

# CHAPTER 12: WORKERS COMPENSATION



## Let's Begin...

### Workers Compensation



Every state in the union requires that employers pay for on-the-job injuries. Under workers compensation law, employers are strictly responsible for the costs of any employee injuries that arise out of any employment related injury regardless of fault.

Workers compensation insurance is relatively new—its concept originated during the industrial revolution in Europe, and Wisconsin passed the first successful U.S. workers compensation law in 1911.

Since the mid-1800s, there has been a gradual and progressive transformation of the legal relationship between employers and employees. At the beginning of the period, the only recourse available to workers who were injured on the job was to seek damages under a system of common law (case law) liability. That system favored employers and made it very difficult for an injured worker to obtain an award.



Courts eventually recognized that an employer did have certain obligations to employees. To satisfy these obligations, the employer was expected to provide:

- a safe place to work,
- safe equipment and tools,
- reasonably competent fellow servants,
- enforcement of safety rules, and
- reasonable warnings about job dangers.

If an employer violated any of these obligations, there might be a basis for establishing negligence. But the burden of proof still fell fully on the injured employee. More significantly, an employer, even if negligent, could invoke certain legal defenses.



Court decisions had created **three basic defenses** which could relieve an employer of legal liability:

- fellow servant rule,
- contributory negligence, and
- assumption of risk.

The arrival of workers compensation laws drastically altered the legal relationship between employer and employee. In the past, each tried to prove the negligence of the other in order to secure or avoid payment. Under the new laws, employers accepted liability for work-related injury or death regardless of fault. In most situations, employees no longer have to prove negligence and have given up their right to file suit, but they are now entitled to benefits. Some classes of employees are exempt from the laws, and suits may still be filed for damages which are not covered by the compensation law. In those cases which do fall outside the law, the three common law defenses are still available to the employers.

Today, under a statutory (written law) system, workers receive compensation for job-related injuries without having to challenge an employer, and regardless of whether or not the employer was at fault. Statutory workers compensation benefits are the exclusive remedy for many types of work-related injuries, but they guarantee that benefits will be paid. It took a major shift in social priorities and public policies to bring about the change.

### **California State Compensation Insurance Fund**

The State Compensation Insurance Fund is administered by its board of directors for the purpose of transacting workers' compensation insurance in a competitive market with other insurers. It is also referred to as the SCIF and is run by 13 directors from the state of California. The fund only writes worker's compensation coverage; however, this would be a last resort for a business after failing to obtain coverage from a private insurer. The majority of The Fund's business comes directly from employers, although some licensed brokers will also utilize the SCIF. (CIC 11770)



## Exempt Classifications

The early workers compensation laws applied only to very hazardous occupations. Over the years the scope of the laws has expanded to embrace more and more occupational groups. Every state has some exempt classifications, but it is estimated that about 90 percent of the nation's employees now fall under workers compensation laws. Although the exemptions are not the same in all states, the following classes of employees are typically exempt:

- certain farm and agricultural workers,
- charitable organization workers,
- domestic employees and casual labor,
- newspaper vendors, and
- outworkers (those who take articles home for cleaning or repair).

In some states, the hours worked or wages earned determine whether or not an employee is exempt. Employers are not required to provide insurance or compensation benefits for exempt employees, but it is often recommended that they do. The fact that a worker is outside the law does not preclude legal claims against the employer. Benefits may always be voluntarily provided by purchasing workers compensation insurance to cover exempt employees.

Principals who use contractors, and contractors who sublet work to subcontractors, should secure certificates of workers compensation insurance from the parties they work with. Principals may be held liable for the employees of contractors who fail to meet obligations under the law, and contractors can be held liable if their subcontractors fail to meet their obligations. In the absence of proper coverage at the lower levels, the responsible party might have to provide benefits. If an insurance company provides additional benefits, it may add the payroll of subcontractors when it calculates a final premium, and the principal or contractor might face a substantial and unexpected additional charge.

A final caveat: Because an employer must provide these benefits and because the benefits are so liberal, the system is ripe for being abused. Cottage industries have sprung up to service injured employees, some of whom use the injury as a means to an extended paid vacation. Legions of unscrupulous lawyers, chiropractors, and doctors have made a living signing off on questionable claims and "soft tissue" injuries that are difficult to disprove. Since workers compensation was designed to settle claims rather than dispute them, questionable claims are paid at substantial cost to the employer.

# Workers Compensation Policy

The policy text reviewed in the following pages is that of the 1992 edition of the Workers Compensation and Employers Liability Policy developed by the **National Council on Compensation Insurance (NCCI)**. This policy form is used by insurance companies in most states.

In its current form, the policy has eight parts:

- Information page
- General section
- Part I—Workers compensation
- Part II—Employers liability
- Part III—Other states insurance
- Part IV—Duties if injury occurs
- Part V—Premium
- Part VI—Conditions

Under each coverage part, the insurance applies to accidental bodily injury, death, or disease, occurring during the policy period and caused or aggravated by the conditions of employment by you. The insurance company agrees to provide a legal defense, and to investigate and settle all claims and suits covered by the insurance.

Supplementary payments are also provided, including coverage for appeal bonds, bonds to release attachments, interest on judgments, claim expenses, litigation costs taxed against you, and your expenses (other than loss of earnings) incurred at the insurance company's request. The insurance company has subrogation rights if anyone other than you is liable for a covered injury. If any other insurance applies, the insurance company will only pay its share of claims and costs—subject to any limits of liability, all shares will be equal until a loss is paid.

In contrast to most other forms of commercial casualty insurance, workers compensation and employers liability coverage contributes equal shares when other insurance applies. Most other coverages contribute proportionally based upon the respective limits of insurance.

We will touch on the most important aspects of the Worker's Compensation Policy.



