

April 20, 2020

Via Email

The Honorable Ricardo Lara
Insurance Commissioner
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Bill Mudge
President
& Chief Executive Officer

**RE: California Workers' Compensation Insurance Special Regulatory Filing
Effective July 1, 2020
CDI File No REG-2020-00007**

Dear Commissioner Lara:

Pursuant to California Insurance Code section 11734, the Workers' Compensation Insurance Rating Bureau of California (WCIRB), a licensed rating organization and the Insurance Commissioner's designated statistical agent, is submitting the enclosed special regulatory filing for your review and approval. This special filing is being submitted to address issues related to the Coronavirus Disease 2019 (COVID-19) pandemic.

The WCIRB has provided notice of the proposed changes to interested individuals and organizations affected by the changes and will also notify them about this filing and provide a copy of the CDI's Notice of Proposed Action and Notice of Public Hearing once it is issued. The WCIRB will submit copies of all such notices to the CDI before the close of the record in this matter. In addition, a copy of this filing as well as the CDI's Notice will be posted on the Regulatory and Pure Premium Rate Filings page in the Filings and Plans section of the WCIRB's website (wcirb.com).

Proposed Regulatory Changes Effective July 1, 2020

Amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (USRP) contained in Section A are proposed to become effective July 1, 2020 and applied to claims with a required date of reporting to the WCIRB on or after August 1, 2020 and to exposure information with a required date of reporting to the WCIRB on or after November 1, 2020, as specified in the filing. These proposed amendments include changes to (1) create special payroll and claims reporting requirements related to COVID-19, (2) permit the temporary use of Classification 8810, *Clerical Office Employees*, when an employee's work has been shifted to be exclusively clerical in nature, and (3) permit payments made to an employee who is performing no duties for the employer to be temporarily excluded from payroll. In addition, the WCIRB is proposing changes to eliminate references to claims arising from the commercial airline hijackings of September 11, 2001 for clarity because these rules are now obsolete.

Amendments to the *California Workers' Compensation Experience Rating Plan—1995* (ERP) contained in Section B are proposed to become effective July 1, 2020 and applied to claims reported to the WCIRB on unit statistical report data with a required date of reporting on or after August 1, 2020. These proposed amendments exclude from experience rating all claims directly arising from a diagnosis of COVID-19.

The Honorable Ricardo Lara
California Department of Insurance
April 20, 2020

We will endeavor to provide you with any additional information you may require.

Sincerely,



Bill Mudge
President & CEO

BM:smd
Enclosures

Workers' Compensation Insurance
Rating Bureau of California

July 1, 2020 Special Regulatory Filing
CDI File No. REG-2020-00007

Submitted: April 20, 2020

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WCIRB July 1, 2020 Special Regulatory Filing

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WCIRB July 1, 2020 Regulatory Filing

Proposed Regulatory Changes Effective July 1, 2020

The WCIRB is recommending:

1. Amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (Title 10, California Code of Regulations, Section 2318.6), to be effective July 1, 2020 and applied to claims with a required date of reporting on or after August 1, 2020 and to exposure information with a required date of reporting on or after November 1, 2020 (Section A); and
2. Amendments to the *California Workers' Compensation Experience Rating Plan—1995* (Title 10, California Code of Regulations, Section 2353.1), to be effective July 1, 2020 and applied to claims with a required date of reporting on or after August 1, 2020 (Section B).

Section A

Recommended Amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995*
Title 10, California Code of Regulations, Section 2318.6
Effective July 1, 2020

The WCIRB recommends that the following amendments to the *California Workers' Compensation Uniform Statistical Reporting Plan—1995* (Uniform Statistical Reporting Plan) be approved effective July 1, 2020 and applied to claims with a required date of reporting on or after August 1, 2020 and to exposure information with a required date of reporting on or after November 1, 2020.

Part 1 — General Provisions

Amend Part 1, *General Provisions*, Section I, *Introduction*, Rule 3, *Effective Date*, show that the effective date of the amended Uniform Statistical Reporting Plan is 12:01 AM, July 1, 2020.

