



Basic Manual—2001 Edition—Florida

State Rule Exceptions

Rule 2—Premium Basis and Payroll Allocation

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A. Premium Basis

Change Rule 2-A as follows:

Premium must be calculated on the basis of the total payroll paid or payable by the insured for services of employees covered by the policy.

Note: Payroll for officers of a corporation who elect to be exempt from workers compensation insurance must not be included in the premium calculation. Valid notices of election to be exempt from the Division of Workers' Compensation must be furnished to the carrier. Payroll shall not be included for the period of time during the policy that each exemption is in effect.

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B. Payroll

Change Rule 2-B as follows:

For purposes of this manual, payroll means money or substitutes for money.

1. Includes:

Change Rule 2-B-1 as follows:

- a. Wages or salaries (including retroactive wages or salaries).
- b. Total cash received by an employee for commissions and draws against commissions.
- c. Bonuses including stock bonus plans. (*Refer to [Rule 2-D-3.](#)*)
- d. Extra pay for overtime work except as provided in [Rule 2-C-2.](#)
- e.

Pay for holidays, vacations, or periods of sickness. (Refer to [Rule 2-G-3](#) for allocation of payroll for employees subject to more than one [classification code](#).)

- f. Payment by an employer of amounts that would have been withheld from employees to meet statutory obligations for insurance or pension plans such as the Federal Social Security Act or Medicare.
- g. Payment to employees on any basis other than time worked, such as piecework, profit sharing or incentive plans.
- h. Payment or allowances for hand tools or hand-held power tools used by employees in their work or operations for the insured. These tools may be supplied directly by the employee or to the employee through a [third party](#).
- i. The rental value of an apartment or house provided to an employee based on comparable accommodations.
- j. The value of lodging, other than an apartment or house received by an employee as part of their pay to the extent shown in the insured's records.
- k. The value of meals received by employees as part of their pay to the extent shown in the insured's records.
- l. The value of store certificates, merchandise, credits or any other substitute for money received by employees as part of their pay.
- m. Payments for salary reduction, employee savings plans, retirement or cafeteria plans (IRC 125) that are made through employee-authorized salary reduction from the employee's gross pay.
- n. Davis-Bacon wages or wages from a similar prevailing wage law.
- o. Annuity plans.
- p. Expense reimbursements to employees to the extent that an employer's records do not confirm that the expense 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, limited to a maximum of \$30 per day, is permitted.

- q. Payment for filming of commercials excluding subsequent residuals that are earned by the commercial's participant(s) each time the commercial appears in print or is broadcast.

2. Excludes:

Change Rule 2-B-2 as follows:

- a. Tips or other gratuities received by employees.
- b. Payments by an employer to group insurance or group pension plans for employees, other than those covered by Rule 2-B-1-f and Rule 2-B-1-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 Sections 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 vacation accrued.
- f. Payments for active military duty.
- g. Employee discounts on goods purchased from the employee's employer.
- h. Expense reimbursements to employees to the extent that an employer's records confirm that the expense was incurred as a valid business expense.

Reimbursed expenses and flat expense allowances (except for hand or hand-held power tools) paid to employees may be excluded from the audit only if all three of the following conditions are met:

- (1) The expenses are incurred for the business of the employer
- (2) The amount of each employee's expense payments or allowances are shown separately in the records of the employer
- (3) The amount of each employee's expense reimbursement is a fair estimate of the actual expenses incurred by the employee in the conduct of his/her work

Refer to User's Guide for an example.

Note: 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, limited to a maximum of \$30 per day, is permitted.

- i. Supper 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 perks such as:
 - Use of company-provided automobiles
 - Airplane flights
 - Incentive vacations (e.g., contest winners)
 - Discounts on property or services
 - Club memberships
 - Tickets to entertainment events
- m. Employer contributions to employee benefit plans such as:
 - Employee savings plans
 - Retirement plans
 - Cafeteria plans (IRC 125)

These include contributions made by the employer, at the employer's expense, which are determined by the amount contributed by the employee.

When gratuities or "tips" received from persons other than the employer make up part of an employee's earnings, payroll must include the actual wages paid by the employer and the

value of board and lodging, if any. The payroll per employee must not be less than the Average Weekly Wage value appearing on the state rate sheet, which is equal to the wage upon which a minimum award for compensation under the particular State Act is based. If an employee works less than a full week, the Average Weekly Wage must be prorated. The proportion is determined by the ratio of number of days worked to five days. Partial days are considered full days. The proportion is subject to the value of the Average Weekly Wage as a maximum.