## **Information Page**

The Information Page (called a declarations page on most other insurance policies) lists the particulars of a specific policy. Among the important parts of an information page:

- Item 1 shows your name and address, and the type of business (individual, partnership, corporation) you manage. A space is provided to list any operations conducted at locations other than your policy address.
- Item 2 shows the policy period, which begins at 12:01 A.M. standard time at the policy address.
- Item 3.A. includes space for listing all of the states in which workers compensation coverage is to apply—states in which you have operations should be listed.
- Employers liability coverage limits are to be entered in item 3.B. Basic limits are \$100,000 per accident for injuries, \$100,000 per employee for disease, and \$500,000 aggregate (annually) for disease. Higher limits may be purchased.
- Item 3.C. includes space for listing additional states in which you might have a future exposure. The optional “other states” coverage will automatically begin only if the additional states are included in item 3.C.
- Space for listing job classifications and codes, estimated payrolls, rates, and estimated premiums is provided under item 4. Premiums may be paid monthly, quarterly, semi-annually, or annually.

It is on this information page that you’ll find your name, the name of your insurance company, the policy’s term, a list of covered states, the employers liability limits, classifications, schedules of rates, and advanced premiums.

## **General Section**

The Workers Compensation and Employers Liability Insurance Policy **has three separate and distinct coverage parts**. The provisions described in the General Agreement and General Section apply to all three.

In addition to providing basic definitions, this section establishes the makeup of the insuring contract: the policy’s information page, the policy form, and all endorsements and schedules. After issuance, the policy’s conditions can be changed only by written endorsements issued by the insurance company.

### *Synopsis*

#### **GENERAL AGREEMENT**

In return for the payment of the premium and subject to all terms of this policy, we agree with you as follows:

#### **GENERAL SECTION**

The Policy:

This policy includes at its effective date the Information Page and all endorsements and schedules listed there. It is a contract of insurance between you (the employer named in Item 1 of the Information Page) and us (the insurer named on the Information Page). The only agreements relating to this insurance are stated in this policy. The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy.

## Who Is Insured

The employer named in the policy is the insured. If the employer is a partnership, all partners are also insured.

### *Synopsis*

#### Who Is Insured:

You are insured if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are insured, but only in your capacity as an employer of the partnership's employees.

## Workers Compensation Law



The term "workers compensation law," as used in the policy means just those laws passed by the states or territories specifically listed on the policy's information page under item 3.A. There is no coverage for claims brought under federal statutes such as the U.S. Longshore and Harbor Workers Compensation Act unless endorsements adding the coverage are attached.

One of the major problems with workers compensation insurance is that it's regulated heavily—and, in many cases, badly. This problem surfaces in several ways, particularly as relates to key issues like policy cancellation.

### *Synopsis*

#### Workers Compensation Law:

Workers Compensation Law means the workers or workmen's compensation law and occupational disease law of each state or territory named in item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provide nonoccupational disability benefits.

## Policy Territory

Although it doesn't say so here, the standard policy can provide coverage in U.S. territories as well as in U.S. states and in Washington D.C.

### *Synopsis*

#### State:

State means any state of the United States of America, and the District of Columbia.

## **Listing Workplaces**

States and territories where coverage applies must be listed in the information page's item 3.A.

### ***Synopsis***

#### **Locations**

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; and it covers all other workplaces in Item 3.A. states unless you have other insurance or are self-insured for such workplaces.



# Part I – Workers Compensation



Now we've come to the first of the three coverage parts—workers compensation insurance. **You'll find no exclusions in this section**, a rarity in insurance policies. But remember that it's the state's compensation laws, not the policy, that determine when and what benefits are payable.

Workers compensation coverage applies to bodily injuries and diseases "arising out of and in the course of employment." **Covered losses must be work-related** (losses that are non-work-related are not covered by workers compensation).

Any covered bodily injury must be **accidental**, and the term includes death resulting from the accident. Only **occupational diseases**, which are unique to the occupation, are covered. A cause-and-effect relationship must exist between the job and the disease, and ordinary diseases suffered by the general public are not covered. The law is different in each state, but usually benefits are not provided if the injury or disease is intentionally caused by the employee, or results from intoxication on the job, or occurs during activities which are not part of the job.

You'll note that nowhere does the policy actually define the term, bodily injury. This is not an oversight. State legislatures and courts—not the policy—determine what is and what is not a compensable injury. Today, unlike forty years ago, workers comp policies commonly pay emotional and mental stress claims as well as those for physical injuries.

## *Synopsis*

### **WORKERS COMPENSATION INSURANCE**

#### **A. How This Insurance Applies**

This workers compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the policy period.

## **Exposure During Policy Term**

This section also stipulates that, in order to receive benefits under a specific policy, an employee's last exposure to a disease-causing or disease-aggravating condition must occur during that policy's term.



## *Synopsis*

2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

What's the intent of this provision? Let's look at an example—at Natural Weave Textile Mill and an employee named Joe. In the thirty years that Natural Weave's been in business, the company has had a dozen different workers comp carriers. Joe, who has "always been a textile worker," is now leaving Natural Weave. He contracted brown lung disease (byssinosis) caused by the years of inhaling raw cotton and linen fibers. Which insurance company pays Joe's benefits? The "last exposure" provision rules that the insurance policy in effect when Joe was last exposed to raw textiles—when he left the company—pays.



## Insuring Agreement

We find here one of the insurance world's shortest and clearest insuring agreements. What will the insurance company pay? Those benefits required by a covered state's workers comp laws. When will the benefits be paid? Promptly.



Workers compensation laws usually provide for the payment of **four types of benefits**:

- medical benefits,
- income benefits,
- death benefits, and
- rehabilitation benefits.

