



**THE WORKERS' COMPENSATION  
RATING AND INSPECTION BUREAU**

January 7, 2003

**CIRCULAR LETTER NO. 1906**

To All Members and Subscribers of the Bureau:

**COVERAGE FOR SOLE PROPRIETORS AND PARTNERS OF LEGAL  
PARTNERSHIPS AND EXEMPTION FROM COVERAGE OF CORPORATE  
OFFICERS OR DIRECTORS**

**REVISIONS TO THE MASSACHUSETTS WORKERS COMPENSATION AND  
EMPLOYERS LIABILITY INSURANCE MANUAL**

**&**

**ADDITION OF MASSACHUSETTS EXPLANATORY NOTES TO NATIONAL  
ENDORSEMENTS WC 00-03-08 AND WC 00-03-10**

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As previously advised in Circular Letters 1898, 1901 and 1902 An Act Relative To Workers' Compensation Coverage For Sole Proprietors, Partnerships and Corporate Officers, also known as Chapter 169 of the Acts and Resolves of 2002, became *effective on October 23, 2002*. This Act amended Massachusetts General Law, c. 152 § 1(4), to make it possible (i) for sole proprietors and partners of a legal partnership to elect coverage for themselves as employees and (ii) for certain corporate officers and directors to exempt themselves from coverage.

The Division of Insurance has approved the Bureau's proposed revisions to the *Massachusetts Workers Compensation and Employers Liability Insurance Manual* (MA Manual). These revisions update the MA Manual to reflect the new legislation and regulations regarding corporate officer and director exclusions from coverage and sole proprietor and partner elections for coverage. Revisions are made to Rule V- Premium Basis; Rule IX- Special Conditions or Operations Affecting Coverage and Premium; and Rule X-Cancellation. See Exhibit A.

**THE WORKERS' COMPENSATION RATING & INSPECTION BUREAU OF MASSACHUSETTS**

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Circular Letter No. 1902 and the revised MA Manual pages instruct insurers to utilize two national endorsements, the Partners, Officers and Others Exclusion Endorsement – WC000308, and the Sole Proprietors, Partners, Officers and Others Coverage Endorsement – WC000310. Those endorsements were part of *NCCI's Forms Manual for Workers Compensation and Employers Liability Insurance* that was approved in Massachusetts effective April 1, 1984. The Bureau has advised NCCI that we intend to use the Endorsements with the inclusion of the Massachusetts Explanatory Notes as shown on each attached endorsement. See Exhibits B & C.

As announced in Circular Letter No. 1901, the approved premium basis for sole proprietors and partners who elect to become employees and obtain workers' compensation insurance coverage for themselves shall be based on an established fixed amount equal to the State Average Weekly Wage (SAWW) x 52 weeks. Effective October 1, 2002, the SAWW in Massachusetts is \$882.57, which equates to a \$45,900 Basis of Premium for sole proprietors and partners. Rule IX of the MA Manual is revised to include a description of the Premium Determination for sole proprietors and partners. The approved \$45,900 Basis of Premium is appropriately detailed in the MA Manual's Miscellaneous Values Page RA-5. See Exhibit D.

Revised MA Manual pages reflecting the changes necessitated by approval of this Item will be distributed in due course. The Internet-based versions of the affected manuals, accessible at [www.wcribma.org](http://www.wcribma.org) and [www.ncci.com](http://www.ncci.com), will be updated as soon as possible. In due course, Massachusetts Explanatory Notes will be printed and distributed in *NCCI's Forms Manual of Workers Compensation and Employers Liability Insurance* for The Partners, Officers and Others Exclusion endorsement – WC 00-03-08 and the Sole Proprietors, Partners, Officers and Others Coverage Endorsement – WC 00-03-10.

It is important to refer to the Department of Industrial Accidents (DIA) promulgated regulations that govern the election of coverage by sole proprietors and partners of a legal partnership and the exemption of coverage for certain corporate officers and directors. These regulations are identified as *452 CMR 8.00: Office of Investigations* and are referenced, where appropriate, in the revised MA Manual pages.

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**Director – Customer Services**

*DC/aa*

## Massachusetts Workers' Compensation And Employers Liability Insurance Manual

### Present Phraseology Part One

### Proposed Phraseology Part One

#### RULE V - PREMIUM BASIS

#### RULE V - PREMIUM BASIS

#### F. PAYROLL LIMITATION

#### F. PAYROLL LIMITATION

##### 1. When Payroll Limitation Applies

Payroll limitation applies after any deductions of extra pay for overtime.

