

# COVID-19 and Workers Compensation: What You Need to Know - Frequently Asked Questions - UPDATE



By NCCI Insights

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The latest updates, as of April 17, 2020, are in blue.

NCCI has received numerous questions in the last few weeks regarding COVID-19 and the impact it may have on the workers compensation industry.

These frequently asked questions (FAQs) are intended to be the start of a series of responses that will address questions NCCI receives. Please review NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance—2001 Edition (Basic Manual)* and *Statistical Plan for Workers Compensation and Employers Liability Insurance—2008 Edition* for additional information applicable to the responses provided. In addition, some states may have exceptions to the national *Basic Manual* rules referenced in this article. Refer to the State Rule Exceptions section of NCCI's *Basic Manual* to determine whether an exception exists.

These FAQs address the rules as filed in NCCI manuals and other potential issues related to NCCI's role in the industry. Individual states approve, interpret, and enforce the rules contained in manuals and forms. Insurance carriers will need to confirm regulatory, legislative, and enforcement changes as a result of the COVID-19 event with the respective states.

If you have additional questions, please submit by clicking the questions or comments button. These FAQs will be updated as questions or new information warrant.

The following are FAQs regarding COVID-19:

## 1. Is COVID-19 compensable under state workers compensation acts?

The answer to that question is “maybe.” While workers compensation laws provide compensation for “occupational diseases” that arise out of and in the course of employment, many state statutes exclude “ordinary diseases of life” (e.g., the common cold or flu). There are occupational groups that arguably would have a higher probability for exposure such as healthcare workers. However, even in those cases, there may be uncertainty as to whether the disease is compensable.

As of now, some states have pending legislative initiatives to expand the coverage for certain workers. Other states legislatures are currently meeting and discussing these issues and it is expected that these states may introduce similar initiatives relative to workers compensation.

## 2. Where can I find state-specific legislative activity related to COVID-19?

We are currently posting COVID-19 legislative updates in our What's Trending section on our [Legislative Activity](#) page.

## 3. A business has suspended operations due to COVID-19, but continues to pay employees, although they are at home and not working. Is this payroll included in the premium calculations for workers compensation?

**Note: This answer has been revised.**

NCCI recognizes that circumstances around COVID 19 are extraordinary and warrant an expedited rule change to address the question of payroll for employees who are being paid but are *not working* as it relates to the basis of premium. If approved, this rule change will be distinct from "idle time" under our current **Basic Manual** rules (Rule 2-F-1), and a corresponding statistical code 0012 will be created for reporting this payroll. This payroll will not be used in the calculation of premium.

Other actions are underway by some companies and individual states to respond to this question, so an emphasis on creating as uniform an approach as possible is being pursued for approval by regulators. The details of the proposed rule changes will be included in a filing that will be submitted to state regulators in all NCCI states. The filing is expected to be made the week of April 20.

## 4. An employer has limited operations due to COVID-19. As a result, some employees are placed into new roles for the duration of the pandemic. What classifications could be assigned to these employees?

As stated in **Basic Manual** Rule 1-A, subject to certain exceptions, it is the business of the employer within a state that is classified, not separate employments, occupations, or operations within the business. Therefore, the classification of the employees working in new roles might not change. However, there may be situations where a change in classification could occur, such as when:

- The employer's operations have changed to a different classification, or

- An employee's occupation for the employer has changed (similar to when an employee receives a job promotion) to a different classification that may be applied to the employer's policy (e.g., an employee changes to a clerical position and Code 8810—Clerical Office Employees NOC may be applied to the policy).

In accordance with **Basic Manual** Rules 1-D-3 and 2-G, the employer would be responsible for maintaining separate payroll records for the change in operations or the wages earned for an employee whose occupation has changed. If these records are not maintained, then all payroll would be assigned to the highest rated applicable class code. See footnote. <sup>1</sup>

## 5. Does **Basic Manual** Rule 1-F Changes or Corrections in Classifications, provide guidance for employers impacted by COVID-19?

