

West Virginia Workers' Compensation Surcharge Applicability Summary

April 2023

When determining premium tax and surcharge applicability, a carrier needs to look to the underlying benefits being provided for the corresponding premiums. Premiums reported as Line 16 premiums (“workers’ compensation”) on a carrier’s Property and Casualty Annual Statement are assessed based upon whether the coverage provided is prescribed by West Virginia workers’ compensation laws (State Act), Federal workers’ compensation laws (Federal Acts) or provides Employers’ Liability insurance against common law liability for injuries to employees. Premiums are subject to either the regulatory surcharge under Chapter 23 or the taxes and surcharge under Chapter 33. Under no circumstances are premiums subject to both Chapters 23 and 33 of the West Virginia code.

State Act

- Premiums received for State Act workers’ compensation coverage are subject to the private market regulatory surcharge of W. Va. Code § 23-2C-3(f).
- Premiums received for Federal Acts coverage and Employers’ Liability (E/L) are subject to the premium taxes and surcharges in Chapter 33.

Federal Acts

Federal Acts coverage includes USL&H, Admiralty, FELA, etc. These Federal Acts premiums are distinguished by the addition of the suffix “F” or “M” to the advisory classification codes filed in West Virginia.

Employers’
Liability

- Special Note – Employers’ Liability Treatment: The construct of the advisory loss costs used for workers’ compensation premium requires further explanation on the treatment of premium taxes and surcharges for Employers’ Liability premium. Employers’ Liability insurance is casualty liability coverage and is regulated by Chapter 33 and subject to the premium taxes and the surcharge of that chapter.

However, each advisory loss cost classification filed by the State’s designated workers’ compensation rating organization contains a charge for providing the standard limits of Employers’ Liability coverage which cannot be easily isolated from each classification. It has been determined that the corresponding premium collected for each approved loss cost classification shall default to the premium tax and surcharge applicable to the underlying loss cost. That is, the standard limits for Employers’ Liability coverage need not be treated separately when determining tax and surcharge applicability of loss cost classifications.

If the corresponding loss cost classification provides State Acts coverage, then the premium that is directly tied to that loss cost is subject to the regulatory surcharge of Chapter 23.

If the corresponding loss cost classification provides Federal Acts coverage (e.g. USL&H, Admiralty, FELA, etc.), then the premium that is directly tied to that loss cost is subject to the premium taxes and surcharge of Chapter 33.

This determination is only applicable to the standard limits of Employers' Liability coverage when included as part of an approved loss cost classification.

All premiums for increased limits Employers' Liability coverage are subject to the premium taxes and surcharge of Chapter 33.

Federal Coal Mine

- Federal Coal Mine Health and Safety Act and State Act coverage for coal mine occupational disease are not subject to experience rating, premium discounts or retrospective rating. The benefits covered determine whether the premium is subject to the premium taxes and surcharge of Chapter 33 or the regulatory surcharge of Chapter 23.

Benefits covered under the Federal Coal Mine Health and Safety Act (black lung only) are Federal Acts benefits and subject to the premium taxes and surcharge of Chapter 33.

Benefits covered under the State Act of West Virginia are State Act benefits and are subject to the regulatory surcharge of Chapter 23.

Deductible Credits

- Deductible Credits – Premiums subject to the premium taxes and surcharge of Chapter 33 (e.g. Federal Acts, increased limits EL) are assessed net (after) the application of an experience modification factor, state approved schedule rating plan, deductible credit plan, premium discount plan, etc. The premium taxes and surcharge of Chapter 33 are assessed on the policyholder's direct written premium.

Premiums subject to the regulatory surcharge of Chapter 23 are also assessed on premium after the application of any of the premium modification plans, except the deductible credit amount. When carriers calculate the regulatory surcharge of Chapter 23, they need to take the net premium collected (after all premium modifications) and add back the amount the premium was reduced for any deductible credits to determine the assessable amount. This is necessary because deductible plans are a form of self-insurance and the self-insured workers' compensation community in WV is also subject to a regulatory surcharge. To retain equity in the assessment of workers' compensation surcharges, private carrier surcharges must include any premium reduction resulting from the application of a deductible plan.

Terrorism

- Premium collected in conjunction with the mandatory Terrorism and Catastrophe (other than Certified Acts of Terrorism) endorsements of the workers' compensation policy is subject to the regulatory surcharge of Chapter 23.