The entire payroll cannot include any of the following provided these or any of them are not part of the contract of employment or an actual consideration for employment.

- Special reward for meritorious achievements or discovery, or
 - Pure gratuities, or
 - Result of voluntary profit sharing arrangements
- n. Payments made by an employer to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations. Such payments made by a public governmental entity directly to paid furloughed employees also are excluded.

However, any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees are not excluded.

Refer to Rule 2-F-3 for the definitions of paid furloughed employees and payments to paid furloughed employees.

This Rule 2-B-2-n is effective March 1, 2020.

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D. Payroll Limitations

Change Rule 2-D as follows:

1. Payroll limitation applies after any deductions of extra pay for overtime. Partial weeks are considered full weeks when determining average weekly pay. Total time of any worker employed during the policy period is the sum of the portions of all verbal or written agreements with that employee that fall within the policy period.
2. Specific limitations may apply to payroll for Executive Officers and to classifications with notes that indicate payroll limitations. Payroll used to calculate premium must exclude that part of the employee's average weekly pay that exceeds the applicable weekly limitation, provided:
 -

Books and records are maintained to show separately that the total payroll earned by each employee is in excess of the weekly payroll limitation for the total time employed during the policy period and

- Separate records are maintained, in summary, by classification for such employees


Refer to state pages for specific limitations.

3. Bonuses—For purposes of applying the payroll limitation rule, bonuses paid during the policy term must be earned during the policy term and prorated for the period of employment during the policy term.

For additional information regarding Executive Officer payroll limitations, *refer to [Rule 2-E-1-b](#).*

Refer to [User's Guide](#) for an example.

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E. Executive Officers, Members of Limited Liability Companies, Partners, and Sole Proprietors

1. Executive Officers

Add the following to Rule 2-E-1:

Active executive officers performing services for the corporation without pay may submit an advance request to be covered by the Workers Compensation and Employers Liability policy. If such coverage is provided by the carrier, the minimum payroll that appears as a “miscellaneous value” on the Florida rate pages must be used in accordance with Rule 2-E-1-b.

b. Premium Determination

Change Rule 2-E-1-b as follows:

The minimum individual payroll for an executive officer in the “construction industry,” as defined in Chapter 440, Florida Statutes, is shown on the state rate pages.

[Premium](#) for executive officers is based on their total payroll, subject to the following limitations and the requirements of Rule 2-D:

- (1) The minimum individual payroll for an executive officer is shown on the individual state pages in the *Basic Manual*.
- (2) The maximum individual payroll for an executive officer is shown on the individual state pages in the *Basic Manual*.
- (3) The payroll limitations in b(1) and b(2) apply to the average weekly payroll of each executive officer for the number of weeks the officer was employed during the [policy period](#).

- (4) Payroll is subject to minimum and maximum limitations and *included* when . . .
- The executive officer does not perform any duties but frequently visits the premises.
 - The executive officer frequently visits the premises of the [risk](#) for business conferences, directors' meetings, or similar duties, even if the officer is an employee or officer of another risk in the operations of which he/she takes an active interest.
 - The officer receives no salary; however, a regular salary is credited to him or her on the books. In this instance the amount credited must be included in payroll.
 - The officer receives no salary, either drawn or credited, or the audit records fail to disclose the salary. In this instance the amount to be included in the payroll is the applicable minimum per Rule 2-D.
- (5) Payroll is *excluded* when . . .
- The executive officer is elected for the value of his/her name or because of stock holdings, has no duties, and does not visit the premises, except perhaps to attend directors' meetings.
 - The executive officer ceases to perform any duties and does not visit the premises, except perhaps to attend directors' meetings.

For the applicable state weekly minimum and maximum individual payroll limitation formula, *refer to Appendix F*.

c. Executive Officers Performing Flight Duties

Change Rule 2-E-1-c as follows:

Payroll of an executive officer who is a pilot or member of the flying crew of an aircraft used in the insured's business must be assigned as follows:

- (1) For each week that the executive officer did not perform flight duties, assign the executive officer's payroll to the classification that applies to the principle operations in which the executive officer is engaged.
- (2) For each week that the executive officer performed flight duties, assign the officer's payroll for that week to Code 7421—Aviation—Flying Crew. However, if the executive officer's nonflying duties in that week are subject to a higher rated classification, assign that higher rated classification for that week.

Note: The above rules apply on the basis of the pilot's logbook, which is required under federal regulations, or on the basis of verifiable records.

