



## Units–Wage Continuation in Lieu of Benefits

### ACTION NEEDED

There are states such as Florida that allow an employer to continue paying wages to an injured worker in lieu of the worker receiving indemnity benefits provided by the policy. This circular will refer to this employer option as “wage continuation.”

When wage continuation occurs, the insurer is required to report the full value of the indemnity loss in accordance with jurisdiction state workers compensation benefit levels and *Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)* rules. The total loss (paid and outstanding) must be reported without any consideration for wage continuation.

### BACKGROUND

In accordance with the rules in NCCI’s *Statistical Plan*, the gross incurred indemnity amount and incurred medical amount (as applicable) must be reported except for specific conditions where losses are reduced (for example, subrogation).

NCCI’s Workers Compensation and Employers Liability Insurance Policy obligates the insurer to “pay promptly when due the benefits required of you by the workers compensation law,” and for the insured to “promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.”

Some state laws allow for employers to continue to pay wages to injured workers in lieu of workers compensation benefits. For example, Florida Administrative Code Rule 69L-56.002 defines Salary in Lieu of Benefits (SILOB) as follows:

“Employer Paid Salary in Lieu of Compensation” means the employer paid the employee salary, wages, or other remuneration for a period of disability for which the insurer would have otherwise been obligated to pay indemnity benefits.

NCCI’s *Statistical Plan* does not include any exception or rule allowance for reporting indemnity losses due to wage continuation.

### IMPACT

Whether or not wage continuation applies to a claim, NCCI’s *Statistical Plan* requires the insurer to report the full value of indemnity and medical benefits for the claim based on the jurisdiction state benefit levels.

### NCCI ACTION

An update to NCCI’s *Unit Statistical Reporting Guidebook*, planned for 4th Quarter 2014, will include a wage continuation reporting example.

### PERSON TO CONTACT

If you have any questions, please contact NCCI’s Customer Service Center at 800-NCCI-123 (800-622-4123) and select **Option 6** for **Data Reporting**, or email us at [data@ncci.com](mailto:data@ncci.com). We’re here to assist you Monday through Friday, 8:00 a.m.–8:00 p.m.



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**ALL ASSOCIATION MEMBERS**

Circular Letter 11-1604

**RE: Guidance on Carriers Obligation to Report Wage Loss Benefits**

This Circular Letter is intended to provide guidance to carriers on their obligation to report wage loss benefits under the Minnesota Statistical Plan when an employer elects to directly pay wages to the injured worker under Minnesota statutes, section 176.221, subd. 9, which governs an employer's payment of full wages to an injured employee.

Apparently some employers may be paying wages to an injured employee, as permitted under subdivision 9, and then asking their carrier to report only the medical benefits paid by the carrier under the injured employee's workers compensation claim. This being done would result in reducing the impact of wage loss benefits due the injured employee on future experience ratings.

Under Minnesota statutes, section 176.021, subd. 1, the employer has the obligation to pay benefits to an injured worker:

*Every employer is liable for compensation according to the provisions of this chapter and is liable to pay compensation in every case of personal injury or death of an employee arising out of and in the course of employment without regard to the question of negligence. The burden of proof of these facts is upon the employee.*

In Minnesota statute, section 176.181, subd. 2(a), the law also mandates that employers guaranty that these obligations will be paid by purchasing workers' compensation insurance, or having an approved self insurance plan.

*Every employer, except the state and its municipal subdivisions, liable under this chapter to pay compensation shall insure payment of compensation with some insurance carrier authorized to insure workers' compensation liability in this state, or obtain a written order from the commissioner of commerce exempting the employer from insuring liability for compensation and permitting self-insurance of the liability.*

The basic workers' compensation policy approved for use in Minnesota by all carriers (WC 00 00 00 B) reflects both the employer's obligation to pay benefits and the carrier's agreement to assume the obligation to pay those benefits on behalf of the employer:

Basic Policy, Part One, B. We Will Pay: We will pay promptly when due the benefits required of you by the workers compensation law.

When a carrier pays wage loss and/or medical benefits to the injured worker, those payments are required to be reported under the Minnesota Statistical Plan and become part of the experience rating for that employer. This allows the Experience Rating Plan to accurately reflect the experience of that employer, and to correctly measure that employer's experience relative to other employers with similar work classification exposures.

It is important to point out that Minnesota statutes, section 176.221, subd. 9, does not alter any reporting requirements under the Minnesota Statistical Plan or the Experience Rating Plan, which are governed by other sections of the law and Minnesota regulations. If an employer elects to pay full wages to an injured employee, outside of its insurance policy, that does not turn the injured employee's claim for wage and medical benefits into a medical only claim. Nor does it permit the carrier to exclude wage loss benefits due the injured employee from Minnesota Statistical Plan reports.

If an employer pays full wages to the injured employee in lieu of the employee receiving wage loss benefits from a carrier, the carrier is obligated under the policy to reimburse that employer up to the level of wage loss benefits since the policy contractually obligates the carrier to pay those benefits. Whether or not that payment is made by the carrier, the carrier is required under the Minnesota Statistical Plan to report the full amount of wage loss benefits due the injured worker under that claim.