WEST VIRGINIA MISCELLANEOUS RULES

WEST VIRGINIA WORKERS COMPENSATION PREMIUM ALGORITHM

(November 1, 2021)

The following algorithm provides the framework for premium charges and credits. It also identifies how the West Virginia surcharges apply based on each premium element.*

This algorithm provides the framework for premium charges and credits. Where not specified, the premium base is the result from the prior line. Use this rating method in the absence of independent carrier filings. W. Va. Code § 23-2C-3(f) provides for the WV Regulatory Surcharge to be assessed on only those premiums received for coverage under Chapter 23 (i.e., State Act workers compensation coverage). Premiums received by private market carriers for coverage for Federal Acts (i.e., USL&H, Admiralty law, FELA, Federal Black Lung) and premium for excess employers liability remain subject to premium taxes and the surcharge under Chapter 33 of the West Virginia Code. Under no circumstances will any premiums be subject to both the surcharge under Chapter 23 and the taxes and surcharge under Chapter 33 of the West Virginia Code.

1	State Act Manual Premium	$[(\text{SUBJECT PAYROLL}/100) * \text{RATE}]$ {State Act Premium Only, Excludes Federal Acts Classifications Coded F and M}
2 +	Federal Acts Manual Premium	$[(\text{SUBJECT PAYROLL}/100) * \text{RATE}]$ {Federal Acts Premium Only - USL&H Act, Admiralty Law and FELA (F & M classification codes)}
3 +	Supplementary Disease (foundry, abrasive, sandblasting) (State Act)	$[(\text{SUBJECT PAYROLL}/100) * \text{DISEASE RATE}]$ {% Applied to the portion of State Act Premium Only, Excludes Federal Acts Classifications Coded F and M}
4 +	Supplementary Disease (foundry, abrasive, sandblasting) (Federal Acts)	$[(\text{SUBJECT PAYROLL}/100) * \text{DISEASE RATE}]$ {% Applied to the portion of Federal Acts Classifications Coded F and M}
5 +	USL&H Exposure for non-F-classification codes	$[(\text{SUBJECT PAYROLL}/100) * (\text{RATE} * \text{USL\&H FACTOR})]$
6	TOTAL MANUAL PREMIUM	Total of all Class Code Premium ----- [Rows 1 + 2 + 3 + 4 + 5]
7 +	Waiver of Subrogation Factor (State Act) ¹	[Rows (1 + 3) * Waiver Rate %] {% applied to the portion of Total State Act Manual Premium where waiver is applicable, subject to minimum charge}
8 +	Waiver of Subrogation Factor (Federal Acts) ¹	[Rows (2 + 4 + 5) * Waiver Rate %] {% applied to the portion of Total Federal Acts Manual Premium where waiver is applicable, subject to minimum charge}
9 +	Employers Liability (E/L) increased limits factor	{% applied to Total Manual Premium}
10 +	Employers Liability (E/L) increased limits charge	[Balance to E/L increased limits minimum premium]
11 +	Employers Liability increased limits factor (Admiralty, FELA)	[Factor applied to the portion of Manual Premium where Admiralty/FELA coverage is applicable]
12 +	Employers Liability/Voluntary Compensation flat charge	[Coverage in Monopolistic State Funds]
13 -	Small Deductible Credit (State Act)	[Rows (1 + 3) * Deductible Credit %] {State Act Premium only}
14 -	Small Deductible Credit (Federal Acts)	[Rows (2 + 4 + 5) * Deductible Credit %] {Federal Acts}
15	TOTAL SUBJECT PREMIUM	[Rows 6 + 7 + 8 + 9 + 10 + 11 + 12 - 13 - 14]
16 x	Experience Modification (Modified Premium -State Act)	[Rows (1 + 3 + 7 - 13) * Emod Factor] {State Act Premium Only}
17 x	Experience Modification (Modified Premium - Federal Acts and E/L)	[Rows (2 + 4 + 5 + 8 + 9 + 10 + 11 + 12 - 14) * Emod Factor] {Federal Acts and E/L Premium}
18	TOTAL MODIFIED PREMIUM	[Row 16 + 17]
19 x	Schedule Rating factor (State Act)	[Row 16 * (1-SR credit %) or (1+SR debit %)] {State Acts Premium Only}
20 x	Schedule Rating factor (Fed Acts & E/L)	[Row 17 * (1-SR credit %) or (1+SR debit %)] {Fed Acts and E/L Premium Only}
21 +	Supplemental Disease Exposure (Asbestos NOC) (State Act) ^{2, 3}	$[(\text{SUBJECT PAYROLL} / 100) * \text{DISEASE RATE}]$ {% applied to the portion of State Act Premium only, excludes Federal Acts classifications coded F and M}
22 +	Supplemental Disease Exposure (Asbestos NOC) (Federal Acts) ^{2, 3}	$[(\text{SUBJECT PAYROLL} / 100) * \text{DISEASE RATE}]$ {% applied to the portion of Federal Acts classifications coded F and M}
23 +	Atomic Energy Radiation Exposure NOC ^{2, 3}	$[(\text{SUBJECT PAYROLL}/100) * \text{Carrier Assigned Charge}]$
24 +	Charge for nonratable catastrophe loading (State Act) ³	$[(\text{SUBJECT PAYROLL} / 100) * \text{CATASTROPHE RATE}]$ {% applied to the portion of State Act Premium only, excludes Federal Acts classifications coded F and M}
25 +	Charge for nonratable catastrophe loading (Federal Acts) ³	$[(\text{SUBJECT PAYROLL} / 100) * \text{CATASTROPHE RATE}]$ {% applied to the portion of Federal Acts classifications coded F and M}
26 +	Balance to Minimum Premium (State Act)	[Balance to minimum premium at Standard Limits] (State Act)
27 +	Balance to Minimum Premium (Admiralty law, FELA)	[Balance to minimum premium at Standard Limits] (Admiralty law, FELA)
28	TOTAL STANDARD PREMIUM	[Rows 19 + 20 + 21 + 22 + 23 + 24 + 25 + 26 + 27]
29 -	Premium Discount (State Act)	[Rows 19 + 21 + 24 + 26] * Premium Discount Factor {State Act Premium only}
30 -	Premium Discount (Federal Acts and E/L)	[Rows 20 + 22 + 23 + 25 + 27] * Premium Discount Factor {Federal Acts and E/L Premium only}
31 +	Coal Mine Disease Charge (State Act)	$[(\text{SUBJECT PAYROLL}/100) * \text{DISEASE RATE}]$ {Disease portion for state benefits only}
32 +	Coal Mine Disease Charge (Federal Acts)	$[(\text{SUBJECT PAYROLL}/100) * \text{DISEASE RATE}]$ {Disease portion for federal benefits only}
33 +	Expense Constant	
34 +	Terrorism	$[(\text{PAYROLL}/100) * \text{TERRORISM VALUE}]$
35 +	Catastrophe (other than Certified Acts of Terrorism)	$[(\text{PAYROLL} / 100) * \text{CATASTROPHE (OTHER THAN CERTIFIED ACTS OF TERRORISM)}]$
36	ESTIMATED ANNUAL PREMIUM	[Rows 28 - 29 - 30 + 31 + 32 + 33 + 34 + 35]
37 +	Audit Noncompliance Charge	[Row 36 * Audit Noncompliance Charge Multiplier]
38	TOTAL AMOUNT DUE	[Rows 36 + 37]
39 +	WV Regulatory Surcharge	Regulatory Surcharge Calculation Rows (13 + 19 + 21 + 24 + 26 - 29 + 31 + 33 + 34 + 35) * Published Reg Surcharge %
40 +	WV Fire and Casualty Surcharge	WV Fire and Casualty Surcharge Calculation Rows (20 + 22 + 23 + 25 + 27 - 30 + 32) * Published WV Fire Casualty Surcharge %