### *Medical Benefits*



Medical benefits are provided without limit in every state. An injured or diseased employee is entitled to receive all necessary medical and surgical treatment to cure or relieve the condition. Certain maximums or limits may apply to a type of care or a particular medical item, but overall benefits are unlimited. For injuries sustained since 2004 California law limits treatment to 24 chiropractic visits, 24 physical therapy visits and 24 occupational therapy visits, unless the claims administrator approves additional treatment

### *Income Benefits*

Income benefits are paid to employees who suffer work-related disabilities. A waiting period (usually three to seven days) applies before benefits for loss of wages begin. If the disability continues beyond a longer period (usually two to four weeks), retroactive benefits will be paid for the initial waiting period.



A disability may be total (making employment impossible) or partial (resulting in a reduced ability to work, or a need to perform alternative work). Either type of disability may be temporary or permanent. For permanent total disability or temporary total disability, the benefit is a percentage of weekly wages, subject to stated minimum and maximum dollar amounts. Within each state, the percentage is the same for either type of total disability (66-2/3 percent is most common). However, for permanent total disability the dollar maximum and the benefit period are usually greater (benefits for permanent total disability often continue to age 65, while benefits for a temporary total disability may be limited to a maximum number of weeks).

People with partial disabilities are able to perform some work, so the laws provide a benefit equal to a percentage of the wage loss (difference between earnings before and after the accident). In addition to benefits for lost wages, nearly every state provides scheduled benefits for specific permanent partial disabilities, such as loss of limbs, sight, or hearing. Usually these benefits are paid in addition to any other income benefits.

### *Death Benefits*



Death benefits are provided by every state, and there are two types of payments. Each state provides a modest burial allowance, which is a maximum dollar amount (usually within the \$1,000 to \$5,000 range). Each state also provides weekly income payments for a surviving spouse and/or children. Weekly benefits are usually a percentage of the deceased worker's wages, subject to stated minimum and maximum dollar amounts, and a time limit. Some states have an aggregate payment limit. A surviving spouse may receive benefits for life, or until remarriage. Surviving children generally receive benefits until age 18 or 19, and until age 22 or 23 if they are still in school.

## ***Rehabilitation Benefits***



Rehabilitation benefits are provided by all states. Some states have set up a special fund to provide these benefits, while others have not. Rehabilitation services are now recognized as a valuable tool for reducing workers compensation costs and returning disabled employees to their jobs as soon as possible. Rehabilitation may include therapy, vocational training, devices such as wheelchairs, and the costs of travel, lodging and living expenses while being rehabilitated. Various states impose weekly limits, maximum limits, and special limits for specific types of rehabilitation.

### ***Synopsis***

We will pay promptly when due the benefits required of you by the workers compensation law.



## **Defense Coverage**

The insurance company will not only provide claim defense, it will pay reasonable costs and expenses of that defense. The catch in this portion of the policy is that the insurance company has the right to settle a claim without your consent. Let's say you, as an employer, are pretty sure your company's last comp claim has little basis—after all, it was just a minor slip-and-fall. You can tell the insurance company you doubt your employee really experienced a serious back strain, but the insurance company doesn't need your permission to pay the claim.

### ***Synopsis***

#### **We Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

#### **D. We Will Also Pay**

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

## Other Insurance

State laws commonly require that higher benefits be paid for certain losses as a form of penalty to be paid by the employer. Benefits are often increased if a loss results from the serious or willful misconduct of the employer (for example, failing to provide required safety equipment). A number of states require that double benefits be paid for injury to a minor who is employed illegally.

These extra payments are not covered by a workers compensation policy, and the additional amount must be borne by the employer. If the insurance company makes such payments, the policy requires reimbursement from you.

Let's look at examples. An employer ignores a state law requiring safety guards on buzz saws, and an employee loses a hand. Or a painting contractor hires a fourteen-year-old in violation of state labor laws, and the kid (definitely a minor) breaks an arm falling off the scaffolding. Both these cases could result in fines and/or penalties which are not insured.

### *Synopsis*

#### Other Insurance

We will not pay more than our share of benefits and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

If other insurance or self-insurance covers the same loss, all coverages share equally in payment of losses.

#### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers compensation law including those required because:

1. of our serious and willful misconduct;
2. You knowingly employ an employee in violation of law;
3. You fail to comply with a health or safety law or regulation; or
4. You discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

If we make any payments in excess of the benefits regularly provided by the workers compensation law on your behalf, you will reimburse us promptly.

## Subrogation

Commonly called subrogation, this clause acts as a form of reimbursement to the insurance company. If a third party is found negligent of the employee's injury, the insurance company pays comp benefits to the injured worker, and then assumes the right to recover its payments from the responsible party. Under this process, the injured worker can't collect from both the insurance company and the negligent party.

Example: Your secretary, while taking your company's deposits to the bank, is hit by a speeding car. If the insurance company pays your secretary workers comp benefits, the insurance company has the right to seek recovery of its payments from the negligent driver. Under this principle, the secretary is limited in how she can pursue a claim against the driver.

## *Synopsis*

### Subrogation

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

## **Statutory Provisions**

Some general provisions apply automatically when required by law.

1. As between an injured worker and us, we have notice of the injury when you have notice.

Notice of an injury given by a worker to the employer has the same legal effect as notice given to the insurer.

2. Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.

Bankruptcy of the employer does not relieve the insurance company of its obligation to pay benefits.

3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.

The insurance company assumes the obligations of the employer to pay benefits. Action may be taken against the employer, or the insurance company, or both, to collect benefits.

4. Jurisdiction over you is jurisdiction over us for purposes of the workers compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.

Legal obligations of the employer, and judgments against the employer, become obligations of the insurance company.

5. This insurance conforms to the parts of the workers compensation law that apply to:

a. benefits payable by this insurance; or

b. special taxes, payments into security or other special funds, and assessments payable by us under that law.

Statutory benefits and any special taxes, payments, and assessments that are required by the workers compensation law are covered by the insurance.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

Any terms of the policy which conflict with law are automatically changed to comply with the law.

