



# COMPENSATION RATING AND INSPECTION BUREAU

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## **MANUAL AMENDMENT BULLETIN #495**

To: All Bureau Members and Subscribers

Re: COVID-19 Manual Changes – Effective Immediately

### **BACKGROUND**

The Commissioner of Banking and Insurance has approved amendments to the New Jersey Workers Compensation and Employers Liability Insurance Manual (Manual) to address how certain payroll, premium, classification, experience rating, and statistical reporting of claim matters should be handled due to the COVID-19 pandemic. These revisions are amended to provide guidance and direction to all workers' compensation stakeholders; to ensure consistency with the approach on similar questions in other jurisdictions; and, in light of the stay-at-home order issued by the Governor of the State of New Jersey on March 21, 2020, to reclassify the exposure for employers to comport with their current hazard in a work-from-home environment. The changes are effective immediately. All attached changes to the Manual rules are indicated in red.

### **MANUAL RULE CHANGES**

**Amend Section 3:3-35** to exclude from the basis of premium any payroll payment made by an employer – regardless of the source of those funds – to an employee who is not rendering services for the employer. This payroll will be reported under new code 0012 without a rate, and for data tracking purposes only.

This revision will apply to policies in effect on/after March 21, 2020 – the day that the stay-at-home order was issued – and will remain in effect until 45 days after that order is lifted to allow employers the flexibility to implement their own return-to-work plan.

**Amend Section 3:3-25** to allow those employees, whose duties were previously assigned to a higher-rated governing classification, to be reassigned to code 8810 (clerical office), where those employees now work in a stay-at-home environment performing duties consistent with clerical operations, and when the established classification does not include clerical operations.

This revision will apply to policies in effect on/after March 21, 2020 – the day that the stay-at-home order was issued – and will remain in effect until 45 days after that order is lifted to allow employers the flexibility to implement their own return-to-work plan.

**Amend Sections 3:11-31 and -37** to exclude all COVID-19 claims from the experience rating calculation. These amendments recognize that COVID-19 claims are unlikely to be a strong predictor of future claim costs incurred by an employer and, therefore, should not be included in an experience modification calculation.

Changes to the Statistical Plan (Section 3:13) are set forth in [Statistical Circular #127](#), issued concurrently with this Bulletin.



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companies, etc., the payroll of all employees not specifically included in the definitions for such Standard Exceptions shall be separately rated, all other rules of this Manual notwithstanding.

**24. General Inclusions.** The classifications in this Manual, other than Standard Exceptions, include the operations listed below and referred to as General Inclusions, unless specifically excluded by the language of the manual classification. Any operation described by a General Inclusion shall nevertheless be subject to division of payroll if conducted as a separate and distinct enterprise and having no relation to the operations described by any other classification applicable to the risk.

- (a) Aircraft travel by employees, other than members of the flying crew, including employees whose payrolls are assigned to the standard exception classifications.
- (b) Commissaries and restaurants except in connection with construction, erection, lumbering or mining operations.
- (c) Manufacture of containers, such as bags, barrels, bottles, boxes, cans, cartons, or packing cases.
- (d) Plant hospitals or dispensaries.
- (e) Maintenance or ordinary repair of insured's buildings or equipment when performed by employees of the insured.
- (f) Printing or lithographing.

**25. General Exclusions.** The classifications in this Manual including Standard Exceptions, require the operations listed below, and referred to as General Exclusions, to be separately rated and classified unless otherwise specifically provided in the classification phraseology and subject to the division of payroll rules. Operations described by General Exclusions shall require such separate rating notwithstanding that the classification wording may include the term "All" as in such phrases as "all employees," "all operations," etc.

- (a) Aircraft Operation—all members of the flying crew.
- (b) Maintenance or repair work if performed by contractors and all new construction or alteration of structures whether done by insured's employees or by contractors.
- (c) Stevedoring, whether performed by insured's employees or by contractors.
- (d) Sawmill Operations. Sawmill operations are defined as the sawing of logs into lumber by the use of circular carriage or band carriage saws, including operations incidental thereto.
- ★ (e) Employer operations, amended due to a government-declared, stay-at-home emergency order, for employees that are limited to duties that constitute those of a clerical office employee,

consistent with the provisions of Rule 3:3-26(a), are assigned to code 8810, when the established classification does not include clerical operations. This exclusion shall apply during the time of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall exceed 45 days after the emergency order has been lifted.