¹ Premium charges established for Waiver of Subrogation are not filed by NCCI for the voluntary market.

² Not Otherwise Classified.

³ Nonratable Element Premiums generated by nonratable portion of manual rate are subject to all applicable premium elements applied to the policy, however, not subject to experience rating or retrospective rating.

Note: For short-rate cancellations, short-rate percentage/short-rate penalty premium factor is subject to experience rating, included in Total Subject Premium, and applied prior to Experience Modification.

Workers' Compensation Surcharge FAQs

April 2023

- WC Surcharge rates must correspond with the effective date of the controlling policy
- WC Surcharge remittances are made at the same time premium taxes are remitted (April 25, July 25, Oct 25, and Mar 1)
- WC Surcharges are to be reflected on each premium invoice, regardless of payment interval
- Each WC Surcharge shall be listed as a separate line item
- Applicable WC Surcharges - Current and Historical:

	Debt <u>Reduction</u>	<u>Regulatory</u>
• July 1, 2007 - June 30, 2008	8.5%	6.3%
• July 1, 2008 - December 31, 2012	9.0%	5.5%
• January 1, 2013 - December 31, 2017	9.0%	5.0%
• January 1, 2018 - December 31, 2018	9.0%	5.0%
• January 1, 2019 - December 31, 2022	0.0%	5.0%
• January 1, 2023 - June 30, 2023	0.0%	5.0%
• July 1, 2023 - June 30, 2028	0.0%	5.0%