



*forest* GUILD  
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# 2007

## New Mexico WORKERS' COMPENSATION INSURANCE

### Forestry Related Activities Overview

This document is provided for informational purposes only, and does not constitute legal or financial advice or opinion, and should not be relied upon for any planning purposes. It is provided solely and exclusively for general, non-specific educational purposes. The Forest Guild does not provide any insurance related services. Contact a professional, licensed insurance agent for insurance advice specific to your particular business operation.



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Funding for this project provided by the USDA  
Forest Service's Forest Products Laboratory.

Nonprofit Org.  
US Postage Paid  
Santa Fe, NM  
Permit No. 276

## Class Codes and their Assigned Risk Pool Rates

The following codes and associated rates are provided for your information only. In order to determine the appropriate code(s) for your business operation, please contact your insurance agent. Employees of the Forest Guild are not insurance experts.

Code	Phraseology	2006 Rate Per\$100 of Payroll	2007 Rate Per \$100 of Payroll
0042	Landscape Gardening & Drivers	\$10.69	\$12.40
0106	Tree Pruning, Spraying, Repairing - All Operations & Drivers	\$29.59	\$28.79
2702	Logging or Lumbering & Drivers	\$60.42	\$51.07
2710	Sawmill	\$23.41	\$27.83
2721	Logging or Lumbering - Certified Loggers	\$30.00	\$30.00
6217	Excavation & Drivers NOC	\$11.51	\$12.61
7380	Drivers and their helpers NOC	\$12.01	\$11.46
770	Firefighters & Drivers	\$14.66	\$16.29
8232	Lumberyard New Materials Only: All Other Employees & Yard, Warehouse, Drivers	\$9.09	\$8.48
8601	Architect or Engineer - Consulting	\$1.51	\$1.50
8810	Clerical Office Employees NOC	\$.85	\$.87

### Useful Resources

State of New Mexico Workers' Compensation Administration  
<http://www.workerscomp.state.nm.us/> or 1-800-255-7965

New Mexico Insurance Division  
<http://www.nmprc.state.nm.us/id.htm> or 1-800-947-4722

## Definitions

- **NM Workers' Compensation Assigned Risk Pool** – a statutorily imposed mechanism that provides workers' compensation insurance to employers that cannot get insurance in the voluntary market for whatever reason. Operated under the auspices of the state's Department of Insurance with Board oversight and administered by the National Council on Compensation Insurance (NCCI). Two servicing carriers are contracted to service policy holders in the pool: New Mexico Mutual Casualty Company and Mountain States Mutual Casualty Company. Pool insurance is, on average, 75% higher than the voluntary market.

- **Experience Rating** - individual risk rating plans to distinguish among different businesses in the same classification. It is formulated to compare the past experience of a business to determine if it had a better-than-average loss history compared to other businesses in the same classification. NCCI says it is "your opportunity to earn and be charged a premium which reflects your past loss history." If your premium averages at least \$4,500 a year for two consecutive years, you will be eligible for an experience rating.

- **Insurance Agent** – a person who is licensed by the state to sell insurance. Your agent is your contact and liaison to coordinate your needs and inquiries to the company providing your coverage.

- **Insurance Company** – an organization that assumes the liability that the insurance agent has placed the coverage with. The insurance company is the entity that you pay the premiums to, adjusts the claims, provides loss control services and audits your records to determine the actual amount of final premium owed.

- **NCCI** – National Council on Compensation Insurance, based in Boca Raton, FL, manages the nation's largest database of workers' compensation insurance information. NCCI analyzes industry trends, prepares workers' compensation insurance rate recommendations, determines the cost of proposed legislation, and provides a variety of services and tools to maintain a healthy workers' compensation system. NCCI is the authorized workers' compensation statistical agent in 38 states.

- **NOC** – Not Otherwise Classified. This denotation is utilized when an operation does not fall into another classification.

- **Residual Market** – another term for the Assigned Risk Pool.

- **Voluntary Market** – workers' compensation insurance is provided by Insurance Companies based on experience rating. The voluntary market is, on average, 75% lower than the Assigned Risk Pool.