##### 1. When Payroll Limitation Applies

No Change

##### 2. How Payroll Limitation Applies

For executive officers and classifications with notes which indicate payroll limitation, the payroll on which premium is based shall exclude that part of the employee's average weekly pay in excess of the applicable weekly limitation, provided:

##### 2. How Payroll Limitation Applies

No Change

- a. Books and records are maintained to show separately the total payroll earned by each employee whose average weekly pay for the total time employed during the policy period exceeds the weekly payroll limitation, and
- b. Separate records are maintained in summary by classification for such employees.

##### 3. Partial Week

##### 3. Partial Week

A part of a week shall be treated as a full week in determining average weekly pay.

No Change

##### 4. Executive Officer's Payroll

##### 4. Executive Officer's Payroll

- a. The remuneration of an executive officer shall not be included with the payroll of the risk for premium computation purposes, provided:

No Change

- (1) That such officer is elected for the value of the officer's name or because of stock holdings, has no duties and does not come on the premises,

**Present Phraseology**  
**Part One**

except perhaps to attend directors' meeting, or

- (2) That such officer ceases to perform any duties and does not come on the premises, except perhaps to attend directors' meetings.

**Proposed Phraseology**  
**Part One**

- (3) That such qualifying corporate officer or director has elected to be excluded from coverage. See Rule IX-A.2.

**RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM**

**RULE IX - SPECIAL CONDITIONS OR OPERATIONS AFFECTING COVERAGE AND PREMIUM**

**A. EXECUTIVE OFFICERS**

**A. EXECUTIVE OFFICERS**

**1. Definition**

Executive officers of a corporation or an association are the president, vice president, secretary, treasurer, clerk or any other officer appointed in accordance with the charter or bylaws of such entity.

**1. Definition**

No Change

**2. Law and Status**

Executive officers of a corporation or an association are covered under M.G.L. Chapter 152, as amended.

Executive officers have the same status as employees under the policy.

**2. Law and Status**

No Change

No Change

*Exceptions to A. 2. above*

Corporate officers or directors who own at least 25% of the issued and outstanding shares of a corporation may elect to be excluded from coverage, pursuant to M.G.L. c. 152, § 1(4) as amended by Chapter 169 of the Acts of 2002. Remuneration of excluded corporate officers or directors shall not be included in premium determination.

To exclude coverage for qualifying corporate officers or directors that have elected and been approved in accordance with 452 CMR 8.06, attach the Partners, Officers and Others Exclusion Endorsement (WC 00 03 08).

**B. SOLE PROPRIETORS OR PARTNERS**

**B. SOLE PROPRIETORS OR PARTNERS**

**1. Sole Proprietors**

Workers compensation insurance coverage for sole proprietors is not available in Massachusetts. Workers compensation insurance coverage must be provided for employees of sole proprietors.

**2. Partners**

Workers compensation insurance coverage for partners of a partnership is not available in Massachusetts. Workers compensation insurance coverage must be provided for employees of a partnership in Massachusetts.

**1. Definition**

Sole proprietors and partners of a legal partnership are employers under M.G.L. c. 152, § 1(5).

**2. Status**

Sole proprietors and partners of a legal partnership are not covered under M.G.L. Chapter 152, as amended, and therefore, do not have the same status as employees covered under the policy.

*Exceptions to B.2. above*

Sole proprietors and partners of a legal partnership, pursuant to M. G. L. c. 152, § 1(4) as amended by Chapter 169 of the Acts of 2002, may elect to be treated as employees and obtain workers compensation insurance coverage.

To provide coverage for sole proprietors and partners of legal partnerships who have elected coverage in accordance with 452 CMR 8.07, attach the Sole Proprietors, Partners, and Others Coverage Endorsement (WC 00 03 10).

**3. Premium Determination**

Premium for sole proprietors and partners of a legal partnership who have elected to become employees and obtain workers compensation insurance coverage shall be based on the established fixed payroll amount.

- a. The fixed payroll amount for each sole proprietor or partner of a legal partnership is detailed in Part Three – Miscellaneous Values, page RA-5.

**Present Phraseology**  
**Part One**

**Proposed Phraseology**  
**Part One**

- b. The fixed payroll amount, as detailed in Part Three – Miscellaneous Values, page RA-5 shall be pro-rated for each sole proprietor or partner of a legal partnership for the number of weeks these individuals were covered during the policy period.