PROPOSED

Section I — Introduction

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3. Effective Date

The provisions of this Plan are effective at 12:01 AM, ~~January~~July 1, 2020. When a change in this Plan is approved, a notice summarizing the change and its effective date, as specified by the Insurance Commissioner, will be published by the WCIRB.

This Plan and all amendments thereto, unless otherwise specifically provided, shall be applied as of the first anniversary rating date of the risk, as established by the WCIRB, which is on or after the effective date of the change but shall not otherwise be available to outstanding ratings.

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Part 3 — Standard Classification System

Amend Section III, *General Classification Procedures*, to add Rule 7, *Coronavirus Disease 2019 (COVID-19)*, to permit during a statewide 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 employee’s regular rate of pay.

PROPOSED

Section III – General Classification Procedures

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7. Coronavirus Disease 2019 (COVID-19)

- a. Effective as of the date of a California statewide stay-at-home order and concluding sixty (60) days after the order is lifted, the payroll of an employee who meets the definition of a Clerical Office Employee, as detailed in Rule 4a, *Clerical Office Employees*, 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*.
A single employee’s payroll may be divided between Classification 8810 and another classification only once during this time period. Once the employee’s duties are no longer exclusively clerical in nature, Classification 8810 shall not be assigned.
- b. Effective as of the date of a California statewide stay-at-home order and concluding thirty (30) days after the order is lifted, payments made to an employee, including but not limited to 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.
- c. Employers must maintain records that document the change in duties and that segregate such payments during the timeframes specified above.

* * * * *

Part 4 — Unit Statistical Report Filing Requirements

Amend 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)*.

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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Amend Section V, *Loss Information*, Rule B, *Loss Data Elements*, Subrule 4, *Catastrophe Number*, to (1) add Catastrophe Number 12 for the reporting of COVID-19 claims, and (2) eliminate the reference to claims arising from the commercial airline hijackings of September 11, 2001 since these rules are now obsolete.

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.)~~ a diagnosis of Coronavirus disease 2019 (COVID-19) and an accident date on or after December 1, 2019.

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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 a Statewide 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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| | * * * * * | |

Amend 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.

PROPOSED

Appendix III

Injury Description Codes

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B. Nature of Injury (Positions 3–4)

| Code | Narrative Description |
|--|---|
| • | |
| • | |
| • | |
| II. Occupational Disease or Cumulative Injury | |
| • | |
| • | |
| • | |
| <u>83. COVID-19</u> | <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 | |
| • | |
| • | |
| • | |
| <u>83. Pandemic</u> | <u>A disease outbreak affecting large populations or a whole region, country or continent</u> |
| • | |
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Section B

Recommended Amendments to the *California Workers' Compensation Experience Rating Plan—1995*

Title 10, California Code of Regulations, Section 2353.1

Effective July 1, 2020

The WCIRB recommends that the following amendments to the *California Workers' Compensation Experience Rating Plan—1995* (Experience Rating Plan) be approved effective July 1, 2020 and applied to claims with a required date of reporting on or after August 1, 2020.

Section I — General Provisions

Amend Section I, *General Provisions*, Rule 2, *Effective Date*, to show that the effective date of the amended Experience Rating Plan is 12:01 AM, July 1, 2020.

PROPOSED

Section I – General Provisions

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2. Effective Date

The rules and rating values of this Plan are effective at 12:01 AM, ~~January~~ July 1, 2020. When a change in this Plan is approved, a notice summarizing the change and its effective date, as specified by the Insurance Commissioner, will be published by the WCIRB.

This Plan and all amendments thereto, unless otherwise specifically provided, shall be applied as of the first anniversary rating date of the risk, as established by the WCIRB, that is on or after the effective date of the change, but shall not otherwise be available to outstanding ratings. No policy may be cancelled or rewritten to avoid application of this provision.

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Section VI – Rating Procedure

Amend Section VI, *Rating Procedure*, Rule 2, *Actual Losses and Actual Primary (Ap) Losses*, to (1) specify that all claims directly arising from 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, since these rules are now obsolete.

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 c~~Claims directly arising from 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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