## The Facts

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1. Workers' compensation insurance is a liability policy to protect workers and employers.
2. All employers with three or more employees (part-time, full-time, family members and/or seasonal) are required to have workers' compensation insurance (other than construction companies which must have insurance regardless of the number of employees).
  - LLC members or partners and corporate officers are automatically covered.
    - Owners can exclude themselves, with proper documentation, if they own 10% or more of the assets of the Corporation or LLC.
3. Payroll division – some classifications allow the payroll of an employee to be split among class codes, provided that proper payroll records and documentation are kept and are available to the premium auditor at the time of the final audit. If there are no verifiable records, all of the payroll will be assigned to the highest rated classification.
  - Example: 8601 and either 2702 or 2721. This is applicable when someone is wielding a chainsaw one day and in the field planning the project the next.
4. If an employee is injured on the job and the employer does not have workers' compensation insurance, there are four main recourses for the employee (all of which amount to a lawsuit):
  - Uninsured employer fund – the employee can file a claim to recover lost wage disability benefits (up to \$40,000) and medical benefits (up to \$40,000). The fund will go after the employer to recover: all benefits paid on worker's behalf, 10% pre-judgment interest, costs associated with processing the claim, and a penalty between 15-50% of all benefits paid.
  - Workers' compensation claim – the employer is personally responsible and is bound by the Workers' Compensation Act.
  - Worker's lawsuit through District Court. Damages are unlimited and are not governed by the Workers' Compensation Act.
  - Worker's lawsuit involving a statutory employer using the provisions of sections 52-1-22 and 23 of the Workers' Compensation Act.

## The Facts, continued

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5. If an injury occurs on private property, the property owner may be held liable for the costs associated with the injury if the accident was caused by the property owner's negligence.
6. Cancellation or Change of Required Insurance Clause to be included in all USDA Forest Service Contracts as of 9/30/06.
  - "There shall be no cancellation, material change, potential exhaustion of aggregate limits or non-renewal of insurance coverage's without thirty (30) days written notice from the Contractor or its insurer's to the Contracting Officer. There shall be no lapse in the required coverage or any reduction in required limits during the life of this contract. Any failure to comply with the requirements of this clause shall constitute default of Contract and may be grounds for immediate termination for default of this Contract."
    - USDA Forest Service Contracting Officers need to receive verification of insurance and ensure that coverage is maintained throughout the life of the contract.
7. Intentional misclassification of class code or payroll is criminal fraud.



## Case Study

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### What Can Happen If You Are Required To Have Workers' Compensation Insurance And Don't

*A temporary restraining order was issued on November 3, 2006 to a well known New Mexican logging company (Defendant) by the State of New Mexico County of Santa Fe First Judicial District Court on behalf of the New Mexico Workers' Compensation Administration, and Alan M. Varela, Director (Plaintiffs). A serious injury occurred to an employee of the Defendant and the Defendant did not have the required workers' compensation insurance.*

The restraining order states among other things:

- "It clearly appears from the specific facts shown by the verified complaint and the affidavits attached that immediate and irreparable injury or loss will result to the State of New Mexico and to the employees of the Defendant if the Defendant is not immediately required to discontinue operation of its business until such time as it has complied with the provisions of NMSA 1978 §52-1-4 (1991) requiring purchase of a valid policy of workers' compensation insurance.
- It is therefore, ordered, adjudged and decreed: Defendant and all unknown and unnamed successor businesses shall be and hereby are restrained from any business operation until they have complied with the provisions of NMSA 1978 §52-1-4 (1991), provided, however that this Order shall not preclude the payment of wages and benefits accrued as of the entry of this Order. The Sheriff or any law enforcement personnel shall compel compliance of this Order by all reasonable means, including but not limited to locking the doors of the business, the removal of license plates and any other lawful act reasonably calculated to cause cessation of the defendant's business operation."



## Testimonials

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### How The Forest Worker Safety Training Has Impacted Workers' Compensation Insurance Rates And Forestry Businesses



*"We had to drop out of the business for a full calendar year because rates were too high, and now we're back in. We saw an immediate reduction in rates, making us more competitive. People were calling us to ask how we could do that. This is a remarkable program. I can see that it makes a significant impact in equalizing the playing field with out-of-state contractors."*

Rene Romero,  
Field Program Director, Rocky Mountain Youth Corps,  
Taos, NM

*"The training was good. It really helped us, especially this year with the increase in fuel costs. It basically cut our rates in half. Now we have some money to put back into the business. We are really glad the Forest Guild came along to reduce rates."*

Mel Jensen,  
Owner, Jensen Contracting, Ruidoso, NM

*"We had been passed over in the past when we submitted responses to RFP's because we didn't have workers' compensation insurance. We were quoted \$98 per \$100 in payroll. Since the training, we submitted a bid and it got accepted. Because of the Safety Certification, I'm able to pull this off. We were shut out before and now we are ready to play."*

Mick Deubel,  
Owner, Alternative Forestry, Mimbres, NM