**26. Standard Exceptions.** The following operations or employments referred to as Standard Exceptions are subject to division of payroll in connection with all other classifications regardless of directional phrases beginning with "all employees" or "all operations" except those which specifically provide for the inclusion of the payroll of certain Standard Exceptions. The Standard Exceptions are:

- (a) **Clerical Office Employees** - Code 8810 - not specifically included in descriptions of other classes assigned to the policy, and not included by other special rules, may qualify for inclusion in standard exception Code 8810 provided the definition of clerical office duties and the definition of a clerical office as described below are both met.

(i) **Clerical Office Duties**

The duties of a clerical office employee include creation or maintenance of financial or other employer records, handling correspondence, computer composition, technical drafting, and telephone duties, including sales by phone. The clerical office classification continues to apply to a qualified clerical office employee who performs a duty outside of a qualified office area when that duty does not involve direct supervision or physical labor and is directly related to that employee's duties in the office. These duties do not exclude the depositing of funds at the bank, purchase of office supplies, and pickup and delivery of mail provided they are incidental and directly related to that employee's duties in the office.

However, for purposes of this rule, the definition of clerical duties excludes outside sales or outside representatives; any work exposed to the operative hazards of the business; and any work, such as a stock or tally clerk, which is necessary, incidental, or related to any operations of the business other than a clerical office.

(ii) **Clerical Office**

A clerical office is a work area separated and distinguishable from all other work areas and hazards of the employer by floors, walls, partitions, counters or other physical barriers.

A clerical office excludes work or service areas, areas where inventory is located, products are

or

- (ii) for work performed on Saturdays, Sundays, or holidays.

Provided, however, that in the case of guaranteed wage agreements under which the employee receives a guaranteed wage for actually working any number of hours up to a specified number of hours per week, "Overtime" shall include only those hours worked in excess of such specified number.

**34. Substitutes for Money.** Whenever employees are recompensed in whole or in part by the value of rent or housing, or by store certificates, merchandise, credits, or any other substitute for money, such form of payment shall be considered as remuneration and the equivalent money value thereof included.

**35. Remuneration Excluded.** The entire remuneration shall be used as the basis of premium, except as provided below:

- (a) Remuneration, other than as provided in 3:3-30 (i) of this Manual, shall not include payments made by the employer (1) to a group insurance or pension plan or (2) to an employee directly in lieu of (1) foregoing because of the provisions of N.J.S.A. 34:11-56 et seq., Section 276A of Title 40 of the United States Code (Davis-Bacon Act), and amendments thereto.
  - (b) Remuneration shall not include special reward for individual invention or discovery.
  - (c) Dismissal or severance payments except for time worked or accrued vacation.
  - (d) Payments made under a formal and established sickness or personal employee benefit program for unused time paid at retirement or termination of employment.
- ★ (e) Payroll payments, consistent with a standard rate of pay, made to employees during a government-declared, stay-at-home emergency order when the employee is not rendering services during such emergency. These payments are assigned to code 0012, which shall apply during the time of such emergency order and, if appropriate, for such limited time thereafter as is necessary for the employer to return to standard business operations, which in no case shall exceed 45 days after the emergency order has been lifted.

**36. Estimated Payrolls.** For each classification there shall be inserted in the policy an adequate estimate of payroll for the policy period, as hereinbefore defined. Estimated payroll shall approximate the actual expenditures as shown by previous records or by inspection.

**37. Estimated Payrolls by a New Carrier.** When a risk passes from one carrier to another the estimated

payroll used by the new carrier shall in no case be less than the payroll shown on the expiring policy unless the carrier of the expiring policy shall concur upon such lesser estimate. The requirements of any carrier as to estimated payroll shall be subject to the approval of the Rating Bureau.

**38. Division of Single Employee's Payroll.** The payroll of any one employee shall not be divided between two or more classifications. The entire payroll of each employee shall be assigned to the highest rated classification representing any part of his work. This rule shall not apply in the case of construction, erection, stevedoring work or the operation of aircraft where the rules of this Manual permit division of payroll provided the original records of the employer disclose the proper allocation of the individual employee's time.

**39. Executive Officers Defined.** Executive Officers are defined as the active, regularly constituted officers of a corporation or unincorporated association and shall include those commonly known and styled as President, Vice President, Secretary or Treasurer.

In order to be considered a "regularly constituted" officer, all three of the following criteria must be met:

- (a) Those persons must be duly named in the Corporate or Business Charter as filed with the Secretary of State of the State of incorporation or the Governing body for the trade name filings;
- (b) Those persons must be duly elected or appointed as evidenced and verified in accordance with the By-Laws and shown in the minutes of the Board meeting; and
- (c) Those persons must have decision making authority in the day-to-day operations of the employer via regular and annual meetings of the officers and/ or Board of Directors.