These provisions declare that the insurance company and insured are one and the same with regard to notice of injury given by a worker, and with respect to matters of legal jurisdiction. Bankruptcy of the employer will not relieve the insurance company of its policy obligations. The insurance company agrees to be directly and primarily liable to anyone entitled to workers comp insurance benefits.

## *Synopsis*

### H. Statutory Provisions

These statements apply where they are required by law.

## **Part II – Employers Liability**



Employers liability coverage protects against a variety of common law exposures. It is needed to fill gaps in the compensation coverage and to cover claims which are not subject to the compensation laws. Although an employee gives up the right to sue in exchange for workers compensation benefits, not all employees come under the law. Those not covered may sue. In recent years, successful suits against employers have also been filed by spouses and children of injured workers. Employers liability insurance covers these claims if the original suit is brought in the United States, its territories or possessions, or Canada.

As in part one, the coverage here applies only to bodily injury (which includes accident, disease, or death) that occurs during the policy period and is job-related. The injury must occur in a covered state or territory listed on the policy's information page. And, as in part one, the employers liability section stipulates that an employee's last exposure to a disease-causing or disease-aggravating condition must occur during the policy's term.

But we now see how the two coverages differ. Benefits in part one respond to the statutory workers compensation laws of a state. Part two, employers liability insurance, responds only to suits, legal actions, brought against the insured employer. These legal actions must be initiated in the United States, its territories or possessions, or Canada.

## *Synopsis*

### **EMPLOYERS LIABILITY INSURANCE**

#### How This Insurance Applies

This employers liability insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in a state or territory listed in Item 3.A. of the Information Page.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

## Coverage Provided

The coverages under employer's liability insurance are based on negligence under common law. Here the insurance company agrees only to pay the damages or amounts for which the insured employer is found to be legally liable, provided they are covered by the policy. This insuring agreement, more detailed than that found in part one, is typical of liability insurance contracts.

### *Synopsis*

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.



## Third Party Suits

Employer's liability coverage is not limited to claims filed by injured employees. One such example is found in third-party-over suits. These actions arise when an injured worker sues and collects from a third party for a work-related injury. The third party then seeks damages from the insured employer. Sound confusing? Let's look at an example: J.D. operates the widget machine on Prefab Company's assembly line. For the fifth time in so many days, the widget machine malfunctions, this time badly injuring J.D. Although it's a work-related injury, J.D. sues a third party, Widget Manufacturing, who made the machine and collects damages. Widget Manufacturing, in an effort to recoup its loss, sues the insured employer, Prefab Company, alleging negligence in permitting the continued use of an unsafe machine.

### *Synopsis*

The damages we will pay, where recovery is permitted by law, include damages:  
1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;

## Family Member Services



An employer may also be held liable for damages payable to an injured worker's family members. The policy states it will pay damages "for care and loss of services," a term commonly translated as damages for loss of consortium, resulting from an employee's work-related injury. The policy also pays damages for "consequential" bodily injury to immediate family members. For example, a Massachusetts court awarded damages to the wife and children of an injured worker for their mental anguish caused by seeing him as a helpless quadriplegic.

### *Synopsis*

2. for care and loss of services; and
3. for consequential bodily injury to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and



## Dual Capacity

This clause refers to the dual capacity theory. In these cases, you may be liable to an injured worker in a manner separate from your role as the worker's employer. For example, a truck's faulty tire, a tire manufactured by Bigstone Tire Company, causes a job-related truck accident that injures a Bigstone driver. That driver could claim workers comp benefits plus product liability damages from Bigstone who is both the driver's employer and the manufacturer of the defective tire.

### *Synopsis*

4. because of bodily injury to your employee that arises out of and in the course of employment, claimed against you in a capacity other than as employer.

# Exclusions

Unlike the workers compensation section, the employers liability portion of the policy **specifically lists twelve exclusions**—circumstances in which coverage does not apply.

## Contractual Liability

Coverage for specified common forms of contractual liability is provided by the commercial general liability policy or separate contractual liability insurance. It's not the intent of employers liability insurance to duplicate that coverage. But, as an exception to this exclusion, the policy does provide coverage under the warranty that your work is performed in a workmanlike manner.

### *Synopsis*

#### Exclusions

This insurance does not cover:

1. liability assumed under a contract. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;

## Punitive Damages

Remember our earlier example. The fourteen-year-old painter's helper fell from the scaffolding. There, the policy's workers comp section didn't insure penalty payments. This part of the policy excludes both punitive damage coverages and bodily injury for an incident involving an employee you knowingly hired illegally. No help is intended for employers who willingly violate the law.

### *Synopsis*

2. punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;

## Legal Obligation

With this exclusion, the policy reminds us of the purpose of the employers liability section. It's not to provide coverage under statutory workers comp laws—that's done by part one of the policy. Nor is it to respond to unemployment, disability, or other similar laws. Separate insurance and benefit programs address these needs.

### *Synopsis*

4. any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;



## Willful Acts

Employers liability insurance was developed to protect you for damages arising out of accidental occurrences, not for deliberate, willful acts.

### *Synopsis*

5. bodily injury intentionally caused or aggravated by you;

## Outside Policy Territory

Injuries occurring outside of the U.S. or Canada are excluded, unless the employee is a citizen who is only temporarily outside of these jurisdictions.

### *Synopsis*

6. bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;

## Stress

In recent years, a host of claimants (especially those recently reprimanded or fired) have sought damages from their employers (or ex-employers) for on-the-job stress or mental anguish. This 1992 edition of the NCCI policy clearly excludes coverage under the employers liability section for work-related acts of coercion, criticism, demotion, discrimination, etc. The exclusion doesn't actually say that mental stress is not a bodily injury. It simply says the specific acts listed are excluded.

The workers comp section doesn't contain a similar exclusion, leaving it to a state's courts and compensation laws to determine when compensation benefits are payable.

