

Governing Committee

Meeting Agenda

Date	Time	Location	Staff Contact
April 17, 2020	8:30 AM PDT	webinar teleconference	Eric S. Riley

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To Members of the Governing Committee, WCIRB Members and All Interested Parties:

Due to the COVID-19 crisis and Governor Gavin Newsom's stay-at-home order, this meeting is being held via webinar teleconference.

Please use the link below to register for the April 17, 2020, WCIRB Governing Committee Meeting. The meeting will begin at 8:30 AM PDT.

<https://attendee.gotowebinar.com/register/211041767195717901>

After registering, you will receive a confirmation email containing information about joining the webinar.

This meeting is Open to the Public.

I. Consideration of Special Regulatory Filing

A. Coronavirus Disease 2019 (COVID-19)

- i. Claims Reporting and Experience Rating
- ii. Impact on Basis of Payroll

II. Next Meeting Date: June 10, 2020

III. Adjournment

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Item I-A Coronavirus Disease 2019 (COVID-19)

The Coronavirus Disease 2019 (COVID-19) pandemic has created several challenges for the California workers' compensation system, including the identification and quantification of COVID-19 claims, the treatment of payroll amounts paid to employees who are not working during the statewide stay-at-home order, the classification of employees whose duties have changed and are now working at home, and the treatment of COVID-19 claims for purposes of experience rating. At the April 8, 2020 Governing Committee meeting, the Committee was advised that several proposed changes to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) and the *California Workers' Compensation Experience Rating Plan—1995* (ERP) would be considered by the Classification and Rating Committee at the April 14, 2020 meeting. Attached is a copy of the agenda item that was distributed to the Classification and Rating Committee in preparation for the April 14, 2020 meeting.

A summary of the recommendations approved at the April 14, 2020 Classification and Rating Committee meeting will be presented at the meeting. The proposed changes to the USRP and ERP, if approved by the Governing Committee at the meeting, will be filed with the Insurance Commissioner shortly thereafter.

Item III-F Coronavirus Disease 2019 (COVID-19)

i. Claims Reporting and Experience Rating

The Coronavirus Disease 2019 (COVID-19) pandemic has created several challenges for the California workers' compensation system, including the identification and quantification of COVID-19 claims and the treatment of COVID-19 claims for purposes of experience rating.

Identification of COVID-19 Claims

In order to facilitate quantifying the cost of workers' compensation claims attributable to the COVID-19 pandemic and determining special treatment in ratemaking and experience rating to the extent appropriate, the Workers Compensation Insurance Organizations (WCIO) have established a Nature of Injury code and Cause of Injury code as well as Catastrophe Number for purposes of reporting COVID-19 claims with accident dates on or after December 1, 2019. Staff, therefore, is proposing amendments to the Nature of Injury codes and Cause of Injury codes included in Appendix III of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) to adopt these codes for reporting COVID-19 claims in California. In addition, staff is proposing amendments to Part 4, *Unit Statistical Reporting Requirements*, Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, of the USRP to direct that COVID-19 claims reported on unit statistical report data with a required date of reporting on or after August 1, 2020 be reported with Catastrophe Number 12.

Exclusion of COVID-19 Claims from Experience Rating

Workers' compensation is a no-fault system. As such, injured workers are compensated for the financial implications of workplace injuries without consideration of fault. There is no attempt in the *California Workers' Compensation Experience Rating Plan—1995* (ERP) to determine whether a particular claim was the fault of the insured and, therefore, all compensable claims are reflected in experience rating. However, California's workers' compensation experience rating system is a merit rating system intended to provide employers a direct financial incentive to reduce work-related accidents. Given the unprecedented nature of this pandemic and the fact that the occurrence of COVID-19 workers' compensation claims are not likely a strong predictor of future claim costs incurred by an employer, the inclusion of such claims in an experience modification calculation would not meet the intended goal of experience rating. Staff, therefore, is proposing that COVID-19 claims reported with Catastrophe Number 12 be excluded from individual employer's experience modification calculations.

Staff is also recommending the elimination of outdated rules from the USRP and ERP related to the treatment of claims arising from the commercial airline hijackings of September 11, 2001 since these rules are now obsolete.

