



CIRCULAR LETTER 3256—OCTOBER 13, 2023

TO: Members of the Bureau

FROM: Donna Knepper

RE: Proceedings of the WCRB Governing Board

NCCI Proposal Item B-1448 – Revisions to Basic Manual Rules Related to Payroll Inclusions and Payroll Exclusions

NCCI Proposal Item B-1449 – Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Pursuant to ch. 626, Wis. Stat., the Office of the Commissioner of Insurance has approved the following changes adopted by the Governing Board. The changes to the WI Basic Manual Rule V – Premium Basis are approved effective January 1, 2024, applicable to new and renewal business.

RULE V – PREMIUM BASIS

Item 4. of the Information Page

A. BASIS OF PREMIUM – TOTAL REMUNERATION

Premium shall be computed on the basis of the total remuneration paid or payable by the employer for services of employees or other individuals who could receive worker's compensation benefits pursuant to Chapter 102, Wis. Stats., for work-related injuries as provided for by the policy.

Exceptions:

- Premium for code 0908 Domestic Workers: Residences – Part Time and code 0913 Domestic Workers: Residences – Full Time is computed on a per capita basis.
- Premium for code 7709 Fire Department – Volunteer is based on population.

B. REMUNERATION –PAYROLL

1. Definition

Remuneration means money or substitutes for money. Payroll means remuneration.

2. Inclusions

CIRCULAR LETTER 3256—OCTOBER 13, 2023—PAGE 2

- a. Current wages or salaries including retroactive wages or salaries, whether by cash check, electronic transfer, etc; paid during the current policy period.
- b. Total pay received by employees for commissions and draws against commissions;
- c. Bonuses including stock bonus plans;
- d. Extra pay for overtime work except as provided in Rule V-E;
- e. Pay for holidays, vacations, periods of sickness or unused accrued sick and vacation time;
- f. Payment by an employer of amounts otherwise required by law to be paid by employees to statutory insurance or pension plans, such as the Federal Social Security Act;
- g. Payment to employees on any basis other than time worked, such as piecework, profit sharing or incentive plans;
- h. (RESERVED FOR FUTURE USE)
- i. The rental value of an apartment or a house provided for an employee based on comparable accommodations;
- j. The value of lodging, other than an apartment or house, received by employees as part of their pay will be the amount shown on the [Miscellaneous Values Table](#) on the WCRB website;
- k. The value of meals received by employees as part of their pay will be the amount shown on the Miscellaneous Values Table on the WCRB web site;
- l. The value of store certificates, merchandise, credits or any other substitutes for money received by employees as part of their pay (refer to exclusions below for certain fringe benefits [substitutes for money] not considered to be remuneration);
- m. Payments for employee-authorized reductions from gross pay in payroll. Payments for salary reduction, retirement, WI Retirement Plan, or cafeteria plans (IRC 125), health savings accounts, and flexible spending accounts that are made through employee-authorized salary reductions from the employee's gross pay;

Examples of payments for employee-authorized reductions from gross pay include:

- salary reductions
- health savings accounts (HSAs)
- Flexible spending accounts (FSAs)
- Employee savings plans
- Retirement plans, and
- Cafeteria plans, including IRC 125 plans.

- WI Retirement Plan
- n. Wages paid to employees as salary in conjunction with the Davis-Bacon Act or other prevailing wage laws;
- o. Annuity plans;
- p. Expense reimbursements and flat expense allowances paid to employees in payroll if when the employer's verifiable records do not substantiate confirm that the employee expense or allowance was incurred as a valid business expense;

Exception:

When it can be verified that the employee was away from home overnight on the business of the employer, but the employer did not maintain verifiable receipts for incurred expenses, a reasonable expense allowance is permitted to be excluded. The allowance is limited to a maximum of \$75 per day. The remaining non-verifiable expenses are included as payroll.

Exclude from payroll a maximum expense allowance of up to \$75 per day when

- it can be verified that the employee was away from home overnight on business for the employer
- the employer did not maintain verifiable records for the employee's daily incurred business expenses, and
- the daily expense allowance paid to the employee is in addition to, not in lieu of, the wages earned by the employee.

Include the remaining nonverified daily business expenses in excess of \$75 per day in payroll.

- q. Payment for filming of commercials, excluding subsequent residuals, which are earned by the commercial's participant(s) each time the commercial appears in any type of media;
- r. Adjustments made by the employer to raise employees' wages to federal, state or local minimum wage, whichever is applicable.
- s. Service charges and automatic gratuities received by employees in payroll. Only the amount of the service charge or automatic gratuity received by employees is included in payroll.

Service charges and automatic gratuities are set percentages or fees added to a bill or contract where the customer does not

- determine the amount of the percentage or fee
- determine who receives the percentage or fee, and
- have the ability to reduce the payment amount below the set percentage or fee.

- t. Employee-authorized reductions from an employee's gross pay for

purchasing stock options or qualified or nonqualified employee stock purchase plans (ESPP) in payroll. The salary reduction amounts are included in payroll for the policy year in effect when the salary reduction was made, even when the plan is a portion of a cafeteria plan.

- u. Employer contributions to an employee's cashless exercise of stock options in payroll.

