

STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
300 Capitol Mall, 17th Floor
Sacramento, CA 95814

PROPOSED DECISION

**SEPTEMBER 1, 2024 WORKERS' COMPENSATION INSURANCE
RATING RULES FILING**

FILE NUMBER REG-2024-00004

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and the California Workers' Compensation Experience Rating Plan–1995. These regulations will be effective on September 1, 2024.

SUMMARY OF PROCEEDINGS

The California Department of Insurance ("Department") held a virtual public hearing in the above-captioned matter on April 25, 2024, at the time set forth in the Notice of Proposed Action and Notice of Public Hearing, File Number REG-2024-00004, dated March 22, 2024. A copy of the Notice is included in the record. The record closed on April 25, 2024.

The Department distributed copies of the Notices to persons and entities referenced in the record. The Notices included a summary of the proposed changes and instructions for interested persons who wanted to view a copy of the information submitted to the Insurance Commissioner in connection with the proposed changes. The Workers' Compensation Insurance Rating Bureau ("WCIRB") submitted a filing letter and related documents on February 27, 2024, which was available for inspection by the public at the Oakland office of the Department and were available online at the WCIRB's website, www.wcirb.com.

The WCIRB's filing proposes amendments to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and California Workers' Compensation Experience Rating Plan–1995.

The Department accepted testimony and written comments at a virtual hearing held on April 25, 2024. The Hearing Officer announced that the record would remain open until 5:00 p.m. on April 25, 2024, to enable interested persons to submit additional written comments. The matter having been duly heard and considered, the Department now presents its review, analysis, and Proposed Decision and Order.

**REVIEW OF PROPOSED CHANGES TO THE WORKERS' COMPENSATION
UNIFORM STATISTICAL REPORTING PLAN–1995, THE MISCELLANEOUS
REGULATIONS FOR THE RECORDING AND REPORTING OF DATA–1995,
AND THE CALIFORNIA WORKERS' COMPENSATION EXPERIENCE
RATING PLAN–1995**

Amendments to the California Workers' Compensation Uniform Statistical Reporting Plan–1995 (USRP), effective September 1, 2024

The WCIRB proposed amendments to the USRP to be effective on September 1, 2024 and applied to policies with an effective date on or after September 1, 2024. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

1. Proposed Amendments to Dual Wage Classification Thresholds

At the Department's hearing on April 25, 2024, the WCIRB presented its proposed changes to the California Workers' Compensation Uniform Statistical Reporting Plan – 1995, which are to be effective September 1, 2024. Among the recommended changes described by the WCIRB were the proposed adjustments to the dual wage thresholds for specified construction classifications to reflect wage inflation since the thresholds were last amended. The Dual Wage Classification program involves segregating a classification into two distinct (dual) classifications based on the hourly wages paid by employers assigned to the classification. The wage threshold for each classification is established at a level so that (a) both the high and low wage dual classifications would have credible experience, (b) relatively few employees in the classifications are paid wages at a level close to the threshold and (c) there is a significant differential indicated between the losses per \$100 of payroll among employers with average wages below the threshold and those with average wages above the threshold.

The WCIRB recommended increasing the hourly dual wage classification thresholds by amounts ranging from \$1 to \$4. Specifically, the WCIRB is proposing the following: a \$1 increase in four thresholds (i.e., Heating or Air Conditioning Equipment/Plumbing/Refrigeration Equipment (5183/5187), Automatic Sprinkler Installation (5185/5186), Concrete or Cement Work (5201/5205) and Painting/Painting or Wallpaper Installation/Waterproofing (5474/5482)); a \$2 increase in eight thresholds (i.e., Electrical Wiring (5190/5140), Carpentry (5403/5432), Plastering or Stucco Work (5484/5485),

Roofing (5552/5553), Steel Framing (5632/5633), Excavation/Grading Land/Land Leveling (6218/6220), Sewer Construction (6307/6308) and Water Mains or Connections Construction/Gas Mains or Connections Construction (6315/6316)); a \$3 increase in three thresholds (i.e., Masonry (5027/5028), Wallboard Installation (5446/5447), Glaziers (5467/5470)); and, a \$4 increase in one threshold (i.e., Sheet Metal Work/Heating or Air Conditioning Ductwork (5538/5542)).

The WCIRB advised that the proposed changes are the result of studies completed by the WCIRB staff, reviewed by the WCIRB Classification and Rating Committee, and approved for inclusion in the September 1, 2024 Workers' Compensation Insurance Regulatory Filing by a unanimous vote of the WCIRB's Governing Committee. The WCIRB advised that it provided notification to the employer associations potentially impacted by the studies and also held stakeholder meetings to obtain feedback regarding the proposed changes from the industry as well as employers. The WCIRB submitted into the record the notifications, summaries of meetings with the employers, and copies of the classification studies supporting the proposed changes.

