



Pennsylvania Compensation Rating Bureau

The Widener Building • 6th Floor

One South Penn Square • Philadelphia, PA 19107-3577 • (215) 568-2371 • FAX (215) 564-4328

October 20, 1998

BUREAU CIRCULAR NO. 1380

To All Members of the Bureau:

Re: **MANUAL REVISIONS**
SECTION 5 - RULINGS AND INTERPRETATIONS
EFFECTIVE NOVEMBER 1, 1998

The Bureau has filed and the Insurance Commissioner approved Manual additions of selected audit topics in Section 5 - Rulings and Interpretations to become effective as of 12:01 a.m., November 1, 1998 with respect to new and renewal business only. These audit topics were covered in recent Test Audit Bulletins and address the premium audit treatment of outworkers/homeworkers, auto repair counter personnel, real estate and property management firms and auto dealerships. These revisions either clarify existing procedure as set forth in the Manual at present or add language to provide Manual reference pertaining to various aspects of current administrative procedure.

The pertinent *new* Manual language is shown below.

SECTION 5

Rulings and Interpretations

Outworkers/Homeworkers

Under Section 104 of the Pennsylvania Workers' Compensation Act an employee is defined as "All natural persons who perform services for another for a valuable consideration exclusive of persons to whom articles or materials are given out to be made up, cleaned, washed, altered, ornamented, finished or repaired, or adapted for sale in the worker's own home, or on other premises, not under the control or management of the employer."

A review of the relevant case law by Bureau counsel indicated the definition of an "employee" is not of significance in disputes over the coverage status for individuals who are injured while working in the home. Instead, the focus is on whether the injury occurred in the furtherance of the business of the employer. Therefore, the ability to resolve disputes involving

coverage status for an outworker/homeworker, as defined in the Act, remains a legal question beyond the Bureau's authority. Accordingly, the employee status of an outworker/homeworker is left to the discretion of the individual insurance carrier.

Counter Personnel - Automobile Repair Facilities

As a general rule, counter personnel for auto repair facilities wait on customers, prepare job cost or sales estimates, write up orders and collect payments for services rendered or merchandise purchased. As described, counter duties are a normal, integral and basic part of the operation of these types of facilities and, as such, are contemplated by the composite rating value of the basic governing classification - Code 815. Therefore, counter personnel for automobile repair facilities and/or automobile tire dealers should be assigned to Code 815 and not to a standard exception classification, either Code 951 or Code 953.

Property Management Firms

Property management firms are engaged in the management of real property which may be owned by the firm or owned by other concerns and managed under contract. The duties of a property management firm are to enforce the provisions of the lease agreement entered into by the tenant and landlord, to ensure that necessary tax, mortgage, insurance and other payments are made in a timely manner, and to ensure that the property is maintained in such a way as to maximize its value to the owner. In the conduct of such operations management companies may employ maintenance personnel, resident or on-site managers, leasing agents or property management supervisors or may subcontract all or portions of these separate responsibilities. The basic functions performed by the personnel of property management firms and the current classification procedures followed in connection therewith are presented below:

Maintenance

Maintenance personnel generally perform minor maintenance and repair work at the property site, including but not limited to: cutting the grass, shoveling snow, plumbing, electrical wiring, painting and minor carpentry activities. New construction or structural alterations generally are subcontracted to a specialty contractor. Maintenance employees are properly assigned to Code 971.

Resident or On-Site Managers

Resident managers typically are retained in connection with residential apartment complexes, while on-site managers may be employed in connection with either residential or commercial properties. Resident managers usually receive compensation in the form of a salary and an apartment unit located at the site of the managed property. The duties of resident or on-site managers retained in connection with apartment complexes and similar multiple dwelling units may include but are not limited to: performing maintenance and repair work, showing apartments to prospective tenants, preparing lease or rental agreements, collecting rents, handling tenant complaints, inspecting vacated units for damage, coordinating maintenance and repair activities, acting as the liaison between tenants and management supervisors, and directly supervising the overall operations and/or maintenance staff of the property.

As a general rule, managers engaged in the above job duties should have their payroll assigned to Code 971. However, managers who perform no maintenance/repair work or perform no direct supervision of the maintenance staff or do not supervise the overall operations of the complex may have their payroll assigned to Code 951. The duties of on-site managers retained in connection with commercial buildings are similar to those described above and they are classified the same way.