Exception:

Exclude from payroll employer contributions to the exercise of stock options except for employer contributions to an employee's cashless exercise of stock options.

- v. Value of equity-based compensation plans, other than stock options and stock purchase plans, at the time of vesting in payroll. This applies when vesting is on a scheduled or annual basis, such as:

- graded vesting
- scheduled cliff vesting
- performance goals vesting, and
- milestone anniversaries vesting.

Equity-based compensation plans, other than stock options and stock purchase plans, include

- stock transfers
- stock warrants
- restricted stock
- restricted stock units
- phantom stock plans, and
- stock appreciation rights

- w. Deferred compensation distribution payments made to current employees from an employer's contributions to previously deferred wages in payroll. This applies to amounts paid during the policy period.

- x. Amount by which an employee's salary is reduced from gross pay to fund an employee-authorized deferred compensation plan in payroll. The salary reduction amounts are included in payroll for the policy year in effect when the salary reduction was made, even when the plan is a portion of a cafeteria plan.

Employee-authorized deferred compensation plans include:

- pension plans
- equity-based compensation plans, and
- other deferral plans.

- y. Retroactive wages or salaries paid to a current employee when:

- the payment is within the three-year audit period of the policy, and
- the employee was actively employed by the employer
 - at the time wages or salaries were paid, or
 - during any portion of the current policy period.

3. Exclusions

- a. Tips and other gratuities received by employees except as noted in Rule V-B-2.r. above;

Tips or other gratuities are optional payments added to a bill or contract where the customer

- determines the amount of payment
- determines that the employees receive the payment for services provided, and
- has the option to not add a payment to the bill or contract.

- b. Payments by an employer to group insurance or group pension plans for employees, other than payments covered by Rule V-B-2.f. and Rule V-B-2.m.;
- c. Payments by an employer into third-party trusts for the Davis-Bacon Act or a similar prevailing wage law provided the pension trust is qualified under IRC Section 401(a) and 501(a);
- d. The value of special rewards for individual invention or discovery;
- e. Dismissal or severance payments except for time worked or accrued vacation;
- f. Payments for active military duty;
- g. Employee discounts on goods purchased from the employer;
- h. ~~Expense reimbursements to employees if the employer's records substantiate that the expense was incurred as a valid business expense;~~

Expense reimbursements and flat expense allowances paid to employees only when all of these conditions are met:

~~Reimbursed expense and flat expense allowances, paid to employees may be excluded from the audit, provided that all three of the following conditions are met:~~

- ~~The reimbursed expenses or allowances are incurred upon the business of the employer, The employer's verifiable records confirm that the expenses or allowances are incurred as a valid business expense, and~~
- The amount of each employee's expense or allowances is shown separately in the records of the employer, and
- The amount of the expense or allowance payment approximates the actual expense incurred by the employee in the conduct of their work.

- The expense reimbursements and/or flat expense allowances paid to the employee must be in addition to, not in lieu of, the wages earned by the employee.

NOTE: If an employer did not maintain verifiable receipts for incurred expenses for an employee that was away from home overnight on the business of an employer, a maximum expense allowance is permitted to be excluded. Refer to Rule V-2-p.

Allowable travel expenses permitted by any contract with a federal, state or local government entity, including, but not limited to, a city, borough, or village, are excluded from payroll. In lieu of verifiable receipts for incurred expenses, the employer must produce a copy of the contract provision permitting the travel expenses at audit. The allowable travel expenses must be in addition to the current wage of the employee.

- i. Meal money for late work;
- j. Work uniform allowances;
- k. Sick pay paid to an employee by a third party such as an insured's group insurance carrier that is paying disability income benefits to a disabled employee;
- l. Employer provided perquisites (perks) such as:
 - Use of company-provided automobiles;
 - An airplane flight;
 - An incentive vacation (e.g., contest winner);
 - Discounts on property or services;
 - Club memberships;
 - Tickets to entertainment events;
 - Educational assistance;
 - Relocation and moving expenses.
- m. Employer contributions to employee benefit plans such as:
 - Employee savings plan
 - Retirement Plans
 - Cafeteria Plans(IRC125)
 - Health savings accounts
 - Flexible spending accounts

These include contributions made by the employer, at the employer's expense, which are determined by the amount contributed by the employee.
- n. Deferred compensation payments to retired or terminated employees during the current policy period, when
 - the employee is not employed at the time of the distribution, and
 - records are maintained to separate these payments.

o. Employer contributions to qualified or nonqualified employee stock purchase plans.

p. Employer contributions to the exercise of stock options except for employer contributions to an employee's cashless exercise of stock options.

Exception:

Include employer contributions to the cashless exercise of stock options in payroll.

q. Employer contributions to deferred compensation plans.

r. Difference between the market price of stock and any discounted price paid by the employee to purchase the stock.

s. Market value of equity-based compensation plans. This applies when accelerated cliff vesting is triggered by

- an Initial Public Offering (IPO) of stock, or
- a change in majority ownership where the owner or owners before the change own less than one-half interest after the change.

t. Retroactive wages or salaries paid to a retired or terminated employee when

- the payment is within the three-year audit period of the policy
- the employee was retired or terminated at the time wages or salaries were paid, and
- the employer maintains records that separate such payments.