

Title 12 NYCRR is amended to add a new Part 318 to read as follows:

Part 318 Finance Regulations

318.1 Purpose

The regulations contained herein are intended to support the Board in fulfilling its legislative mandate to fund administrative costs and special fund payments that are imposed upon and collected from all affected employers provided for in the Workers' Compensation Law (WCL). In addition, Chapter 57 of the Laws of 2013 authorized the Board to streamline the manner in which it collects its administrative and special fund assessments to one that is consistent among the various categories of remitters and is based upon active coverage. The regulations contained herein support that streamlining.

318.2 Assessment Rate

(a) On the first day of November, 2013 and annually thereafter, the Chair shall establish an annual assessment rate. Such rate shall be applicable to policies effective on or after January first of the next succeeding calendar year, unless otherwise directed pursuant to Section 318.6, and shall be applied to a base of standard premium as defined at section 318.4 of this Part. The amounts collected and remitted to the Board for assessments will not be considered premium.

(b) The annual rate shall be available upon request and published on the Board's website on or before November 1st of every calendar year.

318.3 Expenses Covered by Rate

The assessment rate when applied to the base of standard premium as defined at section 318.4 of this Part shall produce assessment receipts at least sufficient to:

(a) fund all expenses necessary for the Board to administer: (i) the WCL; (ii) the Disability Benefits Law; (iii) the Volunteer Ambulance Workers' Benefit Law; (iv) the Volunteer Firefighters' Benefit Law; (v) the Workers' Compensation Act for Civil Defense Volunteers; and (vi) inter-departmental programs at the Departments of Health and Labor; and

(b) fund maintenance by the Board of all required special fund balances including: (i) Special Disability Fund balance as defined in subparagraph four of paragraph (e) of subdivision eight of section fifteen of the WCL; (ii) the balance in the Fund for Reopened Cases as defined in subdivision three of section twenty-five-a of the WCL; and (iii) the amount described in section two hundred fourteen of the WCL for the Special Fund for Disability Benefits; and

(c) fund the amounts required by each then applicable financing agreement including those described in WCL §50-c related to self-insured bonds and those described in WCL §15(8) related to Special Disability Fund bonds.

Such expenses as described in subdivisions (a), (b) and (c) above are collectively referred to in this Part as total estimated annual expenses.

In order to safeguard against fluctuations in the projected base of standard premium, the rate may be adjusted, as necessary in accordance with section 318.6 of this Part, to reflect an overall contingency of at least ten percent of the projected annual assessment revenue.

318.4 Assessment Base

The assessment rate established by November 1st of each year for the succeeding calendar year shall be applied to a base of standard premium as defined below.

(a) Standard premium is defined as follows:

(1) Carriers and State Insurance Fund – For employers securing workers' compensation coverage via a policy issued either by an authorized carrier or the State Insurance Fund, standard premium shall mean the full annual value of premiums for each policy written or renewed during a specific reporting period as determined on forms prescribed by the Chair.

(2) Private and Public Self-Insured Employers – Standard written premium for self-insured employers shall be determined by applying payroll by classification codes to applicable loss cost rates. Loss cost rates for self-insured employers shall be furnished by the Chair based, in whole or in part at the discretion of the Chair, upon comparable rates applicable to carrier policies which may be adjusted for administrative expenses. To the extent there are no corresponding class codes for one or more classifications of payroll, the Chair shall establish an equivalent rate.

(b) Estimated statewide premiums shall be determined by combining the standard premium for all employers. The estimated statewide premiums may, where appropriate, reflect projected changes in overall premium levels that may result from loss cost rate changes approved by the Department of Financial Services.

318.5 Calculation of Rate

The assessment rate shall be a percentage of standard premiums and calculated as follows:

Total estimated annual expenses as defined in 318.3

Divided By

Total estimated statewide premiums as defined in 318.4 (b)

318.6 Assessment Rate Adjustments

(a) If the rate established for any given year results in the collection of assessments which exceed the amounts described herein, the assessment rate for the next calendar year shall be reduced accordingly. However, the assessment rate for each calendar year shall ensure that the clearing account described in section 318.7 maintains a balance of at least ten percent of the annual projected assessments.

(b) If it appears that the rate established for any given year will not produce assessment revenue sufficient to meet all estimated annual expenses as described herein, the Board may make adjustments to the existing published rate prior to the beginning of the next calendar year. Any

such mid-year rate adjustments must be published at least 45 days prior to becoming effective and will apply to policies with effective dates between the effective date of the adjusted rate through December 31 of that calendar year or until the Board issues a new rate, whichever is later.

318.7 Clearing Account for Receipt of Assessments

On an annual basis, all assessment monies received shall first be deposited into a clearing account established for the purpose of receiving assessments. Assessment revenue will be applied pursuant to WCL §151-8 in accordance with each then applicable financing agreement prior to application for any other purpose. Once any and all amounts required by applicable financing agreements have been met for the year, assessments will then be applied from the clearing account, at the discretion of the Chair, to the administrative and special fund expenses described herein.

318.8 Remittance of Assessment Payments

(a) The assessment rate established by the Board shall apply to all employers required to secure compensation for their employees.