### *Synopsis*

7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;



## Limited Jurisdiction

These last five exclusions limit the jurisdiction of employers liability insurance. Like the workers compensation part of the policy, this section won't automatically pay compensation or damages in response to any federal or maritime or admiralty compensation laws. And fines or penalties for violations of these laws, as well as those of a state, are excluded.

Here we see an important role of endorsements. Suppose your company has federal as well as state exposures. A simple endorsement to the standard policy can add the needed coverages (both workers compensation and employers liability)—at an added cost, of course.

What are these federal acts? The exclusion names the most common. Let's look at just one—the U.S. Longshore and Harbor Workers Compensation Act (USL&HW Act). Maritime employees who work on U.S. navigable waters and their adjoining piers or docks fall under this federal act. Their duties can vary from stevedoring and freight handling to boat building and harbor work. Some employees may come under both state laws and those of the USL&HW Act. For example, customhouse brokers or some electronics repairmen frequently board ships in connection with their shore-side jobs.

(As a note here, the USL&WH Act doesn't cover all boat or ship-related duties. Seamen, those who have the job of operating a U.S. commercial vessel in navigable waters, fall under a different federal law, called the Jones Act.)

### *Synopsis*

8. bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Non-appropriated Fund Instrumentalities Act (5 USC Sections 8171-8173), the Outer Continental Shelf Lands Act (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 910-942), any other federal workers or workmen's compensation law or other federal occupational disease law, or any amendments to these laws;
9. bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment, or any amendments to those laws;
10. bodily injury to a master or member of the crew of any vessel;
11. fines or penalties imposed for violation of federal or state law; and
12. damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

## Defense Coverage

The employers liability defense provisions are nearly identical to those found in the workers compensation section. The insurance company will both provide defense for a claim and pay the reasonable costs and expenses of that defense. These expenses are paid in addition to any amounts that are subject to policy limits. And, as with most liability policies, the insurance company has the right to settle a claim without your consent.

However, employers liability has an additional condition in its defense provisions. Unlike workers comp, employers liability has specific maximum limits of coverage. Once the insurance company has paid out that amount in damages, they don't have to provide further defense for employers liability.

### *Synopsis*

#### D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this insurance. We have the right to investigate and settle these claims, proceedings and suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this insurance.

#### E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. reasonable expenses incurred at our request, but not loss of earnings;
2. premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of liability under this insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this insurance; and
5. expenses we incur.

## Other Insurance

The "other insurance" clause for employers liability coverage is nearly the same as that for workers compensation. If other insurance applies, each contributes equal shares until the loss is paid or the insurance is exhausted.

### *Synopsis*

#### F. Other Insurance

We will not pay more than our share of damages and costs covered by this insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

## Policy Limits

We've already established that workers compensation pays benefits based on a state's statutory workers comp laws. Because each covered state determines the amount to be paid, the policy doesn't show a maximum for workers comp benefits. But the policy's information page does list maximum payable amounts for employers liability. These limits are the most the insurance company will pay for damages during the policy's term.

Item 3.B. of the information page shows three separate limits for employers liability damages. The first, for bodily injury by accident, applies "per accident" regardless of the number of employees injured in the same accident.

### *Synopsis*

#### G. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B. of the Information Page. They apply as explained below.

1. Bodily injury by Accident. The limit shown for "bodily injury by accident—each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident.

A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

The final two limits apply to damages arising from bodily injury by disease. One limit shows the most the policy will pay for disease to any one employee. The other gives the policy limit, called an annual aggregate, for all damages arising from disease during the policy's term.

The standard policy's basic employers liability limits of \$100,000 per accident for injuries, \$100,000 per employee for disease, and \$500,000 annual aggregate for disease can be increased for an additional charge (or premium). Many employers often obtain even greater employers liability protection by purchasing additional layers of coverage through a commercial umbrella or excess liability policy.

Example: A group of employees suffers asbestosis—the lung disease linked to inhaling asbestos fibers—and sues for damages. The standard policy will limit any settlements per employee as well as per the group. \$500,000 wouldn't go very far in this kind of lawsuit, so a commercial umbrella or excess liability policy would be essential.

### *Synopsis*

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease—policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease—each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

## Subrogation

The policy again confirms the insurance company's rights of recovery or reimbursement (subrogation rights). Remember the secretary who was hit by a speeding car while taking the company's deposits to the bank? We said the insurance company had the right to attempt to recover any workers comp benefits paid to the secretary from the negligent driver. The same subrogation principle applies to employers liability damages paid by the insurance company.

### *Synopsis*

#### H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.



## Legal Action Against Insurance Company

No one has the right to take legal action against the insurance company: (1) unless you have done all that the policy requires of you and (2) until the final amount of damages is determined. The fact that the insurance company provides you with coverage doesn't make it a co-defendant in a claim against you.

### *Synopsis*

#### I. Actions Against Us

There will be no right of action against us under this insurance unless:

1. You have complied with all the terms of this policy; and
2. The amount you owe has been determined with our consent or by actual trial and final judgment.

This insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.



## **Part III - Other States Insurance**

Now we've come to the last of the three coverage parts—other states insurance.

This section of the policy replaces the Broad Form All States Endorsement which used to be used with earlier policy forms. The coverage is still optional. It automatically provides compensation coverage in additional states, but only if the additional states are referred to in item 3.C. and you inform the carrier as soon as work begins in any new state. The policy cannot cover exposures in the six jurisdictions where monopolistic state funds operate— North Dakota, Ohio, Washington, Wyoming, Puerto Rico and US Virgin Islands. So, if you anticipate exposures in any of those states, arrangements will have to be made with the appropriate state fund.

If you have a work exposure on the effective date of the policy in any state which is not listed in item 3.A, there will not be any coverage in that state unless the insurance company is notified within 30 days.