The Department did not receive any written comments or objections regarding the proposed adjustments to the dual wage thresholds. However, during the public hearing, there was one public comment regarding the proposed adjustment to one of the dual wage thresholds. Bruce Wick of the Housing Contractors of California expressed concern regarding the proposed \$4 increase in the threshold for the sheet metal work classification (5538/5542), stating that it was a "big jump in any one time period." Mr. Wick recounted that during Commissioner Jones' tenure, there had been a proposal to increase the threshold for plumbing codes by \$5 an hour, which had been questioned. Commissioner Jones had disallowed it, and according to Mr. Wick, the next adjustment to the plumbing threshold only provided for a \$2 increase in the threshold for the plumbing classifications. Mr. Wick suggested that the Department of Insurance review the recommendation related to the sheet metal work classification and determine if a modification to the proposed threshold adjustment from a \$4 increase to a \$3 increase would be appropriate.

In response to the commenter's concerns, the Department had its actuary analyze the WCIRB's proposed adjustments to the dual wage thresholds. The actuary reviewed, among other materials submitted as part of the Regulatory filing, the WCIRB's *Report on the Review of Dual Wage Classification Thresholds*, dated November 14, 2023, which outlines the data relied upon and methodologies used by the WCIRB in determining the appropriate wage thresholds for the impacted classifications. The WCIRB's study of dual wage classification thresholds is based on an analytical review of WCIRB unit statistical data and external wage data from published government sources. The unit statistical data reviewed was based on information from policies incepting in 2020 and prior as reported to the WCIRB. Wage data was primarily based on

information obtained from the Bureau of Labor Statistics (BLS) Occupational Employment and Wage Statistics (OEWS) program published in April 2023. Other published sources of wages for construction occupations were also reviewed. For each pair of dual wage classifications, the dual wage thresholds indicated by several alternative analytical methods using different assumptions were reviewed to determine the proposed threshold for the classifications to be effective September 1, 2024.

The WCIRB's recommendation is supported by the analysis in their report:

“The current threshold for Classifications 5538/5542, Sheet Metal Work/Heating or Air Conditioning Ductwork, is \$29. The threshold became effective on September 1, 2022, which is selected as the “base year” for this study. The approximate wage percentile corresponding to the \$29 dual wage threshold effective in 2022 is 33% based on the OEWS wage distribution in 2022. Wage inflation for Classifications 5538/5542 workers with wages approximated at the threshold level from the policy period incepting September 1, 2022 to the policy period incepting September 1, 2024 is estimated to be 14.2% over the entire period (Exhibit 14.1). Applying this estimated wage inflation to the current \$29 threshold results in an indicated threshold of \$33.

Under the supplemental method, a \$33 threshold is estimated to produce the maximum incremental increase in the loss to payroll differential, leading to an overall increase in the differential from 218% at the current threshold to 232% (Exhibit 14.2). Any threshold lower than \$33, including the current threshold, is estimated to reduce the loss to payroll differential. A \$33 threshold is also estimated to significantly increase the low wage payroll share from 24% to 33%. As shown in Exhibit 14.2, compared to alternative thresholds, \$33 has the lowest concentration of wages within one dollar of the threshold based on the distribution of injured workers' average weekly wage reported in unit statistical data.

Given that the primary method indication of \$33 is well supported by the supplemental method, WCIRB staff recommends an increase in the threshold for Classifications 5538/5542 from \$29 to \$33.”

Based on the analysis of the data, bases, and methodology used by the WCIRB to reach its determination of the proposed threshold adjustment, the Department's actuary concluded that the WCIRB's analysis and methodologies are actuarially sound and that the proposed \$4 increase in the dual wage threshold for the sheet metal work classification is appropriate.

The current wage threshold level of \$29 per hour for the sheet metal work classification (5538/5542) has not been updated in two years and during that time, wage inflation in the sheet metal industry has increased by 14.2%,

consistent with the increase from \$29 per hour to \$33 per hour. This wage level also corresponds with the threshold that will result in the greatest increase in the loss to payroll differential.

While a reasonable case could be made for a range of hourly wage thresholds, given the agreement of actuarial models and the need for consistency in making determinations as part of Dual Classification by Wage Level Program, the undersigned recommends that the proposed amendments to all the dual wage classification thresholds, including the proposed adjustment for the sheet metal work classification (5538/5542), be adopted.

2. Other Proposed Amendments to the Uniform Statistical Reporting Plan

The Department reviewed the WCIRB's other proposed amendments to the USRP and received no objection as to those items. As to those items, the proposed amendments are reasonable and consistent with the purpose of the USRP. This proposed decision recommends, therefore, that the amendments be approved.

Amendments to the Miscellaneous Regulations for the Recording and Reporting of Data—1995

The WCIRB proposed amendments to the Miscellaneous Regulations for the Recording and Reporting of Data—1995 to be effective on September 1, 2024, and applied to a policy with an effective date on or after September 1, 2024. The proposed amendments are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

The Department reviewed the WCIRB's proposed amendments and received no objections to the proposed amendments. The proposed amendments are reasonable and consistent with the purpose of these Miscellaneous Regulations for the Recording and Reporting of Data—1995. This proposed decision recommends, therefore, that the amendments be approved.