Leasing Agents

Leasing agents are typically engaged in residential and/or commercial property leasing or real estate sales activities. Leasing agents are paid a commission based upon the total rent paid over the duration of the lease. Leasing agents show available space to prospective tenants and negotiate the terms of the lease, including the lease period, tenant improvements, payment schedules, and termination provisions. Leasing agents usually do not perform any property management activities.

Historically, leasing agents engaged exclusively in the aforementioned activities have been assigned to Code 951. Leasing agents who, in addition to leasing activities, perform property management operations, such as the direct supervision of employees engaged in the operation, maintenance or repair of properties, are assignable to Code 971.

Property Management Supervisors

Property management supervisors normally retain responsibility for several residential complexes, single family residences and/or commercial buildings. Such persons primarily perform administrative duties in the office of the management firm but will also visit the various properties under management to ensure that the properties are being adequately maintained. The job duties of these employees involve entering into contractual arrangements with real estate property owners for the management of properties, obtaining new properties to be managed, negotiating contracts with firms specializing in the maintenance, repair or alteration of properties, hiring and dismissal of resident or on-site managers, handling the financial arrangements of the property, preparing financial reports, showing available space to potential tenants, renegotiating or extending leases, meeting with resident or on-site managers to discuss problems or complaints, periodically inspecting the physical appearance of the property to ensure that necessary maintenance and repair operations are being performed and to take note of additional needed repairs.

Property management supervisors do not:

- reside at or work from the site of the properties under management
- directly supervise maintenance or repair employees
- directly supervise the operation of the property.

Employees exclusively engaged in the above job duties may have their payroll assigned to Code 951.

Automobile Dealerships

With the understanding that the assignment of an employee's payroll may vary according to individual circumstances, the following guidelines have been developed to aid in the classification of employees of a typical auto dealership. Proper documentation on worksheets should be added when exceptions are made to these guidelines.

Finance and Insurance (F&I) Manager and employees process automobile financing and payment schedule paperwork required by a bank or other financial institution on behalf of the customer. Their payroll is assignable to Code 953.

Inventory coordinators or inventory control attendants may physically check incoming or outgoing automobile inventory. These employees may move new or used automobiles from one lot location to another or to different locations within a single lot. They may also physically check the inventory on a regular basis by walking throughout the lot(s) to do a physical count of the automobiles and monitor them for damage or defects. Their payroll is assignable to Code 818. If job duties are limited to operating a computer in a physically separate office, Code 953 would apply.

Inventory clerks (either service or parts) usually assist the appropriate manager in the compilation and/or recording of paperwork involved in keeping track of either repair/service work done by the service department or the sale/inventory of parts done by the parts department. If they work exclusively on a computer or handle the paperwork generated by the appropriate respective department, their payroll is assignable to Code 953. However, if they physically handle the parts or work in areas that are not physically separated from the parts or service areas, their payroll is assignable to Code 818. Sometimes these employees have job titles of parts clerk or service clerk.

Service writers/service advisors have historically had their payroll assigned to Code 818 because of their job duties, as well as where they perform these job duties. However, as technology modernizes the automobile dealership industry, many job descriptions of dealership employees have changed. If a service writer performs any of the following job duties, the payroll of that employee is assignable to Code 818:

- Physically inspecting the customer's automobile to determine what repair work is required.
- Walking out to the car to write down the mileage from the odometer. This information is necessary because warranty work and adherence to the warranty schedule is keyed to the mileage an automobile has on it. An automobile dealership may not honor the warranty agreement unless all repairs and service have been completed by the dealership's own technicians.
- Providing information or direction to service/repair employees (called mechanics or technicians) through direct interface in the service/repair area.
- Pickup and delivery of parts.
- Road testing the malfunctioning or the repaired vehicle, conducting a final inspection of the vehicle or physically handling ordered automobile parts.

Frequently, service writers work in a driveway/garage area. An operative hazard of an automobile dealership is the operation of a vehicle. In the above mentioned area the automobiles are driven directly up to the service writers, and there is no floor to ceiling partition separating the writers from this hazard. Therefore, the employees in question do not meet the restrictive definition of a clerical office employee, and their payroll would be assignable to Code 818.

As an exception to the rule, service writers may have their payroll assigned to Code 953, if they work in an area that is physically separated from other operations by floor to ceiling partitions and in which work of clerical office employees, as defined in the restrictive standard exception rule, is performed exclusively.