- 3 If Code [7421](#)—Aviation—Flying Crew applies and verifiable records are not kept to indicate those weeks during which flying is performed by the executive officer, assign the executive officer's payroll to the highest rated classification that applies to any of their duties.

2. Members of Limited Liability Companies

b. Premium Determination

Change Rule 2-E-2-b as follows:

For purposes of premium determination, members of limited liability companies must be treated as executive officers.

3. Partners or Sole Proprietors

Add the following to Rule 2-E-3:

For the construction industry only, premium determination for each partner and sole proprietor treated as an employee is based on the state rate pages unless the partner or sole proprietor verifies otherwise by submitting IRS Schedule C form.

Maximum payroll is shown under Miscellaneous Values in the state rate pages.

Minimum payroll is based on the entire payroll earned by such partners or sole proprietors during the coverage period including the annual amount of wages, salary, emoluments or profits for each such partner or sole proprietor.

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F. Wages for Time Not Worked

1. Idle Time

Change Rule 2-F-1 as follows:

Idle time is downtime that occurs when employees are not working and the employer pays the employees for the time not worked.

All wages paid to the employee for idle time must be included in payroll. Wages paid during this time are assigned to the classification for work normally performed by the employee under the following circumstances:

- Suspension or delay of work due to weather conditions
- Delays while waiting for materials
- Delays while waiting for another party to complete certain work
- Delays arising from breakdown in equipment
- “Stand-by” time where employees such as operators of cranes, hoists or other equipment are on the job, but their active services are not required continuously
- Special union requirements or agreements between employer and employees calling for pay for idle time under specific circumstances
- Inability of non-striking employees to perform normal duties due to other employees who are on strike. If non-striking employees perform absolutely no work for their employer and are not

present at their employer's premises or job sites during a strike period, their payroll must be assigned to Code 8810—Clerical Office Employees, provided adequate records are maintained by the employer.

- All other causes of a similar nature

For purposes of this Rule 2-F-1, idle time does not include “paid furloughed employees” or “payments to paid furloughed employees” as provided in *Basic Manual* Rule 2-F-3.

Refer to *User's Guide* for an example.

Refer to Rule 2-F-2 for the treatment of idle time by construction, erection or stevedoring risks.

3. Payments to Paid Furloughed Employees During Federal, State, and/or Local Emergency Orders, Laws, or Regulations Issued Due to the COVID-19 (Coronavirus) Pandemic

Change Rule 2-F-3 as follows:

For purposes of this Rule 2-F-3, “paid furloughed employees” and “payments to paid furloughed employees” are defined within this rule. “Paid furloughed employees” means employees who continue to receive payments during a temporary layoff or an involuntary leave and are not performing any work duties for an employer.

“Payments to paid furloughed employees” means payments made by an employer to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations. Such payments include payments made by a public governmental entity directly to paid furloughed employees. However, such payments do not include any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees.


Payments to paid furloughed employees must be assigned to Code 0012, in accordance with the *Statistical Plan*. Payments to paid furloughed employees made in accordance with this Rule 2-F-3 are excluded from the premium and experience rating calculations only if the employer keeps separate, accurate, and verifiable records. If separate, accurate, and verifiable records are not maintained, payroll is assigned to the classification for work normally performed by the employee prior to any emergency orders, laws, or regulations issued due to the COVID-19 (coronavirus) pandemic.

If an employee is requested to perform any duties for an employer, the employee is not deemed a paid furloughed employee for any period of time they are performing duties for the employer. If the employee is not deemed a paid furloughed employee, payroll must be assigned to the classification applicable to the work being performed in accordance with *Basic Manual* Rule 1-A.

Display the payments reported to Code 0012 on the policy Information Page with a zero rate and zero premium.

This Rule 2-F-3 is effective March 1, 2020.

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G. Interchange of Labor

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H. Subcontractors

Change **Subcontractor Tables 1 and 2** of Rule 2-H-2 as follows:

Subcontractor Table 1

If the contractor has not furnished evidence of workers compensation insurance and . . .	Then to calculate the additional premium . . .
Furnishes complete payroll records of the subcontractor's employees . . .	Use the payroll detailed in the records.
Does not furnish complete payroll records and the subcontract price does not reflect a definite payroll amount . . .	Use the percentages of full subcontract price indicated in Subcontractor Table 2 as the payroll.
Does not furnish complete payroll records, but documentation of a specific job discloses that a definite amount of the subcontract price represents payroll . . .	Use the payroll amount indicated by the documentation as the payroll.