But what happens if you open a new office in a state not listed in 3.A., and a claim occurs there immediately—before you notify the insurance company of the new location? The other states insurance coverage automatically extends coverage to additional states where operations begin midterm, but only if these new states are listed on the information page, under item 3.C.

To prevent overlooking a state, many insurance professionals recommend writing the following phrase under 3.C.: "all states except Nevada, North Dakota, Ohio, Washington, West Virginia, Wyoming and the states [already] listed in item 3.A. of the information page." But you must be certain the insurance company is licensed to write in these additional states.

Why, in the last paragraph, did we say "all states except Nevada, North Dakota, Ohio, Washington, West Virginia, and Wyoming"? Except for Wyoming, state-operated compensation funds have monopolies (exclusive control) over the writing of workers comp in these states. Wyoming's state fund has near control; private insurance companies may write coverage there only for occupations for which workers comp is optional. So, if new operations are planned in any of these states, the employer will have to arrange coverage with the specific state fund.

*Synopsis*

**OTHER STATES' WORKERS COMPENSATION INSURANCE**

**A. How This Insurance Applies**

1. This other states insurance applies only if one or more states are shown in Item 3.C. of the Information Page.
2. If you begin work in any one of those states after the effective date of this policy and are not insured or are not self-insured for such work, all provisions of the policy will apply as though that state were listed in Item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.

**Notice for new Workplaces**

This clause reinforces the intent of other states insurance: to provide incidental coverage for new operations that begin midterm only. Here the policy says there's no coverage for a work exposure that existed on the policy's effective date in a state not listed in item 3.A. unless notice is given to the insurance company within 30 days of the policy's inception.

*Synopsis*

4. If you have work on the effective date of this policy in any state not listed in Item 3.A. of the Information Page, coverage will not be afforded for that state unless we are notified within thirty days.

**Work in a New State**

You have an obligation to inform the insurance company as soon as work begins in a new state. The insurance company will then delete that state from 3.C. (other states insurance) and add it under 3.A.

*Synopsis*

**B. Notice**

Tell us at once if you begin work in any state listed in Item 3.C. of the Information Page.

## Part IV – Duty if Injury Occurs

Part four of the policy lists your duties when injuries occur, emphasizing the need for early notification to the insurance company. To ensure that all parties respond quickly to injuries, many states have established penalties for not meeting a prescribed timetable.



For example, in California, a worker should notify his employer of an injury within 30 days; the employer must give the worker a claim form within a day of receiving notice; and the first payment for benefits must be made within 14 days of the employer's knowledge of the injury.

You are obligated to inform the insurance company "at once," and to promptly give the insurance company all names and addresses of injured persons and witnesses, all legal notices and demands, and any other necessary information.

### Duties of the Insured

The other duties, all fairly self-explanatory, are designed to facilitate the company's handling of claims while minimizing expense.

When injury occurs, you must notify the insurance company, provide any medical services required by the workers compensation law, give the insurance company or agent names and addresses of injured persons and witnesses, cooperate with and assist the insurance company in investigating and settling the claim or suit, and do nothing to interfere with the insurance company's right to recover from others. Additionally, you may not voluntarily make payments, assume obligations, or incur expenses except at your own cost.

This section is the tool that many workers comp carriers use when they suspect fraudulent claims are taking place. Some companies will use this tool aggressively.

While you should want your comp insurer to investigate fraud, some insurance companies use fraud as an excuse to resist claims. And even those that aren't sneaky about resisting payments can be foolish about looking for fraud where there isn't any.

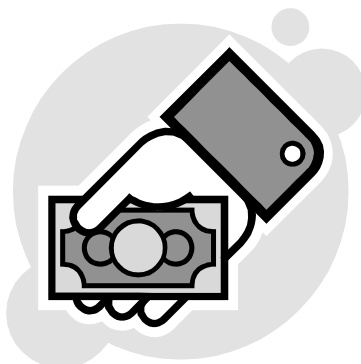
### *Synopsis*

#### **YOUR DUTIES IF INJURY OCCURS**

1. Provide for immediate medical and other services required by the workers compensation law.
2. Give us or our agent the names and addresses of the injured persons and of witnesses, and other information we may need.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.



## Part V – Premium



### Applicable Rates

In part five, the policy gives us a look at its pricing structure: it defines elements used in premium development. All premiums for the policy will be determined by the insurance company's manual of rules, rates, and classifications.

#### *Synopsis*

##### **PREMIUM**

Our Manuals:

All premium for this policy will be determined by our manuals of rules, rates, rating plans and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this insurance.

### Classifications



For workers compensation rating purposes, all occupations are divided into classifications. Similar employments are grouped so that each class reflects exposures common to them all. Some jobs are inherently more dangerous than others, and the classification system attempts to bring equity to the rating system.

The classifying of a risk, more than any other factor, governs the workers comp premium. Classifications and rates, based on expected work exposures, are listed on the policy's information page. From them estimated premiums are developed. But the insurance company can correct inaccurate policy classifications by endorsement.

#### *Synopsis*

Classifications:

Item 4 of the Information Page shows the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates and premium basis by endorsement to this policy.

## Premium Basis



The premium basis used with most classifications is remuneration. (Remuneration includes payroll and other forms of payment such as commissions, bonuses, employer-provided room and board, etc.) Simply multiply the premium basis by the rate to obtain the premium for that classification.

Let's look at an example of an office risk with an anticipated annual payroll of \$300,000. Let's assume the rate for the appropriate classification, Clerical—8810, is \$.40 per \$100 of payroll. The formula for determining the premium for this class is  $\$300,000/100$  or 3000 (premium basis) x \$.40 (rate) = \$1,200 (estimated annual premium).

Payroll for all covered officers and employees is used to compute premium, but most states have established minimum and maximum reportable payrolls for each executive officer.