If a carrier attempts to circumvent its reporting obligations under the Minnesota Statistical Plan by cooperating with an employer to avoid reporting wage loss benefits (or if an agent is counseling an employer to undertake this tactic to artificially reduce its experience ratings), disciplinary action by the Department of Commerce is possible. If as a result of such a program, the injured employee receives less than his or her rightful wage loss benefits under Minnesota law, additional liability may be imposed by the Department of Labor & Industry.

In summary, the intent of the Minnesota Statistical Plan and the Experience Rating Plan is to accurately measure all benefits paid to injured workers under Minnesota's workers' compensation law. Any attempt to underreport wage loss benefits by reclassifying such benefits as some form of wage continuation paid to an injured worker by his or her employer is not permitted.

Please direct any questions you may have concerning this item to MWCIA Senior Communications/Underwriter Specialist, Glenn Colby, at 952.897.6411 or by emailing him at [glenn.colby@mwcia.org](mailto:glenn.colby@mwcia.org).



Wisconsin Compensation Rating Bureau

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## GENERAL CIRCULAR LETTER 533—JANUARY 13, 2009

TO: Members of the Bureau

FROM: Donna Knepper

RE: Wage Continuation—Workers Compensation Reimbursement

Recently, WCRB, Office of the Commissioner of Insurance (OCI), and Department of Workforce Development (DWD) have received inquiries with regard to employers continuing wages to injured employees. The OCI will be publishing an article in the next Wisconsin Insurance News (WIN).

The WCRB has added the following FAQ on the Web site:

***My insured has been advised that they can lower their experience modification by continuing an injured employee's wages and not reporting the indemnity loss to my insurance carrier. Is this practice acceptable?***

If you know of anyone marketing this practice, the Office of the Commissioner of Insurance should be notified.

Some insured employers are paying continuing wages to injured employees while they are unable to work due to work-related injuries. WC insurance companies for these employers have not been paying compensation as required by ch. 102, Wis. Stats. (Wisconsin Worker's Compensation Act), and have not reported the amount of compensation due to the Wisconsin Compensation Rating Bureau (WCRB). These practices are inappropriate since they jeopardize the safety incentive implied in the experience modification system, put other employers at a rating disadvantage, and distort work-injury statistics.

Under ch. 102, Wis. Stats., employers are allowed to pay continued wages to injured employees. This usually occurs while employees are temporarily disabled during the healing period.

Section 102.31 (1) (b), Wis. Stats., provides that a contract for WC insurance coverage shall be construed to grant full coverage for all liability of the insured under ch. 102, Wis. Stats.

The portion of continued wages that is workers compensation is the amount that is payable for compensation under ch. 102, Wis. Stats. The Office of the Commissioner of Insurance and the Worker's Compensation Division have

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regulatory authority over this portion of the continued wages. The excess amount is not workers compensation, and therefore the Office of the Commissioner of Insurance and the Worker's Compensation Division have no WC regulatory authority.

Where wages are continued in lieu of compensation WC insurance carriers must reimburse employers an amount equal in value to the amount payable under ch. 102, Wis. Stats., and report this amount to the Wisconsin Compensation Rating Bureau for purposes of experience rating. Failure of WC insurance carriers to take such action constitutes use of deductible WC policies that have not been approved by the Office of the Commissioner of Insurance in Wisconsin.

It is the position of the Office of the Commissioner of Insurance, Wisconsin Compensation Rating Bureau, and the Department of Workforce Development that in a situation where an insured employer pays continued wages to an injured worker, consultants, agents and insurance companies cannot encourage, advise or condone an insurance company's failure to reimburse an employer an amount equal in value to the amount of compensation payable under ch. 102, Wis. Stats., and not report the amount of compensation paid to the Wisconsin Compensation Rating Bureau for purposes of experience rating. Statutory authority that support this position include:

- s. 626.11, Wis. Stats, Rate standards;
- s. 626.12, Wis. Stats., Rating methods;
- s. 626.25, Wis. Stats., Use of rates; and
- s. 628.34, Wis. Stats., Unfair marketing practices.

The standard workers compensation insurance policy contains language that requires the insurance company to promptly pay benefits when due that are required by ch. 102, Wis. Stats., and establishes a duty for an employer after an injury occurs to not voluntarily make payments, assume obligations or incur expenses. An employer must comply with the policy provisions to obtain protection from the policy. Since workers compensation is a required coverage and all policies authorized for use in Wisconsin contain identical provisions about payments and required duties of the insured employer, it is improper for consultants, agents or insurance companies to permit employers to pay continued wages to injured employees without reimbursement by the insurance company and reporting of the compensation payments to the Wisconsin Compensation Rating Bureau. It is also improper for insurance companies to avoid paying legitimate workers compensation claims because of a request to do so by a consultant, agent or employer.

For additional information or to report inappropriate activity, contact:

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