**4. Assignment of Payroll**

The fixed payroll amount shall be assigned to the classification that applies to the principal operations in which the individual sole proprietor or partner of a legal partnership is engaged

Exceptions to B.4. above

- a. The fixed payroll amount of a sole proprietor or partner of a legal partnership who regularly and frequently engages in duties which are ordinarily performed by a superintendent, foreman or worker shall be assigned to the governing classification.
- b. The fixed payroll amount of a sole proprietor or partner of a legal partnership who performs construction, erection or stevedoring operations shall be divided and assigned to the classifications which apply to the different types of operations of the sole proprietor or partner of a legal partnership , subject to the requirements of Rule IV-E.2.

**5. Flight Duties**

The fixed payroll amount of a sole proprietor or partner of a legal partnership who is a pilot or member of the flying crew of an aircraft used in the insured's business shall be assigned as follows:

- a. For each week during which the sole proprietor or partner of a legal partnership did not perform flight duties, assign the fixed payroll amount as provided in Rule IX- B-4.

**Present Phraseology  
Part One**

**Proposed Phraseology  
Part One**

- b. For each week during which the sole proprietor or partner of a legal partnership performed flight duties, assign the fixed payroll amount for that week to Code 7421 - Aircraft Operation - Flying Crew. If a sole proprietor's or partner of a legal partnership's non-flying duties in such a week are subject to a higher rated classification, that higher rated classification shall be assigned in that week.

Rules 5. a. and b. apply on the basis of the pilot's log book required under Federal regulations or other verifiable records.

If Code 7421 - Aircraft Operation - Flying Crew - applies and verifiable records are not maintained to indicate those weeks during which flying is performed by a sole proprietor or partner of a legal partnership, their fixed payroll amount shall be assigned to the highest rated classification which applies to any of their operations.

**RULE X - CANCELATION**

**C. PREMIUM DETERMINATION -  
CANCELATION BY THE INSURED WHEN  
RETIRING FROM BUSINESS**

Compute the premium as provided in B. above if a policy is canceled by the insured when:

- 1. All the work covered by the policy has been completed, or
- 2. All interest in any business covered by the policy has been sold, or
- 3. The insured has retired from all business covered by the policy.

**RULE X - CANCELATION**

**C. PREMIUM DETERMINATION -  
CANCELATION BY THE INSURED WHEN  
RETIRING FROM BUSINESS**

No Change

- 4. The insured is a corporation that can legally operate without workers compensation insurance because all the corporate officers and directors have exercised their right of exemption and are the only employees of the corporation, per 452 CMR 8.06.

PARTNERS, OFFICERS AND OTHERS EXCLUSION ENDORSEMENT

The policy does not cover bodily injury to any person described in the Schedule.

The premium basis for the policy does not include the remuneration of such persons.

You will reimburse us for any payment we must make because of bodily injury to such persons.

Schedule

Partners

Officers

Others

Notes :

- 1. Use this endorsement in a state where an individual has elected pursuant to the workers compensation law not to be covered by the law and to exclude employers liability coverage where the insured is statutorily exempt from workers compensation coverage.
- 2. Individuals may be designated in this endorsement only when it is proper to do so under the workers compensation law. Individuals may be designated by naming them or by describing them, as, for example:
  - a. all partners;
  - b. all executive officers except the president;
  - c. each person named in Item 4 of the Information Page.
- 3. This endorsement may be used in Missouri to exclude members of a limited liability company who have rejected workers compensation and employers liability insurance in accordance with Missouri Department of Insurance Bulletin 96-02.
- 4. Use this endorsement in the State of Missouri to exclude family members, as allowed by Section 287.035.6.(2), RSMo. The family members should be individually named (a general statement of "all family members" is not acceptable) within this endorsement and updated annually to avoid any possible disputes over which family members intend to be excluded. In addition, for purposes of Section 287.035.6.(1), RSMo, family members within the third degree of affinity or consanguinity shall mean the following:
  - 1st Degree: Parents or child of the employer, or of the employer's current living spouse.
  - 2nd Degree: Grandparents, grandchildren, brothers or sisters of the employer or of the employer's current living spouse.
  - 3rd Degree: Great grandparents, great grandchildren, aunts, uncles, nieces or nephews of the employer or of the employer's current living spouse.
- 5. In the Commonwealth of Massachusetts, this endorsement can be used only to identify corporate officers or directors who own at least 25% of the issued and outstanding stock of a corporation and who have elected to exclude themselves from coverage in accordance with Massachusetts General Law, Chapter 152, Section 1(4), as amended, and Massachusetts Department of Industrial Accidents Regulation 452 CMR 8.00. All excluded corporate officers and directors must be individually named on this endorsement.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)

Endorsement Insured

Effective Policy No.