The laws of most states make a contractor liable for compensation benefits for injured employees of an uninsured subcontractor. And insurance companies require premium for this added exposure. Unless the insured contractor collects, as proof of coverage, certificates of workers comp insurance from each sub, the contractor can expect an additional premium charge to cover subcontracted work. In these cases, the contract price for the sub's services and materials may be used as the premium basis.

### *Synopsis*

#### Remuneration:

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your officers and employees engaged in work covered by this policy; and
2. all other persons engaged in work that could make us liable under Part One (Workers Compensation Insurance) of this policy. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

## Premium Payments

To prevent cancellation of the policy for nonpayment, you must pay all premiums, even estimated premiums, when due.

### *Synopsis*

#### Premium Payments:

You will pay all premium when due. You will pay the premium even if part or all of a workers compensation law is not valid.

## Final Premium Calculation

Final policy premiums are determined—based on actual rates, classifications, and premium basis—after the policy’s expiration. If the final premium is more than the estimated premium previously paid, you must pay the additional premium. If the final premium is less than the estimated premium, the insurance company will refund the balance. However, each policy is subject to a minimum premium.

### *Synopsis*

#### Final Premium:

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual, not the estimated, premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will refund the balance to you. The final premium will not be less than the highest minimum premium for the classifications covered by this policy.

## Cancellation

If the insurance company cancels the policy, the final premium and any premium adjustment will be determined on a pro rata basis (proportional, based on the time the policy has actually been in effect). If you cancel, the final premium and adjustment will be determined on a short rate basis (a slightly higher charge, or penalty, is imposed to cover initial policy writing costs).

### *Synopsis*

If this policy is canceled, final premium will be determined in the following way unless our manuals provide otherwise:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the pro rata share of the minimum premium.
2. If you cancel, final premium will be more than pro rata; it will be based on the time this policy was in force, and increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium.

## Records

Final premiums are based on actual payroll exposures—as opposed to a policy limit, because there is no policy limit. The limit is determined by state law. The policy requires you to keep payroll records and other information necessary to accurately compute premium and to give the insurance company copies if requested.

### *Synopsis*

#### Records:

You will keep records of the information needed to compute premium. You will provide us with copies of those records when we ask for them.

## Audit

The insurance company has the right to examine and audit your records to the extent that they relate to the policy. (This right is also extended to rate service organizations.) These records can be in a variety of forms, from ledgers to computer data. The audits, made in regular business hours, can occur during the policy period and within three years of its expiration.

The final audit billing should never be a "surprise" to you, yet audits often develop unexpected additional premiums. Using wrong classifications, underestimating payroll, not keeping complete accounting records—all can result in additional premiums at audit.

### Synopsis

#### Audit:

You will let us examine and audit all your records that relate to this policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.



**"All right, Tom! It's time I ended this charade! I'm not Glenda, your adoring wife of 12 years! I'm IRS agent Lola Schwantz, and I know every trick you've tried to pull! Get ready for the mother of all audits!"**

## Part VI – Conditions

In this last part, we find a number of specific policy conditions.

### Inspection

The inspection provision clearly states that the insurance company and rate service organization have the right to inspect your workplace for underwriting and rating considerations. But these inspections aren't to be considered safety inspections. It's not the insurance company's intent to make sure that you operate a safe workplace.

#### *Synopsis*

##### **CONDITIONS**

###### **A. Inspection**

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.



### Policy Term

Most policies are written for one-year terms. This clause states that, in any policy written for a term longer than one year and sixteen days, the provisions apply as if a new policy were issued at each annual policy anniversary. For an application of this condition, let's look at the policy limit for disease for employers liability insurance. The "policy aggregate limit" becomes an annual aggregate limit.

#### *Synopsis*

###### **B. Long Term Policy**

If the policy period is longer than one year and sixteen days, all provisions of this policy will apply as though a new policy were issued on each annual anniversary that this policy is in force.

## **Transfer of Rights and Duties**

Only by the insurance company's written consent can the policy be assigned to another. On your death, your legal representative can be covered, provided the insurance company is notified within thirty days.

### ***Synopsis***

#### **C. Transfer of Your Rights and Duties**

Your rights or duties under this policy may not be transferred without our written consent. If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

## **Cancellation**

You may cancel the policy at any time by providing proper notice. The insurance company may cancel by giving at least 10 days advance written notice (cancellation notice requirements may vary by state.) The policy will terminate on the day and hour specified in any cancellation notice.

### ***Synopsis***

#### **D. Cancellation**

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this policy. We must mail or deliver to you not less than ten days advance written notice stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in Item 1 of the Information Page will be sufficient to prove notice.
3. The policy period will end on the day and hour stated in the cancellation notice.
4. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with the law.

## **First Named Insured**

The first named insured shown on the information page will be the sole representative for the purpose of acting on behalf of all other insured parties to change the policy, receive return premiums, and to give or receive notice of cancellation. This simplifies the obligations of the parties when there are multiple businesses, affiliates and/or subsidiaries covered by the same policy.

### ***Synopsis***

#### **E. Sole Representative**

The insured first named in Item 1 of the Information Page will act on behalf of all insureds to change this policy, receive return premium, and give or receive notice of cancellation.

## Endorsements

A standard policy's terms and conditions may be changed by the attachment of written endorsements issued by the insurance company. A policy's jurisdiction can be broadened to include coverage for employees who fall under federal or maritime laws; a policy's term can be shortened to attain an established anniversary date for experience rating—all by endorsements.

The coverage provided by the standard workers compensation and employers liability policy will not meet the needs of every insured. Various endorsements are available to adjust the coverage for special needs.

### Voluntary Compensation

One practical coverage is **voluntary compensation** for employees who are normally exempt from the law. You may not be required to provide the coverage, but voluntary benefits may be an act of goodwill and may prevent lawsuits under the employers liability section of the policy.

