



Florida—Approval of Item 04-FL-2022—Revisions to Basic Manual Rules for Subcontractors in Florida

ACTION NEEDED

This circular announces the approval of Item 04-FL-2022—Revisions to Basic Manual Rules for Subcontractors in Florida.

The Florida Office of Insurance Regulation has approved this item **with changes** for new and renewal voluntary policies only, with effective dates on and after March 1, 2023. Exhibit 2 of Item 04-FL-2022 was revised for clarity and formatting changes.

Please review the revised exhibit attached to this circular for impact on your company’s systems and procedures. **NOTE:** All other proposed changes were approved as filed.

In Florida, a participating company may respond to an NCCI filing as follows:

Florida Company Response

A participating company must decide whether to adhere to the filing made on its behalf by NCCI, or to make a deviation filing.

Company Action Table

When the company decides to ...	Then the company ...
use NCCI's rules	performs no further action.
not use NCCI's rules	submits a rule filing to the OIR to include information as required by § 627.211, Florida Statutes, and Rule 69O-189.016, Florida Administrative Code; prior approval by the OIR is required.

The material contained herein is based on NCCI's latest research but is subject to periodic change. This information is provided as a guide to voluntary market carriers and is not intended as an interpretation of state law. Refer to state law for current and detailed information because there may be additional laws that may impact your response to an NCCI item filing. While all due effort is made to keep the material up to date, NCCI assumes no responsibility for the use of this material.

BACKGROUND

Circular FL-2022-08, dated December 22, 2022, announced the filing of Item 04-FL-2022—Revisions to Basic Manual Rules for Subcontractors in Florida.

Refer to the announcement circular and the attached revised exhibit for complete details on this item.

IMPACT

No statewide premium impact will result from the changes proposed in this item.

NCCI ACTION

NCCI will take the following actions for Item 04-FL-2022:

- update the weekly *Status of Item Filings* circular on ncci.com with the approval, and
- publish updated pages for NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance* prior to the effective date.

If you would like to subscribe to any of our manuals, please call our Customer Service Center at 800-NCCI-123 (800-622-4123).

PERSON TO CONTACT

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ITEM 04-FL-2022—REVISIONS TO BASIC MANUAL RULES FOR SUBCONTRACTORS IN FLORIDA

**EXHIBIT 2
BASIC MANUAL—2001 EDITION
FLORIDA STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION**

H. SUBCONTRACTORS

Change Rule 2-H-1 as follows:

1. In Florida, the workers compensation law provides that a contractor is liable for and must secure the payment of compensation benefits to nonexempt employees of their uninsured subcontractors.
 - a. In instances where a subcontractor is a corporation and has an officer or officers who elect to be exempt, and the subcontractor provides a copy of the officer's or officers' Certificate of Election to be Exempt to a contractor pursuant to Section 440.10(1)(c), F.S., the subcontractor is not required to also provide evidence of workers compensation insurance to the contractor if the subcontractor has no employees who may recover benefits under Chapter 440, F.S., at any time during the life of the contract or project for which evidence of exemption or coverage is required.
 - b. If a subcontractor hires one or more nonexempt employees at any time during the life of a contract, that subcontractor must provide the contractor with evidence of valid/in-force workers compensation insurance before any such employee or employees can perform any work related to that contract. The following documents may be used to provide satisfactory evidence:
 - 1) Certificate of insurance for the subcontractor's workers compensation policy confirming workers compensation coverage is in effect
Note: If the subcontractor is a client company of an employee leasing company, the contractor must also provide a list of the employees leased to the subcontractor obtained from the employee leasing company as of the date the subcontractor commenced work for the contractor on each project.
 - 2) Copy of the Information Page of the subcontractor's in-force workers compensation policy, or
 - 3) Screen print from the Florida Division of Workers' Compensation (DWC) Proof of Coverage database confirming that workers compensation coverage is in effect for the subcontractor.
 - c. If a subcontractor has corporate officers who have elected to be exempt from Florida's workers compensation law, the contractor must provide to their carrier either of the following:
 - 1) A valid copy of the subcontractor's officer's or officers' Certificate of Election to be Exempt, or
 - 2) A screen print from the Florida DWC Exemption Search database confirming that a Certificate of Election to be Exempt is in effect for each corporate officer of the subcontractor's officer or officers.
 - d. For purposes of **Basic Manual** Rule 2-H, a nonexempt employee means an employee of a subcontractor who may recover benefits under Chapter 440, F.S., at any time during the life of the contract or project for which evidence of coverage is required.