Endorsement No. Premium

Insurance Company

Countersigned by \_\_\_\_\_



**SOLE PROPRIETORS, PARTNERS, OFFICERS AND OTHERS COVERAGE ENDORSEMENT**

An election was made by or on behalf of each person described in the Schedule to be subject to the workers compensation law of the state named in the Schedule. The premium basis for the policy includes the remuneration of such persons.

Schedule

**Persons** **State**

Sole Proprietor:

Partners:

Officers:

Others:

**Notes:**

Individuals may be designated in this endorsement only when it is proper to do so under the workers compensation law. Individuals may be designated by naming them or by describing them, as, for example:

- a. all partners;
- b. all executive officers except the president;
- c. each person named in Item 4 of the Information Page.

In the Commonwealth of Massachusetts, this endorsement can be used only to identify sole proprietors or partners who have elected to obtain coverage for themselves as employees on this policy in accordance with Massachusetts General Law, Chapter 152, Section 1(4), as amended, and Massachusetts Department of Industrial Accidents Regulation 452 CMR 8.00. All included sole proprietors and partners must be individually named on this endorsement.

This endorsement changes the policy to which it is attached and is effective on the date issued unless otherwise stated.

**(The information below is required only when this endorsement is issued subsequent to preparation of the policy.)**

Endorsement Insured	Effective Policy No.	Endorsement No. Premium
Insurance Company	Countersigned by _____	

**MASSACHUSETTS WORKERS COMPENSATION  
AND EMPLOYERS LIABILITY INSURANCE MANUAL**

1<sup>st</sup> Reprint

Effective July 1, 2001

Page RA-5

**MISCELLANEOUS VALUES**

Basis of Premium applicable in accordance with the footnote instructions for Code 7370 - "Taxicab Co.":

Employee operated vehicles .....	\$64,809.00*
Leased or rented vehicles .....	\$43,206.00*

Basis of Premium for Sole Proprietors and Partners of Legal Partnerships in accordance with Rule IX-B. 3. a.....\$45,900.00‡

**BENEFITS DEDUCTIBLE COVERAGE PROGRAM**

<u>Medical and Indemnity Deductible Amount</u>	<u>Premium Reduction Percentage</u>
\$ 500	3.0%
\$1,000	4.2%
\$2,000	6.2%
\$2,500	7.1%
\$5,000	10.6%

**BENEFITS CLAIM AND AGGREGATE DEDUCTIBLE PROGRAM**

<u>Estimated Annual Standard Premium</u>	<u>Claim Deductible Amount</u>	<u>Aggregate Deductible Amount</u>	<u>Premium Reduction Percentage</u>
0 to \$75,000	\$2,500	\$10,000	7.0%
\$75,001 to \$100,000	\$2,500	\$10,000	6.5%
\$100,001 to \$125,000	\$2,500	\$10,000	5.9%
\$125,001 to \$150,000	\$2,500	\$10,000	5.4%
\$150,001 to \$200,000	\$2,500	\$10,000	4.5%
over \$200,000	\$2,500	5% of Estimated Annual Standard Premium	4.3%

Expense Constant applicable in accordance with Basic Manual Rule VI-E-2:

Policies which develop earned Standard Premium of less than \$200 .....	\$122.00*
Policies which develop earned Standard Premium of \$200 or more .....	\$244.00*

The expense constant for private residence per capita classifications is \$49\*, subject to a maximum of four per capita exposures.

Premium Discount Percentages - (See Basic Manual Rule VII). The following premium discounts are applicable to Standard Premiums:

		<u>Type A Discount</u>	<u>Type B Discount</u>
First	\$ 10,000.....	0.0%	0.0%
Next	190,000.....	9.1%	5.1%
Next	1,550,000.....	11.3%	6.5%
Over	1,750,000.....	12.3%	7.5%

Premium Discount not applicable to Assigned Risk policies.

United States Longshore and Harbor Workers' Compensation Coverage Percentage applicable only in connection with Rule XII-D-3 "U.S. Longshore and Harbor Workers' Compensation Act" of the Basic Manual.....38.4%

(Multiply a Non-F classification rate by a factor of 1.384)

**EXPERIENCE RATING ELIGIBILITY**

A risk is eligible for intrastate experience rating when the payrolls or other exposures developed in the last year or last two years of the experience period produced a premium of at least \$11,000. If more than two years, an average annual premium of at least \$5,500 is required.<sup>†</sup> Page A-1 of the Experience Rating Plan Manual should be referenced for the latest eligibility amounts by state.

<sup>†</sup> Effective October 1, 1991.

<sup>‡</sup> Effective October 23, 2002