Subcontractor Table 2

If the job involves . . .	Then the amount of payroll to calculate additional premium must not be less than . . .
Mobile equipment with operators (such as but not limited to earth movers, graders, bulldozers, or log skidders)	33 1/3% of the subcontract price.
Labor and material	50% of the subcontract price.
Labor only	90% of the subcontract price.
Piecework	100% of the subcontract price (the entire amount paid to pieceworkers must be the payroll).

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I. Voluntary/Foreign Voluntary Compensation Insurance

Change Rule 2-I as follows:

1. Voluntary Compensation Insurance

- a. Premium is determined on the basis of the workers compensation rules, classifications, and rates in this manual for the state workers compensation law designated in the schedule on the Voluntary Compensation and Employers Liability Coverage Endorsement.
- b. When Voluntary Compensation Insurance is provided for a group of employees, separate payroll records must be maintained by the insured for the designated group of employees.
- c. For details, *refer to the Additional Coverages Summary Table found in F-7 of the User's Guide.*

2. Foreign Voluntary Compensation Insurance

- a. It is permissible in Florida to issue a Standard Policy with foreign voluntary compensation insurance for injuries to employees while traveling or temporarily residing in foreign countries. Attach the Florida Foreign Voluntary Compensation and Employers Liability Endorsement to provide this coverage.
- b. Premium is determined on the basis of the workers compensation rules, classifications, and rates in this manual for the state of Florida. If the carrier opts to use a different rate or charge, the carrier must file the rate or charge with the Florida Office of Insurance Regulation and obtain approval prior to use.
- c. Separate payroll records must be maintained for any employee covered by the provisions of Foreign Voluntary Compensation Insurance.

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K. Migrant and Seasonal Agricultural Workers

Add the following to Rule 2-K:

Coverage for the Migrant and Seasonal Agricultural Worker Protection Act is afforded by adding the Migrant and Seasonal Agricultural Worker Protection Act Coverage Endorsement (WC 00 01 11). All insurers planning to use this coverage endorsement are required to file the appropriate rating plans with the Office of Insurance Regulation prior to use. In addition, associate endorsement (WC 00 01 11) is Advisory.

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Add the following to Rule 2:

L. Extraterritorial Rating Procedure

Any employer who has employees engaged in work in Florida will obtain a Florida policy or endorsement for such employees that utilizes Florida class codes, rates, rules, and manuals.

Except as otherwise provided by statute or Department of Financial Services' Rule:

- Rule 2-L-1-a(1) applies to contractors headquartered outside the state of Florida engaged in the construction industry in Florida and employees as defined in 440.02(15)(c), Florida Statutes, which includes independent contractors working or performing services in the construction industry
- Rule 2-L-1-a(2) applies to contractors headquartered outside the state of Florida and employees that are not engaged in the construction industry in Florida
- Rule 2-L-1-b(1) applies to contractors headquartered in Florida engaged in the construction industry in other states
- Rule 2-L-1-b(2) applies to contractors headquartered in Florida that are not engaged in the construction industry in other states
- Rule 2-L-2 applies to Truckers
- Rule 2-L-3 applies to employees other than Contractors or Truckers

1. Contractors

a. Headquartered Outside of Florida

(1) Engaged in the Construction Industry

The payroll of employees of construction industry contractors who are headquartered outside of Florida, and engaged in work in Florida must be assigned to Florida. For such construction industry employees, "engaged in work" in Florida is defined as an employee's participation in any one of the following activities:

- (a) New construction or alterations, or any job or any construction activities involving any form of the building, clearing, filling, excavation or improvement in the size or use of any structure or the appearance of any land as defined in 440.02(8), Florida Statutes, or any job duties or activities that would be subject to those contracting classifications identified under the Florida Contracting Classification Premium Adjustment Program in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance*, regardless of whether the employees return to their home state each night, or
- (b) If the construction industry contractor is headquartered outside the state of Florida and maintains a permanent staff of employees and superintendents and any of these employees or superintendents are assigned to construction activities located in Florida, or
- (c) If the construction industry contractor is headquartered outside the state of Florida, and hires employees in Florida for the specific purpose of completing all or any portion of the construction contract work and related construction activities in the state of Florida.

Notwithstanding any other provision in this Rule 2-L-1-a, the payroll of executive supervisors of construction industry contractors headquartered outside of Florida who may visit a Florida location, but who are not in direct charge of a Florida location, must be assigned to the state in which the headquarters is located.