NCCI's **Basic Manual** Rule 1-F-1 addresses changes or corrections in classifications due to changes in an employer's operations. The temporary interruption or suspension of normal business activities caused by COVID-19 may qualify as a change in operations. For example, if an employer continues to pay its employees while they are working out of their homes (telecommuting) rather than an office, carriers may consider a change from the employer's governing classification to Code 8810—Clerical Office Employees NOC or Code 8871—Clerical Telecommuter Employees, or other appropriate classifications based on the duties of the employees while normal business operations are interrupted or suspended. Once normal business operations resume, appropriate classifications should be applied.

Find the specific description of Code 8871 using NCCI's [Class Look Up tool](#). To access it, you need a user ID and password (at no charge). If you don't have these, please contact our Customer Service Center at 800-622-4123 and select the Products and Services option.

## 6. What is the appropriate class code for specialty cleaning companies or contractors that are conducting cleaning/disinfecting to remove potential COVID-19 contamination?

NCCI's **Basic Manual** Rule 1-D-2 states that if no basic classification clearly describes the business, the classification that most closely describes the business must be assigned.

In order to determine the appropriate classification, it is important to understand how the employer is conducting the cleaning operation. If the employer is simply going into a business and wiping down surfaces, Code 9014—Janitorial Services by Contractors—No Window Cleaning Above Ground Level and Drivers may be the appropriate classification. For example, Code 9014 typically applies for surface cleaning of minor mold spots or general cleaning where hazardous materials are not being removed.

If containment operations are being conducted using sheeting, air filtration equipment, along with personal protective equipment such as full body suits, respirators, etc., then this could be

considered as hazardous material remediation and Code 5473—Asbestos Removal Operations—Contractor—NOC & Drivers may apply.

## **7. If an employer’s employees are working at home due to COVID-19, and they live in a monopolistic state (but normally work in an NCCI state), will its workers compensation policy in the NCCI state cover such exposure?**

NCCI’s *Basic Manual*, Introduction—Application of Manual Rules, No. 9, provides that “interpretation of state or federal laws pertaining to coverage issues is not within the jurisdiction of NCCI.” Contact the monopolistic state(s) in question to obtain coverage requirements under its state workers compensation law.

## **8. Can NCCI provide guidance on how carriers should handle physical audits vs. virtual audits from a voluntary and residual market perspective?**

NCCI offers the following guidance:

**Voluntary Market**—As compliance requirements vary by state, NCCI suggests that voluntary carriers consult the state regulators’ websites for bulletins or executive orders to determine if there are any exceptions to compliance requirements as a result of COVID-19 (e.g., virtual audit rather than a physical audit).

**Residual Market Policies**—For policies written through the Workers Compensation Insurance Plan (WCIP), if assigned carriers (servicing carriers and direct assignment carriers) are unable to complete physical audits due to travel restrictions or policyholder unavailability due to COVID-19, the assigned carriers should be flexible and document their files regarding any extensions provided or action taken. This process is important to ensure a complete record is available for auditors reviewing files against NCCI’s *Assigned Carrier Performance Standards*.

## **9. If an employer is unable to comply with completing an audit because of the COVID-19 situation, is the employer considered to be noncompliant and subject to the Audit Noncompliance Charge (ANC) as provided in *Basic Manual Rule 3-A-13-b*?**

A carrier’s application of the ANC is not mandatory. Therefore, a carrier could opt not to apply the ANC to an employer’s policy in this situation.

## 10. Are there rules around cancellation/nonpayment addressed in NCCI's *Basic Manual*?

Yes, NCCI's *Basic Manual* Rule 3-A-3 addresses cancellation provisions. Some states may have exceptions for residual market policies. Refer to the State Rule Exceptions section of NCCI's *Basic Manual* to determine whether an exception exists.

State statutes govern cancellation/nonpayment requirements. Various states are addressing, via executive order, bulletins, etc., cancellation and nonpayment requirements in light of COVID-19. Carriers should consult state regulators' websites for further guidance.