Regularly constituted officers are "active" only if at least one of the following conditions are met:

- (a) They have regular duties; or
- (b) They receive remuneration for services rendered.

**40. Executive Officers' Payroll.** In every instance the payroll of all active executive officers shall be included in the statement of payroll and a premium charge thereon subject to a maximum average individual payroll of two thousand six hundred forty dollars (\$2,640) per week and a minimum average of six hundred sixty dollars (\$660) per week.

**41. Adjustment of Executive Officer's Maximum and Minimum Payroll.** Subject in each and every case to submission to and approval of the Rating Bureau upon the basis of a complete statement of facts, the maximum average and minimum average payroll required by this rule shall be subject to pro rata adjustment where the executive does not devote his entire business time to the risk subject to audit.

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month nearest the policy expiration date, the experience modification applicable to the policy shall apply for its entire term. The expiration month, day and year of the policy shall then become the new rating effective date.

The Rating Bureau shall establish the rating effective date in all other cases.

### 26. Application of the Experience Modifications to Multiple Policies.

- (a) If a risk is covered by several policies which differ as to expiration date, a single experience modification shall be computed once every twelve months on the rating effective date to be determined by the Rating Bureau and shall be applicable to all policies during the ensuing twelve months. At the end of the twelve-month period a new modification shall be computed to apply to the unexpired term of any outstanding policy and to be effective for policies issued within the next twelve months until the next rating effective date. The experience modification so calculated shall be based upon the rates and factors in force as of the rating effective date.
- (b) If the policy controlling the rating effective date established by the Rating Bureau has been terminated by cancellation, or is not renewed, a new rating effective date shall be established in accordance with paragraph (a) above.

### 27. Promulgation of Experience Modification.

Experience modifications are promulgated on a daily basis and released to the carrier of record as promptly as possible.

**28. Source of Data for Rating.** The data used for experience rating shall be the individual risk experience data reported and valued in accordance with the provisions of the Statistical Plan, 3:13 of this Manual.

**29. Rating Forms.** To determine the experience modification the prescribed data shall be tabulated by the Rating Bureau on approved experience rating forms.

**30. Payrolls—Tabulation.** The actual audited payroll for each classification for the experience period shall be tabulated by policy year.

**31. Losses—Tabulation.** Incurred losses paid and outstanding shall be tabulated by policy year according to the following divisions between "Minor" and "Serious" cases as required for the rating procedure.

- (a) The indemnity cost of all cases which are reported as closed and which individually do not involve excess indemnity or excess medical shall be grouped and tabulated as minor indemnity losses.
- (b) The total medical cost of all cases which are reported as closed and which individually do not involve excess medical or excess indemnity shall be grouped and tabulated as minor medical losses.

- (c) Any case which involves excess indemnity or excess medical shall be individually tabulated.
- (d) Death and permanent total disability (D. & P.T.D.) cases shall be identified as such and individually tabulated.
- (e) Any case reported as open, regardless of amount, shall be individually tabulated.

★ **Exception:** All claims reported with Catastrophe Number 12 shall be excluded from experience rating calculations. For a definition of losses included under Catastrophe Number 12, see 3:13-55 of this Manual.

**32. Employers Liability Cases.** All Employers Liability cases (those settled under Part Two of the policy contract) shall be individually tabulated on an actual cost basis and so identified. The actual incurred settlement cost shall be employed in the experience rating calculations uniformly modified by the factor of 1.12 set forth in Table A, 2:5-1 of the Manual.

In no event shall any claim be included in a rating at an amount greater than the applicable basic limit provided under Part Two of the Standard Provisions Policy.

Claims shall be divided to Normal and Excess in accordance with the values in Table A, 2-5:1 of the Manual. The limiting loss values indicated in Table A, 2-5-1 apply to all claims except Admiralty or Federal Employers' Liability Act.

For Admiralty or Federal Employers' Liability Act claims, a maximum per claim limiting value of \$100,000 applies. The medical portion of each claim shall not exceed 25%, or \$25,000.

### 33. Reserved for Future Use

**34. Fees.** Whenever the award of the Compensation Referee includes the cost of witness fees, attorney's fees, or expert medical testimony to the injured, pursuant to N.J.S.A. 34:15-64, the amount so awarded shall be considered as part of the indemnity cost and so included in the tabulation of losses.