(2) Not Engaged in the Construction Industry

- (a) The payroll of employees of contractors headquartered outside of Florida who operate in Florida but are not engaged in construction activities described in 2-L-1-a above, and who routinely cross state lines, but usually return to their homes each night, must be assigned to the headquarter state.
- (b) The payroll for executive supervisors of non-construction industry contractors headquartered outside of Florida, who may visit a Florida location, but are not in direct charge of the Florida location, must be assigned to the state in which the headquarters is located.
- (c) The payroll for employees of contractors headquartered outside of Florida not engaged in construction activities described in Rule 2-L-1-a above, who are hired for a specific project in Florida, must be assigned to Florida.

b. Headquartered in Florida

(1) Engaged in the Construction Industry

- (a) Payroll of employees of contractors who have their place of business headquartered in Florida and operate also in other states and who are constantly crossing state lines, but usually return to their homes each night, must be assigned to Florida. However, the payroll of employees performing new construction or alterations in a state other than Florida must be assigned to the state where the job is located.
- (b) The payroll for executive supervisors who may visit a job but who are not in direct charge of a job must be assigned to the state in which the headquarters is located.
- (c) There are contractors who maintain a permanent staff of employees and superintendents in states other than Florida. If any of these employees or superintendents are assigned to a job that is located in a state other than Florida either for the duration of the job or any portion thereof, their payroll must be assigned to the state in which the job is located.
- (d) The payroll of employees who are hired for a specific project must be assigned to the state where work is performed.

(2) Not Engaged in the Construction Industry

- (a) Payroll of employees of contractors who have their place of business headquartered in Florida and operate also in other states and who are constantly crossing state lines, but usually return to their homes each night, must be assigned to Florida. However, the payroll of employees performing new construction or alterations in a state other than Florida must be assigned to the state where the job is located.
- (b) The payroll for executive supervisors who may visit a job but who are not in direct charge of a job must be assigned to the state in which the headquarters is located.
- (c) There are contractors who maintain a permanent staff of employees and superintendents in states other than Florida. If any of these employees or superintendents are assigned to a job that is located in a state other than Florida either for the duration of the job or any portion thereof, their payroll must be assigned to the state in which the job is located.
- (d) The payroll of employees who are hired for a specific project must be assigned to the state where work is performed.

2. Truckers

- a. The payroll of drivers, chauffeurs and helpers for truckers must be assigned to the state in which the base terminal or base of operations from which they load, unload, store or transfer freight on a regular basis is located.
- b. When the driver, chauffeur or helper does not operate from a “base terminal or base of operations,” a determination must be made as to where the exposure lies. In that case, payroll must be assigned as follows:
 - (1) If it can be established that a trucker spends a majority of driving time in a specific state, the trucker's payroll must be assigned to that state.
 - (2) If state of majority driving time cannot be established and if the driver, chauffeur, helper or other employee operates from his headquarters, his payroll should be assigned to the headquarters' state regardless of state of residence.
 - (3) If state of majority driving time cannot be established and if the driver, chauffeur, helper or other employee does not operate from his headquarters, his payroll should be assigned to the state of residence.
- c. For the purposes of these rules, the following definitions must apply:
 - (1) *Base terminal/Base of operations:* A permanent location owned, leased or used by the trucker at which loading, unloading and other related non-clerical work functions such as maintenance, repairs and transfers are performed and from which the driver/employee physically reports to work on a regular basis.
 - (2) *Headquarters:* The home or branch office location that is located in the state where unemployment tax reports are filed.
 - (3) *State of residence/domicile:* The state in which the trucker resides as evidenced by the location of filing state or federal income taxes.
 - (4) *Regular:* A pattern of 40 hours per week or any pattern that appears on a continuing basis.

3. Employees Other Than Contractors or Truckers

- a. Employees other than contractors or truckers who travel for administrative, clerical, or sales related duties and move about from state to state such as salespersons, sales engineers, service representatives, supervisors, and executives are treated as follows:
 - (1) If the employee lives in the same state as the headquarters from which business travel is conducted, payroll should be assigned to the headquarter's state.
 - (2) If the employee lives in a state different from that in which the headquarters is located, but business travel is conducted from the headquarters, payroll should be assigned to the headquarters' state.
 - (3) If the employee is stationed in a state where there is no headquarters, but conducts business travel from home for an out-of-state employer, payroll must be assigned to the employee's state of domicile.

b. For the purposes of these rules, the following definitions must apply:

- (1) *Headquarters*: The home or branch office location that is located in the state where unemployment tax reports are filed.
 - (2) *State of residence/domicile*: The state in which the employee resides as evidenced by the location for filing state or federal income taxes.
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