

Governing Committee

Meeting Minutes

Date	Time	Location	Staff Contact
April 17, 2020	8:30 AM	Webinar Teleconference	Eric S. Riley

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Insurer Members

Everest National Insurance Company
Hartford Accident and Indemnity Company
Pacific Compensation Insurance Company
Preferred Employers Insurance Company
State Compensation Insurance Fund
Travelers Property Casualty Company of America
Zenith Insurance Company
Zurich American Insurance Company

Public Members

Roberto Cortez
Jeremy Smith (did not attend)
Diana Rich
Mitch Steiger

California Department of Insurance

Patricia Hein (did not attend)
Brentley Yim

WCIRB

Bill Mudge
David Bellusci
Brenda Keys
Michael Knibbs
Eric Riley

Public Members' Staff

Mark Priven

Counsel

Dan Brown, McDermott Will & Emery

Represented by

Michael Mulray
Gretchen Thompson
Tom Collins
Steve Gallacher
Vernon Steiner
Eric Belk
Paul Ramont
Susan Gordon

Representing

Insured Employers
Organized Labor
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The teleconference meeting of the Governing Committee was called to order at 8:30 AM following a reminder of applicable antitrust restrictions, with Chair Mike Mulray presiding.

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Item IA

Consideration of Special Regulatory Filing – Coronavirus Disease 2019 (COVID-19)

The Committee was advised that in response to the impact of the Coronavirus Disease 2019 (COVID-19) pandemic on California's policyholders and employees, the Classification and Rating (C & R) Committee, at its April 14, 2020 meeting, voted to recommend that the WCIRB make a July 1, 2020 Special Regulatory Filing proposing changes to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) and *California Workers' Compensation Experience Rating Plan—1995* (ERP).

The proposed regulatory changes address: (i) the reporting of COVID-19 claims and the treatment of these claims for purposes of experience rating and (ii) the impact of California's stay-at-home order on the reportable basis of payroll.

Item IA-i

Claims Reporting and Experience Rating

WCIRB Managing Attorney Kristen Marsh summarized changes that the C & R Committee recommended be made to the USRP and ERP for inclusion in a July 1, 2020 Special Regulatory Filing. The proposed regulatory changes address 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 arising from a COVID-19 diagnosis, the C & R Committee recommended amendments to the USRP to (1) adopt the Workers Compensation Insurance Organizations' Nature of Injury and Cause of Injury codes for reporting COVID-19 claims in California and (2) direct that claims directly arising from a COVID-19 diagnosis 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

Ms. Marsh also advised the Committee that given the unprecedented nature of this pandemic and that the occurrence or non-occurrence of COVID-19 workers' compensation claims are not likely a strong predictor of future overall 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. Accordingly, the C & R Committee recommended that COVID-19 claims reported with Catastrophe Number 12 be excluded from individual employers' experience modification calculations.

During the discussion, one of the Committee's Public Members noted that while in support of the recommendation, there is potentially a component of employer safety practices that is related to the occurrence of COVID-19 claims at an employer's workplace. While recognizing that, in some instances, there could be a safety component related to the occurrence of COVID-19 claims, WCIRB staff noted that COVID-19 claims occurring on, for example, 2020 policies will likely have limited predictive value on an employers' overall claim history in 2022-2024, the period in which those claims would be used in experience rating. Another Committee member commented that such factors would be considerations in each insurer's underwriting and safety program policies.

Following the discussion, a motion was made, seconded and unanimously passed to include these proposed changes in the July 1, 2020 Special Regulatory Filing for claims reported on unit statistical data with a required date of reporting on or after August 1, 2020.

Item IA-ii

Impact on Basis of Payroll

WCIRB Senior Vice President and Chief Customer Officer Eric Riley advised the Committee that California's stay-at-home order in response to COVID-19 has prompted many employers to alter their employees' duties such that the employee duties now meet the definition of a Clerical Office Employee, and other employers have continued to pay their employees even though the employees are not working. In response to these concerns, the C & R Committee recommended amendments to the USRP to:

1. Permit the assignment of Classification 8810, *Clerical Office Employees*, while the California stay-at-home order is in place and for sixty 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. A single employee's payroll could be divided between Classification 8810 and another classification only once during this time period and once the employee's duties are no longer exclusively clerical in nature, Classification 8810 would not be assignable;
2. Exclude from reportable payroll, payments that are made to employees while they are not performing duties of any kind in the service of the employer during the time the California stay-at-home order is in place and for thirty days thereafter; and
3. Collect data regarding the excluded payments for purposes of understanding the impact of COVID-19 on the workers' compensation system, utilizing code 0012 on the Exposure Record.

In response to a Committee member's question, Mr. Riley clarified that the proposed changes would apply to the current as well as any future COVID-19 related statewide stay-at-home orders. In response to a question regarding how policyholder disputes regarding these changes would be resolved, Mr. Riley indicated that the WCIRB would be conducting significant outreach and education regarding these changes and anticipated that insurers and policyholders would work together on the manner in which changes to employee duties during the statewide COVID-19 stay-at-home order are documented. Ultimately, any disputes regarding the basis of payroll could be resolved through the standard complaint and appeal process.

Following the discussion, a motion was made, seconded and unanimously passed to include these proposed changes in the July 1, 2020 Special Regulatory Filing, and that these rules apply to unit statistical report data with a required date of reporting on or after November 1, 2020.

Next Meeting Date

The Chair noted that the next meeting is scheduled for June 10, 2020.

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There being no further business to come before the Committee, the meeting was adjourned at 9:15 AM.

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Note to Committee Members: These Minutes, as written, have not been approved. Please refer to the Minutes of the meeting scheduled for June 10, 2020 for approval and/or modification.