

Covid-19 and Workers' Compensation

UPDATE

As if Workers' Compensation wasn't complex enough already, the COVID-19 crisis has created a whole new level of complexity.

Below are some frequently asked questions we have received on the impact of COVID-19 on Workers' Compensation in New York:

My business has temporarily laid-off/furloughed employees, although we are still paying them. How will this impact my Workers' Compensation premium?

The National Council on Compensation Insurance (NCCI) filed new rules on April 23 that allows for the exclusion of monies you pay your employees not to work.

Important notes:

- 1) This filing has been approved in the states listed below. Oregon and Texas are the only two states regulated by NCCI that have not approved these rules.
- 2) To exclude this pay from your premium, you must keep "separate, accurate, and verifiable records" to provide the insurance company auditor when your policy expires.

Without these records, the insurance company will have to include the pay in your premium calculation.

- 3) This rule is only applicable when an employee is not performing ANY duties for you. If the worker is performing tasks in service of the

employer, the payroll will be reported to the appropriate classification, and premium will be charged appropriately.

- 4) This rule will be effective retroactively to March 1, 2020. It will expire on December 31, though this date may be adjusted as circumstances warrant.
- 5) This includes paid sick leave or paid FMLA approved by congressional action in response to the crisis.

My employees are now working from home. Can their Workers' Compensation Class Code assignment change?

The answer to this question will depend on the specific circumstances of each situation. If the employee was already classified in 8810 (Clerical Office), their classification would change to 8871 (Clerical Telecommuter).

In order for other employees to qualify for a change in classification, their job must change.



For example: You operate a manufacturing facility and have an employee who programs CNC machines for your manufacturing process. Their job consisted of not only writing programs but inspecting parts to ensure the program is working correctly.

As a result of the crisis, this employee is now working from home writing programs. This employee could have their payroll re-classified into 8873 because they are currently doing a purely clerical job, with no exposure to the manufacturing shop.

Some classifications include clerical employees in their definition. In these cases, re-classifying employees who are now working from home would not be allowed.

It's critical you discuss your situation with a Certified WorkComp Advisor to find the correct answer for your business.

My employee has been diagnosed and their illness has been accepted as a workers' compensation claim. Will this impact my Experience Modification Factor?

In May, NCCI filed Item E-1407 which will exclude COVID-19 claims from the experience mod. As of 6/18/2020, the states listed below have approved this filing. (See note about independent bureau states)

State that have approved COVID-19 Experience Rating Rules:

- Alabama
- Alaska
- Arizona
- Arkansas
- Colorado
- Connecticut
- District of Columbia
- Florida
- Georgia
- Maryland
- Mississippi
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Mexico
- North Carolina
- Oklahoma

- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Rhode Island
- South Dakota
- Tennessee
- Vermont
- Virginia
- West Virginia

States that have approved COVID Payroll Rules:

- Alabama
- Alaska
- Arizona
- Arkansas
- Colorado
- Connecticut
- Washington, DC
- Florida
- Georgia
- Hawaii
- Idaho
- Illinois
- Indiana
- Iowa
- Kansas
- Kentucky
- Louisiana
- Maine
- Maryland
- Mississippi
- Missouri
- Montana
- Nebraska
- Nevada
- New Hampshire
- New Mexico
- North Carolina
- Oklahoma
- Rhode Island
- South Carolina
- South Dakota
- Tennessee
- Utah
- Vermont
- Virginia
- West Virginia

California, Michigan, Wisconsin, New York, Pennsylvania, Delaware, Massachusetts and Minnesota have independent rating bureaus that have separate rules.



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