

# Owner/Officer Election

**NOTE:**

West Virginia Workers’ Compensation is governed by State Code Chapter 23, and is based on a “mutual renunciation of common law rights and defenses by employers and employees alike” §23-1-1(b). Chapter 23 transferred private carrier regulation for companies such as BrickStreet, to the West Virginia Insurance Commissioner (WVOIC—West Virginia Office of the Insurance Commissioner). Legislative Rule **Title 85, Series 8**, clarifies Article 2 of WV Code Chapter 23 concerning owners/officers excludable from workers’ compensation coverage. The information contained on this page is only a reflection of this material. For the most up-to-date status of these laws, refer to the [West Virginia Secretary of State](#) website.

**Who’s Covered?**

Unless written notice naming the positions not to be covered and the names and social security numbers of the individuals occupying those positions is submitted to your private carrier, all employees and employers are covered for workers’ compensation in West Virginia. A letter of exemption for employers with no employees can be obtained following completion of the “[Application for Exemption](#)” form, available through the WV Office of the Insurance Commissioner.

**Owner/Officer Election not to provide certain coverages:**

Entity Type	Title	State <sup>A</sup>	Receives Reportable Wages	Able to Exclude	Wages subject to NCCI rating rule:
Sole Proprietorship or Partnership	Owner/Any Partner	WV	N/A	Yes	flat amount
Corporation or Association (including non-profits & S-corp.s)	Executive Officers <sup>B</sup>	WV	Yes	Yes	min/max
	Board Member	WV	Yes	Yes**	Actual
	Board Member	WV	No	Yes**	N/A
	**It is the employer's burden to show that the individual elected out of coverage is, in fact, a member of the Board of Directors and is, in fact, vested with the authority to manage the affairs of the corporation as a member of the employer's BOD.				
LLC, PLLCs					

a) Reporting to IRS as <u>sole proprietor/partnership</u>	Manager/Officer/Member	WV	N/A	Yes*	flat amount
b) Reporting to IRS as a <u>corporation</u>	Manager/Officer/Member	WV	Yes	Yes*	min/max
<b><i>*Limited to four persons acting in manager, officer or member role</i></b>					
<b>Government Entity</b>	Elected Official	WV	Yes	Yes	min/max
	Appointed/Other Officials	WV	Yes	No	Actual

A- WV WC will only cover owner/officers with duties in the state of West Virginia.

B- Only four officers are excludable, and are limited to the four principal officers listed in §23-2-1(g)(2): President, Vice President, Treasurer, and Secretary

Also Note: Board members receiving no “gross wages” from the employer for their activities are not “employees” within the meaning of chapter twenty-three of the West Virginia Code

**NCCI rating rule:**

Owner/Officer remuneration is subject to rates determined by the National Council on Compensation Insurance, Inc. (NCCI). West Virginia has adopted these NCCI rating rules for wage calculation and premium computation. NOTE: EFFECTIVE 11/1/2010, executive remuneration rates will be based on the **State Average Weekly Wage (SAWW)**. See table below for actual values.

FLAT AMOUNT- Sole proprietors, partners and LLCs/PLLCs filing as sole proprietorships or partnerships, are charged a flat amount based on the effective date of the policy. For example, a policy with the period 01-25-09 to 01-25-10 would be charged \$33,100.

MIN/MAX- Executives of a corporation, association, S-corporation or LLC/PLLC filing as a corporation report actual wages subject to a minimum and maximum rate per week, based on a 52 work-week year. For example, a policy with the period 1-25-09 to 01-25-10 and an executive with wages of \$100,000 would be charged \$100,000. However, another executive with the same policy period making \$200,000 would only be charged the maximum \$130,000.

SAWW -(State Average Minimum Weekly Wage)—*Effective in West Virginia for all policies written on or after November 1, 2010.* NCCI has revised executive remuneration rates to be reflective of the stage average weekly wage. Sole proprietor, partnership, and

minimum limitations for executive officer wages will be equal to the SAWW multiplied by 52 weeks. Maximum limits for executive officer wages will be equal to the four times the SAWW, multiplied by 52.

### NCCI EXECUTIVE WAGE RATES

	Policy Effective Date			Effective 11-1-2010
	7-1-08	1-1-09	11-1-09	
<b>Flat Amount</b>				
Annual	\$33,100	\$33,100	\$35,300	\$36,400
<b>Executive Min/Max</b>				
Minimum	300/week	300/week	300/week	\$700/week
Annual	15,600	15,600	15,600	\$36,400
Maximum	2500/week	2500/week	2700/week	\$2,800/week
Annual	130,000	130,000	140,400	\$145,600