Amendments to the California Workers' Compensation Experience Rating Plan—1995 (ERP)

The WCIRB proposed amendments to the ERP to be effective on September 1, 2024 and applied as of the rating effective date of a risk on or after September 1, 2024. These recommended amendments include a proposal to sunset a special rule adopted during the early months of the pandemic that excluded COVID-19 claims from experience rating. At that time, there was a significant lack of understanding of, and available protections against, the COVID-19 virus, as well as a good deal of uncertainty regarding the projected frequency, severity, and costs of COVID claims. Therefore, in an effort to protect employers from being penalized with higher rates due to COVID, the Commissioner adopted a special

rule on June 15, 2020, precluding all claims directly arising from a COVID-19 diagnosis from being included in the computation of an employer's experience modification.

Since that time, considerable progress has been made in terms of the understanding of the virus and how to protect the public from its transmission, including major medical advancements in testing, vaccines, and treatments, all of which are readily available. As a result, COVID-19 currently appears to have shifted from a pandemic phase to an endemic one, and the COVID-19 workers' compensation claims environment has stabilized such that COVID claims are similar to other workers' compensation exposures. Additionally, the California Division of Occupational Safety and Health has issued guidance and established mandatory standards to assist employers in developing COVID-19 prevention and mitigation protocols and policies. At this time, both the federally-declared public health emergency and California-declared state of emergency regarding COVID-19 have ended, and the special California workers' compensation COVID-19 presumption of compensability statutes have sunsetted. In light of these developments, the WCIRB has proposed to treat COVID-19 claims as other work-related injuries and illnesses for purposes of experience rating going forward. Specifically, the WCIRB's proposed amendments would effectively sunset the special rule and clarify that only those COVID-19 claims with an accident date between December 1, 2019 and August 31, 2024 are excluded from experience rating. Consequently, COVID-19 claims occurring on or after September 1, 2024 would be taken into consideration for purposes of the computation of employer experience modifications.

The remaining proposed amendments to the ERP including, but not limited to, updates to the eligibility threshold and primary thresholds, are contained in the WCIRB's filing and are summarized in the Notice of Proposed Action.

The Department reviewed the WCIRB's proposed amendments and received no objections to the proposed amendments. The proposed amendments are reasonable and consistent with the purpose of the ERP. This proposed decision recommends, therefore, that all the amendments, including the one relating to the consideration of COVID-19 claims for purposes of the computation of experience modifications, be approved.

PROPOSED ORDER

IT IS ORDERED, by virtue of the authority vested in the Insurance Commissioner of the State of California by California Insurance Code sections 11734, 11750(a), 11750.3, 11751.5, and 11751.8 that the proposed revisions to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, the Miscellaneous Regulations for the Recording and Reporting of Data–1995 and the California Workers' Compensation Experience Rating Plan–1995 filed by the WCIRB and Sections 2318.6, 2353.1 and 2354 of Title 10 of the California Code of Regulations are hereby amended and modified in the respects specified above; and

IT IS FURTHER ORDERED that these regulations shall be effective September 1, 2024.

I HEREBY CERTIFY that the foregoing constitutes my Proposed Decision and Proposed Order in the above-entitled matter as a result of my review of the record and the comments received and I hereby recommend its adoption as the Decision and Order of the Insurance Commissioner of the State of California.

May 29, 2024

Yvonne Hauscarriague

Yvonne Hauscarriague
Attorney V

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE**

In the Matter of: Proposed adoption or amendment of the Insurance Commissioner's regulations pertaining to the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and the California Workers' Compensation Experience Rating Plan–1995. These regulations will be effective on September 1, 2024.

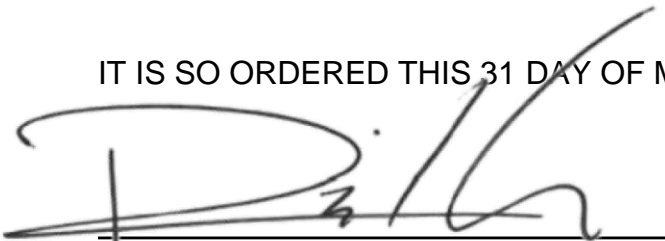
FILE NUMBER REG-2024-00004

DECISION AND ORDER

I hereby adopt the Proposed Decision and Proposed Order of Yvonne Hauscarriague, dated May 29, 2024, in the above-entitled matter as my Decision.

WHEREFORE, IT IS ORDERED that the WCIRB amend the California Workers' Compensation Uniform Statistical Reporting Plan–1995, Miscellaneous Regulations for the Recording and Reporting of Data–1995, and the California Workers' Compensation Experience Rating Plan–1995 as set forth in the Proposed Decision.

IT IS SO ORDERED THIS 31 DAY OF MAY, 2024.

A handwritten signature in black ink, appearing to read 'Ricardo Lara', written over a horizontal line.

RICARDO LARA
Insurance Commissioner