Change **Subcontractor Tables 4 and 2** of Rule 2-H-2 as follows:-

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**EXHIBIT 2 (CONT'D)
BASIC MANUAL—2001 EDITION
FLORIDA STATE RULE EXCEPTIONS
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION**

Subcontractor Table 4

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).

Change Rule 2-H-2 as follows:

2. For each subcontractor not providing evidence of workers compensation insurance, additional premium must be charged on the contractor's policy for the uninsured subcontractor's nonexempt employees when the specific conditions for the carrier are met as follows:
 - a. A carrier must provide notice to the Florida Division of Workers' Compensation (DWC) through the DWC Non-Compliance Referral Website when the carrier determines that a subcontractor:
 - 1) Provided their officer's or officers' valid Certificate of Election to be Exempt to the contractor
 - 2) Hired one or more nonexempt employees at any time during the life of a contract, and
 - 3) Fails to provide the contractor with evidence of workers compensation insurance before any such employee performs work related to the contract.
 - b. The carrier's notice to the DWC must:
 - 1) Be provided before charging premium for the nonexempt employees
 - 2) Explain that the subcontractor provided their officer's or officers' valid Certificate of Election to be Exempt to the contractor; that the subcontractor hired one or more nonexempt employees at any time during the life of a contract; and that the subcontractor failed to provide the contractor with evidence of workers compensation insurance before any such employee performed work related to the contract, and
 - 3) Be maintained in the carrier's file for the employer to serve as a record of providing such notice to the DWC and include the DWC Referral Number.

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**EXHIBIT 2 (CONT'D)
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- c. A carrier may charge additional premium for an uninsured subcontractor’s nonexempt employees only when the carrier:
 - 1) Determines that the subcontractor is a corporation that has an officer or officers who provided the contractor a valid Certificate of Election to be Exempt
 - 2) Determines that the subcontractor hired one or more nonexempt employees at any time during the life of a contract
 - 3) Determines that the subcontractor failed to provide the contractor with evidence of workers compensation insurance before any such employee performed work related to the contract, and
 - 4) Provided notice to the DWC before charging additional premium.
- d. When a carrier has satisfied all steps in Rule 2-H-2-c to charge additional premium for an uninsured subcontractor’s nonexempt employees, the carrier must use Subcontractor Table 1 to calculate the additional premium to be charged on the contractor’s policy.

Subcontractor Table 1—Calculation of Additional Premium for an Uninsured Subcontractor’s Nonexempt Employees

If the contractor has not provided evidence of the subcontractor’s workers compensation insurance and . . .	Then to calculate the additional premium for the subcontractor’s nonexempt employee . . .
Provides complete payroll records of the subcontractor’s nonexempt employees . . .	Use the payroll detailed in the records.
Does not provide complete payroll records of the subcontractor’s nonexempt employees, but does provide documentation of a specific job that discloses a definite amount of the subcontract price that represents payroll . . .	Use the payroll amount indicated by the documentation as the payroll.
Does not provide complete payroll records of the subcontractor’s nonexempt employees and the subcontract price does not reflect a definite payroll amount . . .	Use the following percentages of the full subcontract price as the minimum amount of payroll: <ul style="list-style-type: none"> 1) 33 1/3% of the subcontract price if the job involves mobile equipment with operators (such as, but not limited to, earth movers, graders, bulldozers, or log skidders) 2) 50% of the subcontract price if the job involves labor and material 3) 90% of the subcontract price if the job involves labor only 4) 100% of the subcontract price (the entire amount paid to pieceworkers must be the payroll) if the job involves piecework <p>Note: The amount of payroll used in the premium calculation must be less than 100% of the subcontract price when the subcontractor has any valid exempt corporate officers.</p>

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- e. The carrier must use Subcontractor Table 2 to determine the amount of payroll to exclude for an exempt corporate officer from the calculation of additional premium for the uninsured subcontractor.

Subcontractor Table 2—Determination of the Payroll to Exclude for Exempt Corporate Officers From the Calculation of Additional Premium for Uninsured Subcontractors

If the contractor . . .	Then the amount of payroll to exclude for the exempt corporate officer from the calculation of additional premium is . . .
Provides complete payroll records of the exempt corporate officer or other documentation that reflects the amount paid to the exempt corporate officer . . .	The payroll detailed in the records or the amount indicated by the documentation as the payroll.
Provides documentation that helps to establish the amount of payment the exempt corporate officer received for their labor . . .	The payment amount indicated by the documentation. Note: Documentation may include copies of tax returns or documentation of average labor costs for highly skilled or specialized professions.