(b) Until such time as the Board can establish a direct employer payment process, the remittance to the Board of all required assessments that are imposed upon and collected from all affected employers shall be as follows:

(1) For those employers obtaining coverage: (a) through a policy with the State Insurance Fund; (b) through a policy with an authorized carrier; (c) through a county self-insurance plan under Article V of the WCL; or (d) through a private or public group self-insurer; such assessment amounts shall be collected from the employer and remitted to the Board by the State Insurance Fund, carrier, county plan, or self-insured group. The State Insurance Fund, carrier, county plan, or self-insured group shall complete the reports identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(2) For those private or public employers that self-insure individually, said employers shall pay assessment amounts directly to the Board. Such employers shall complete the report identified in section 318.9 herein, apply the applicable assessment rate as established by the Board and, timely remit both the report and the corresponding payment to the Board on the schedule set forth in paragraph (c) below.

(c) Both the report identified in section 318.9 below and the required assessment payment shall be remitted to the Board in accordance with the following schedule:

- (1) Assessments related to the quarter ending March 31 postmarked on or before April 30.
- (2) Assessments related to the quarter ending June 30 postmarked on or before July 31.
- (3) Assessments related to the quarter ending September 30 postmarked on or before October 31.
- (4) Assessment related to the quarter ending December 31 postmarked on or before January 31.

(d) If the above cited due dates fall on a weekend or holiday the remittances shall be due the next following business day.

(e) In addition at any time prior to March 31, June 30, September 30, or December 31, the Board may identify any employer that has refused or neglected to pay assessments pursuant to WCL § 50(3-a)(7)(b). In such instance the Board shall calculate a charge to be imposed on such employer in addition to the assessment required herein. Such charge shall be a percentage of the standard premium as defined herein and shall range from between 10 and 30 percent based upon: 1) the length of time the employer has been delinquent in its WCL §50(3-a)(7)(b) assessment obligations; 2) the amount of the WCL §50(3-a)(7)(b) assessment delinquency; and 3) the amount of the insolvent group self-insurance trust's obligations that remain unmet at the time of the calculation of the surcharge. The Board shall inform the employer's current provider of coverage of the neglect or delinquency. The employer's current provider of coverage shall collect and remit such additional surcharge in the manner provided for above. All monies recovered from the payment of such charge shall be credited to: 1) the employer's unmet obligations under the WCL; and 2) the group self-insurance trusts' unmet obligations under the WCL.

318.9 Premium Reports

(a) The assessment payment remitted quarterly shall be accompanied by reports prescribed by the Chair. Depending upon whether the remitter is a carrier, the State Insurance Fund, private or public self-insured employer, or private or public group self-insured employer, these reports may contain but not be limited to: written premium; total payroll; payroll by classification; adjustments from prior periods; etc. Annual reports prescribed by the Chair may also be required.

(b) All such prescribed reports will require an attestation by an authorized representative that all information is true, correct and complete. A remitter that knowingly makes a material misrepresentation of information related to assessments shall be guilty of a Class E Felony.

(c) To the extent that a remitter is also required to report the information requested by this section, or substantially similar values, to other governmental entities including but not limited to state and federal agencies, then the information reported by the remitter to the Board shall be consistent with the payer's reporting to other entities. To the extent that the remitter's reporting to the Board is materially inconsistent with the remitter's reports to other governmental entities, then the remitter shall disclose such inconsistency in the reports submitted to the Board and supply an explanation for such inconsistency.

318.10 Failure to Remit

In the event of a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer's failure to remit assessment payments and reports in accordance with the requirements contained herein the Board may undertake any or all of the following collection activities with respect to the assessments:

(a) Refer the matter to the Office of the Attorney General for commencement of a collection action;

(b) Withhold any and all payments to the carrier, the State Insurance Fund, private or public self-insured employer or private or public group self-insured employer including but not limited to special fund reimbursements, until such time as all assessments have been paid in full;

(c) The failure of a private or public self-insured employer or private or public group self-insured employer to timely remit assessments and required reports shall constitute good cause for the Board to revoke said self-insurers self-insured status.

In the event that a carrier, the State Insurance Fund, a private or public self-insured employer, or a private or public group self-insured employer has underpaid an assessment as the result of inaccurate reporting, such remitter shall pay all overdue assessments in full within 30 days of notification by the Board and may be subject to interest at a rate of 9% annually on the unpaid amount. Further, in the event that it is determined that the remitterknew or should have known that the reported information was inaccurate an additional penalty of up to 20% of the unpaid amount may be imposed by the Board against such carrier, the State Insurance Fund, private or public self-insured employers.

318.11 Rate Modification Report

On an annual basis in conjunction with the publication of the assessment rate on or before November 1st, the Board will prepare a report which supports the assessment rate established for policies effective in the succeeding calendar year. Such report shall also be prepared in the event an assessment rate modification is required pursuant to Section 318.6. Such report will include a summary of the projections or estimates made in the development of the assessment rate including the expenses covered by the rate and underlying assessment base.

318.12 Audit

The Chair may conduct periodic audits on employers, self-insurers, carriers and the State Insurance Fund concerning any information or payment related to assessments.