Example: If you use unpaid interns at your company, you may want to provide benefits for them in the event that they are injured. This will help you avoid a civil lawsuit, which might be more costly.

### Longshore and Harbor Workers Endorsement

You should remember that certain workers fall under federal jurisdiction no matter where they work. Those who load, unload, build or repair ships are covered by the U.S. Longshore and Harbor Workers Compensation Act. Miners may require Federal Black Lung Compensation insurance. A workers compensation policy will not automatically provide any of these benefits, and an employer faces a risk that required benefits under federal law may be substantially higher than state benefits provided by the policy. Endorsements are available for each of these exposures. For example, the **Longshore and Harbor Workers Endorsement** extends coverage under a compensation policy so that it will pay the benefits required by federal law.

### Voluntary Compensation Maritime Coverage Endorsement

Other exposures exist outside of the area of statutory benefits. Masters and members of the crew of ocean vessels are protected by a section of the Merchant Marine Act, which is known as the Jones Act. The law permits an injured seaman to elect to sue the employer for damages and to have a jury trial. Insurance is provided under the employers liability section of a standard workers compensation policy, but when the exposure exists the insurance company usually requires attachment of the Maritime Coverage Endorsement, which actually limits the insurance and adds a few more exclusions to the policy. If an employer does not want an injured seaman to have to sue for damages after being injured on the job, the employer can purchase the **Voluntary Compensation Maritime Coverage Endorsement**, which voluntarily provides the statutory benefits of the worker's home state. As is the case with voluntary compensation coverage for other workers, this approach is a matter of goodwill and may prevent lawsuits.

## Foreign Coverage Endorsement

The **foreign coverage endorsement** makes the workers compensation policy 24-hours per day/7-days per week coverage. It also covers an endemic disease characteristic to the area as an occupational disease, and includes the option to buy repatriation coverage, or the additional amount it would take to return the person to the United States.

## Assigned Risk Plans

In some states, workers compensation assigned risk plans have been established to guarantee that employers who have had difficulty in finding coverage will be able to obtain insurance. The assigned risk plan is actually an insurance pool, where risks are shared by participating insurance companies. Participation by authorized carriers in the state may be mandatory or voluntary. An applicant may need to show evidence of having attempted to obtain coverage, and having been rejected, before becoming eligible for insurance through the pool. Risks submitted to the pool may be assigned to a single carrier, or may be shared proportionally by all participating carriers. The requirements will vary from state-to-state, and the pools do not exist in every state. However, you should be aware that this mechanism exists, and that its purpose is to make coverage available for difficult to place risks.



## Workers Compensation Rating

Basic rates for workers compensation insurance are based upon a system of job classifications and manual rates. **Job classification codes** have been established for each type of job description. Separate job descriptions and classification codes exist for similar types of jobs if there are significant differences in the risk factors present. For each job classification code there is a manual rate. Naturally, the rates are higher for high-risk occupations (such as construction and manufacturing) than for low-risk occupations (such as clerical office work and service work).

The **premium base for each job classification is payroll**. Basic premiums are determined by multiplying the manual rate for each job classification code by each \$100 of payroll for that classification.



Smaller employers generally pay the manual rates. Larger employers are subject to **experience rating**, which allows for adjustments of the premium based on actual loss experience. Each employer's actual losses for past years is used in determining an experience rating factor, which is multiplied by the basic premium to arrive at the experience rated premium. In this manner, an employer who has been able to control and minimize losses pays an actual premium which is lower than the basic premium, while an employer who has had above average losses pays an actual premium which is higher than the basic premium.

Employers may choose to participate in a **retrospective rating plan**, which uses a formula to adjust the premium after the end of the policy period. A retrospective rating formula has a number of elements, including a minimum and maximum premium percentage, and a stop loss for individual losses.

Each of these elements allows you to assume a greater or lesser amount of the risk, which tends to push the provisional premium in the opposite direction (the greater the risk assumed by the employer, the lower the premium, and vice versa). The minimum and maximum premium levels represent a floor and a ceiling on how far the final retrospective premium can be adjusted.

For example, a minimum of 75 percent and a maximum of 125 percent means that you could get back as much as 25 percent of the provisional premium, or could end up paying as much as 25 percent more than the provisional premium. The stop loss represents a limit on how much of any individual loss will be used in the calculation of the final premium. For example, if the stop loss is \$25,000 and a \$40,000 loss is paid, only \$25,000 of the loss will be used in the premium calculation. After the policy expires, individual losses (subject to the stop loss limit) will be added together and used in the retrospective rating calculation. A separate stop loss may apply to aggregate losses. The formula, which includes basic premiums, limited losses, and loadings for company expenses and premium taxes, will produce the final premium (subject to the plan's minimum and maximum limits).

Many companies are now using managed health care networks (HMOs PPOs, etc.) to help restrain the growth of workers comp insurance costs. These networks use volume purchasing and careful scrutiny of expense—commonly referred to as **utilization review**—to hold down medical costs. By channeling injured employees to these networks, you can limit the temptation of employees and health care providers to collude in fraudulent schemes.

## 24-Hour Coverage



Employers can purchase a combination of traditional health insurance and workers compensation insurance so that coverage is provided under the same policy regardless of whether the employee's injury or illness is work-related. Advantages include the elimination of duplicate benefits, and the fact that there is no need to first establish whether a claim is work-related before determining coverage (this would also reduce related litigation expenses). There are administrative cost savings as well, since only one source coordinates and delivers the insurance benefits.

Some disadvantages to 24-hour coverage include differences in the underlying insurance benefits (for example, medical benefits are provided without limit and without deductibles or copayments under workers compensation insurance, but not under regular health insurance policies). Also, there may be conflict with conversion privileges, preexisting condition exclusions, dispute resolution, and waiting periods. Finally, there may be legal barriers such as conflicts with ERISA and some state laws to be resolved when this combination coverage is contemplated.