WCIRB staff is recommending that all of the above amendments to the USRP and ERP be included in a special Regulatory Filing and apply to claims reported on unit statistical report data with a required date of reporting on or after August 1, 2020.

Recommendation

Amend the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP), Part 4, *Unit Statistical Reporting Requirements*, Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, to add Catastrophe Number 12 for the reporting of COVID-19 claims and eliminate the reference to claims arising from the commercial airline hijackings of September 11, 2001 with respect to unit statistical report data with a required date of reporting on or after August 1, 2020.

PROPOSED

Section V – Loss Information

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B. Loss Data Elements

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4. Catastrophe Number

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With respect to unit statistical report data with a required date of ~~valuation~~reporting on or after ~~March 1, 2002~~August 1, 2020, report "Catastrophe Number" ~~4812~~ for all claims ~~directly arising from the commercial airline hijackings of September 11, 2001 and the resulting subsequent events with accident dates of September 11, 2001 through September 14, 2001. (This applies to both single and multiple claims.) (See the definition of "Catastrophe" as applicable to this Plan.)~~with a diagnosis of Coronavirus disease 2019 (COVID-19) and an accident date on or after December 1, 2019.

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Recommendation

Amend the USRP, Appendix III, *Injury Description Codes*, Section B, *Nature of Injury (Positions 3-4)*, and Section C, *Cause of Injury (Positions 5-6)*, to add a Nature of Injury code and a Cause of Injury Code for COVID-19 claims with respect to unit statistical report data with a required date of reporting on or after August 1, 2020.

PROPOSED

Appendix III

Injury Description Codes

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B. Nature of Injury (Positions 3–4)

Code	Narrative Description
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•	
•	
II. Occupational Disease or Cumulative Injury	
•	
•	
•	
83. COVID-19	<u>Coronavirus disease 2019 (COVID-19) is a respiratory disease caused by a coronavirus</u>
•	
•	
•	

C. Cause of Injury (Positions 5-6)

Code	Narrative Description
•	
•	
•	
X. Miscellaneous Causes	
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83. Pandemic	<u>A disease outbreak affecting large populations or a whole region, country, or continent</u>
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Recommendation

Amend the *California Workers' Compensation Experience Rating Plan—1995*, Section VI, *Rating Procedure*, Rule 2, *Actual Losses and Actual Primary (Ap) Losses*, to (1) specify that all claims with a diagnosis of Coronavirus disease 2019 (COVID-19) shall not be reflected in the computation of an experience modification and (2) eliminate the reference to claims arising from the Terrorism Risk Insurance Act of 2002, as amended.

PROPOSED

Section VI – Rating Procedure

2. Actual Losses and Actual Primary (Ap) Losses

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- j. ~~For a claim directly arising from certified terrorism losses, as defined by the Terrorism Risk Insurance Act of 2002 as amended by the Terrorism Risk Insurance Program Reauthorization Act of 2007 and 2015, reported with a Catastrophe Code assigned pursuant to the Uniform Statistical Reporting Plan, none of the reported incurred loss on the eClaims with a diagnosis of Coronavirus disease 2019 (COVID-19), reported with a Catastrophe Number 12 pursuant to the Uniform Statistical Reporting Plan, shall not~~ be reflected in the computation of the experience modification.

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Item III-F

Coronavirus Disease 2019 (COVID-19)

ii. Impact on Basis of Payroll

The California stay-at-home order in response to COVID-19 is having a major impact on the workers' compensation system in California. Many employers have altered employees' duties so they can be accomplished from home and other employers have continued to pay their employees even though the employees are not working.

Currently, the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) permits the division of an employee's payroll between a Standard Exception classification and another classification only when there is a single, permanent job reassignment. As a result of the California stay-at-home order, however, many employees' job duties have changed such that they would qualify for assignment to Classification 8810 but their jobs have not been permanently reassigned and thus their payroll cannot be divided under the current rules. WCIRB staff, therefore, is proposing amendments to permit the assignment of Classification 8810, *Clerical Office Employees*, while the California stay-at-home order is in place and for thirty days thereafter, for employees whose reassigned job duties meet the definition of Clerical Office Employees and who are not assigned to a classification that includes Clerical Office Employees during the remainder of the policy period.