**35. Final Award.** Where a final award has been made prior to the date of experience valuation, the actual loss incurred as determined by such award shall be included in the experience data.

**36. Moral Responsibility.** No loss shall be excluded from the experience of a risk on the ground that the employer was not morally responsible for the accident that caused such loss.

**37. Revision of Ratings—Losses.** It shall not be permissible to revise the rating of an insured to increase or reduce values because of developments in the nature of injury or because of departmental or judicial decision made subsequent to the date of valuation.

The carrier shall submit a complete statement in each case and ratings shall be revised:



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- (a) If loss values are included or excluded through mistake other than error of judgment, or if loss values are included, and
- (b) The claimant has recovered in an action against a third party, provided the reported net loss is less than the total incurred loss previously used in the rating, or
- (c) A claim has been officially dismissed by judicial or appropriate departmental ruling (1) as non-compensable or (2) for lack of prosecution where the statute of limitations has expired, or
- (d) The statute of limitations has expired and the claim has been closed with no payment other than medical.
- (e) A settlement has been approved in accordance with N.J.S.A. 34:15-20 of the New Jersey Workers' Compensation Law where the issue involves question of jurisdiction, disability, causal relationship or dependency of the petitioner.
- (f) A claim valued on a life pension basis is settled on a basis other than a life pension.
- ★ (g) **A claim should have been reported with Catastrophe Number 12. The reporting shall allow for its elimination. For a definition of losses included under Catastrophe Number 12, see 3:13-55 of this Manual.**

Revisions in accordance with the above shall be made during the effective period of the rating or within three years thereafter. The Rating Bureau, however, may defer any revision of the insured's rating until the time of the preparation of the next renewal rating unless immediate revision is requested by the insured or the carrier.

**38. Revision of Ratings—Payroll.** The carrier shall submit a complete statement in each case and ratings shall be revised:

- (a) If payroll amounts are included or excluded through clerical error, or if payrolls are included, and
- (b) The amounts have been revised to reflect an audit or re-audit, or
- (c) If the amounts have been reassigned to other classifications as a result of inspection or correction error.

Revisions in accordance with the above shall be made during the effective period of the rating or within three years thereafter. The Rating Bureau, however, may defer any revision of the insured's rating until the time of the preparation of the next renewal rating unless immediate revision is requested by the insured or the carrier.

**39. Third Party Cases.** In cases where the carrier has received reimbursement under subrogation rights or where the injured employee or his dependents have

recovered from a third party, the reported net loss shall be used in experience rating. The net loss shall include allocated claim expense incurred in obtaining recovery. In cases where the claim expense incurred in connection with such recovery exceeds the amount recovered, the net loss tabulated shall not exceed the gross amount of loss prior to recovery.

**40. Losses—Treatment in Ratings.** The reported losses shall be tabulated by year of issue and shall be modified by the appropriate loss modification factors set forth in Table A, 2:5-1 of this Manual. The indicated "excess" loss and the indicated "normal" loss shall be developed separately as follows:

- (a) The medical loss per case shall be divided between "normal" and "excess" and limited in accordance with the amounts provided in Table A.
- (b) The indemnity loss per case shall be divided between "normal" and "excess" and limited in accordance with the amounts provided in Table A.
- (c) **Catastrophes—Accidents involving two or more persons.** In the case of an accident involving injury or death of two or more persons, the individual losses shall be separately modified and analyzed into the normal and excess divisions as provided above. The normal indemnity and medical losses chargeable to the accident and to be used in the rating shall be limited to twice the individual limiting normal values for indemnity and medical for a single case as provided in Table A.

The excess indemnity and medical chargeable to the accident and to be used in the rating shall be the difference between the total adjusted indemnity and medical losses chargeable to the accident (limited to the maximum indemnity and medical amounts provided in Table A) and the applicable normal indemnity and medical amounts, respectively.

**41. Subject Premium.** The premium subject to experience rating, hereinafter referred to as the subject premium, shall be computed by segregating the payrolls of the experience period by classification and according to the coverage provided and extending them at the appropriate manual rates.

If the operations of a risk are reclassified other than as a result of a change in operations the payrolls reported under the previous classification(s) and used in the experience rating shall be reassigned to the new classification and the premium subject to experience rating computed on the basis of the new classification(s).

**Exception:** Subject premiums for Admiralty or Federal Employers' Liability Act exposures shall be determined by segregating the payrolls by Coverage I and II classification and extending them at the appropriate, basic manual rates for \$100,000/100,000 limits.