Cashiers who wait on customers should have their payroll assigned to Code 818. The cashier who works in an area where only office work is performed and that area is physically separate from the parts, body shop, service/repair, showroom or sales lot areas should be assigned to Code 953.

Telephone operators should have their payroll assigned to Code 953, if they work in physically separate areas away from the parts, body shop, service/repair, showroom or sales lot areas.

Greeters working in the showroom direct walk-in customers to waiting salespersons. Their payroll should be assigned to Code 819.

Title clerks process the paperwork involved in title and registration transfers. Their payroll is assignable to either Codes 953, 819 or 818 depending on where they perform these job duties.

Automobile salespersons must have their payroll assigned to Code 819. This classification is analogous to Code 951, which is the standard exception classification applicable to employees engaged in the outside solicitation of a firm's goods or services. Job duties inherent for automobile salespersons include:

- Selling automobiles by talking with walk-in customers
- Having their offices/work areas in the showroom
- Taking the customer out for a test drive
- Demonstrating the various features of the automobiles to the customers and delivering (arranging for the delivery of) the vehicle to the customer
- Spending time in the new/used automobile lot or showroom

Sales managers should have their payroll assigned to Code 819 even though they may not sell cars, if their areas of responsibility encompass the sales department and they are engaged in directly supervising the productivity, training and evaluation of the sales department.

They accomplish these goals by observing the salespeople in their interaction with the customer in the showroom or car lot. They constantly evaluate the performance of the salespeople and direct them by updating and improving their sales techniques. While individual salespeople may learn the results of their evaluation in the sales manager's office for reasons of confidentiality and privacy, the sales manager must regularly spend time in the car lot and/or showroom in order to accomplish his/her goals of effective management.

The payroll of the sales manager should be assigned to the same classification that is applicable to the group of employees he/she directly supervises. The term "directly supervises" is construed to mean that the education, training, evaluation and/or the provision of instructions is done face to face in the areas where the employee is working.

The exception to this rule is the case where the sales manager, due to the complexity or large size of the dealership, would delegate training, evaluation and direct supervision of employees to a supervisor/subordinate and where the job duties of the sales manager relegate him/her to exclusively working in the office.

Parts managers and service managers should have their payroll assigned to Code 818. Parts managers may work in the parts department, provide direct supervision (as defined above) of employees, fill in for parts counter employees, physically handle parts, unload and

stock parts in inventory and/or wait on customers or employee mechanics providing them with parts. Any of these activities are sufficient to place the parts manager in Code 818.

Service managers may work in the service area providing supervision and direction to employees, estimate service and repair cost by examining the car, and road test customer vehicles as a regular part of their job duties.

As noted above, the payroll of the manager should be assigned to the same classification that is applicable to the group of employees he/she directly supervises.

General managers should have their payroll assigned to either Codes 818, 819 or 953 depending upon their job duties. If the general manager directly supervises the parts, service, body shop or other operational areas of the dealership with the exception of the office or showroom/sales lot area or has regular job duties in those areas, that individual's payroll is assignable to Code 818.

In some automobile dealerships a general manager may have assumed the duties of a sales manager and is engaged in directly supervising the productivity, training and evaluation of the sales department, in which case Code 819 would be the appropriate classification for the general manager's payroll.

Finally, a general manager who is exclusively engaged in job duties that fall within the restrictive definition of Code 953 in Section 1 may have his/her payroll assigned to that classification.

Drivers/car jockeys drive the new and/or used automobiles from one lot location to another or back and forth to positions within one location. They may wash and detail the car prior to the customer taking possession of the purchased automobile. They may drive cars from an automobile auction or a car wash to the lot location. These employees are miscellaneous employees whose job functions support the dealership's business, and their payroll is properly assignable to Code 818.

Automobile rental clerks have job duties that include but are not necessarily limited to assigning vehicles, completing rental agreements, insurance and credit forms and collecting payment for the rental of automobiles. Their payroll is assignable to Code 819. Rental clerks may also demonstrate or move the automobile.

Leasing managers: The Bureau considers the leasing of a vehicle as analogous to "selling" the vehicle, as the leasing of the vehicle effectively means relinquishing possession of the vehicle to a customer on a more or less permanent basis. Therefore, a leasing agent or manager that demonstrates the features of the automobile should have their payroll assignable to Code 819. Leasing managers should have their payrolls assigned to Code 953, if their job duties are limited to making leasing arrangements over the telephone.

Manual reprints will be distributed at a later date in the usual manner.

Timothy L. Wisecarver
President

kg
D