With respect to employees who continue to be paid while they are not performing any duties of any kind in the service of the employer, WCIRB staff is proposing amendments to the USRP to exclude such payments during the time the California stay-at-home order is in place and for thirty days thereafter. The rationale for this recommendation is that, because these employees are not engaged in any work activities, they have little to no work-related exposure. Further, unlike typical sick leave, vacation pay, bonus pay and idle time pay, this is an extraordinary payroll event that is not included within the assumptions of the current basis of payroll rules.

Finally, in order to collect data regarding the excluded payments for purposes of understanding the impact of COVID-19 on the workers' compensation system, WCIRB staff is proposing that such amounts be reported utilizing code 0012 on the Exposure Record.

WCIRB staff is recommending that these amendments to the USRP be included in a special Regulatory Filing and apply to unit statistical report data with a required date of reporting on or after November 1, 2020.

Recommendation

Amend the *California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP)*, Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, to add Rule 7, *Coronavirus Disease 2019 (COVID-19)*, to permit during an official California COVID-19 stay-at-home order, (1) the division of an employee's payroll between Classification 8810, *Clerical Office Employees*, and a non-standard exception classification when the employee's work is exclusively clerical in nature, and (2) payments made to an employee while the employee is performing no duties of any kind in service of the employer to be excluded from payroll when the payments are equal to or less than the employees regular rate of pay, for unit statistical report data with a required date of reporting on or after November 1, 2020.

PROPOSED

Section III – General Classification Procedures

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7. Coronavirus Disease 2019 (COVID-19)

Effective as of the date of a California statewide stay-at-home order and concluding thirty (30) days after the order is lifted:

- a. Payroll of an employee who meets the definition of a Clerical Office Employee and whose payroll for the balance of the policy period is not assignable to a standard classification that specifically includes Clerical Office Employees shall be assigned to Classification 8810, *Clerical Office Employees*.
- b. Payments made to an employee, including sick or family leave payments, while the employee is performing no duties of any kind in service of the employer shall be excluded from remuneration; however, the excluded amounts shall be no greater than the employee's regular rate of pay.

Employers must maintain records that document the change in duties and that segregate such payments during this time.

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Recommendation

Amend the USRP, Part 4, Section IV, *Exposure Information*, Rule 1, *Classification Code*, and Rule 4, *Exposure Amount*, to report payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)* with respect to unit statistical report data with a required date of reporting on or after November 1, 2020.

PROPOSED

Section IV – Exposure Information

1. Classification Code

Report the appropriate 4-digit California standard classification code. Report code 0012 for payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)*, subrule b. All records containing “Exposure Amount” must be assigned to a standard classification code developed in accordance with the provisions of this Plan or code 0012.

Also, report statistical code 9740, *Catastrophe Provisions for Terrorism*, if applicable. Other statistical codes need not be reported. (See the definition of “Statistical Code” as applicable to this Plan.)

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4. Exposure Amount

Report the total audited exposure for each standard classification code. (See the definition of “Audited Exposure” as applicable to this Plan.) Report payments excluded from remuneration pursuant to Part 3, *Standard Classification System*, Section III, *General Classification Procedures*, Rule 7, *Coronavirus Disease 2019 (COVID-19)*, subrule b. Report payroll dollars rounded to the nearest whole dollar amount. Report non-payroll exposures to the nearest tenth of a unit. Payrolls or other applicable exposure amounts reported shall be obtained in accordance with the provisions of this Plan.

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Recommendation

Amend Appendix II, *Payroll/Remuneration Table*, for consistency with other proposed changes.

PROPOSED

Appendix II

Payroll/Remuneration Table

Type of Compensation	Is Payment Included as Payroll?	Exception or Comment
•		
•		
•		
Commissions or Draws	Yes	
<u>Coronavirus Disease 2019 (COVID-19): Payments Made During the California Stay-At-Home Order</u>		<u>See USRP, Part 3, Section III, Rule 7</u>
“Davis-Bacon”, Davis Bacon Act		See “Prevailing Wage Laws”, “Davis Bacon Act”
•		
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