## 11. Is there any guidance regarding data reporting and claims coding related to COVID-19?

**Note: This answer has been revised.**

Specific reporting requirements have been established for claims attributable to COVID-19 with accident dates of December 1, 2019, and subsequent. Extraordinary Loss Event (ELE) Code 12 (catastrophe number) and new code 83 for nature of injury and cause of injury will be required for the applicable data types.

Refer to the following circulars:

*Content Requires Authentication*

- [DR-2020-01 Data Reporting—COVID-19 Coronavirus—Claim Reporting Requirements](#)
- [CIF-2020-21 Countrywide—Announcement of Item U-1401—Nature and Cause of Injury Codes for COVID-19 \(Coronavirus\) Claims](#)

## 12. Has Congress or the administration taken any specific actions that would directly impact the state-based workers compensation system?

To date, no specific federal legislative and regulatory initiatives have been advanced that would impact the workers compensation system. Updates on federal activities related to COVID-19 will be posted on our [Federal Issues](#) page.

## 13. What are possible impacts on loss costs and rates?

NCCI continues to examine the potential impact COVID-19 may have on workers compensation ratemaking, including the associated economic effects. While at this early stage the overall impact that COVID-19 may have on trends (and loss costs) is indeterminate, it may

be reasonable to believe COVID-19 will give rise to component changes that may, to some extent, have offsetting impacts on system costs.

For example:

- There could be an increase in the number of compensable workers compensation claims arising in frontline, COVID-19-related occupations.
- There could also be a decrease in workers compensation claims due to the increased number of employees who are teleworking.

Short- and long-term COVID-19-related impacts may also differ. For example:

- In the short term, during the COVID-19 pandemic, there may be a reduction in the number of physical therapy sessions attended by injured employees and/or a deferral in the number of workers compensation-related surgeries that are not deemed to be immediately critical.
- Over the longer term, an increase in these types of services may be expected as the current burden on medical-related personnel and facilities is lessened.
- Lastly, in economic downturns, workers may forego filing claims for relatively minor injuries to maintain active employment as the economy navigates these uncertain times, leading to temporary downward pressure on claim frequency.

Going forward, NCCI will continue to evaluate the impact COVID-19 may have on future workers compensation system costs, but does not anticipate revising previously approved loss cost/rate filings at this time.

## **14. For audits that may not be able to be performed during the COVID-19 pandemic, are carriers able to report estimated audits?**

**Note: This answer has been revised.**

Yes, upon approval of NCCI Item Filing B-1441, if final premium based on audited exposure cannot be reported due to federal, state, or local emergency orders issued due to the COVID-19 pandemic, the applicable exposure and premium may be reported in the class code(s) and the Estimated Audit Code as an "N."

## **15. Are there any considerations to adjust data reporting due dates or assessments from NCCI's data quality programs?**

Some data reporters may be affected by COVID-19 and may have already experienced impact to their operations that affect the timely reporting of quality data to NCCI. NCCI will consider relief from data reporting obligations or assessments on a case-by-case basis. For appeals on Financial Call assessments, refer to the *Data Quality Guidebook* Part 2-E-7. For any other

appeals, contact NCCI's Customer Service Center at 800-622-4123. Initial reporting of the Indemnity Data Call continues to be due by the end of Third Quarter 2020.

Refer to the following circulars:

*Content Requires Authentication*

- [DQ-2020-01 Data Quality—COVID-19 \(Coronavirus\)—NCCI Data Quality Compliance Programs](#)
- [FYI-IND-2020-01 Indemnity Data Call—Reporting Begins Second Quarter 2020](#)

## 16. Will claims related to COVID-19 be included in experience rating?

**Note: This answer has been revised.**

NCCI is proposing that claims attributed to the COVID-19 pandemic be excluded from experience rating. NCCI will file a rule change for the exclusion of claims identified with Catastrophe Number 12 for consideration by state insurance regulators.

COVID-19 is different from more common infectious diseases. Currently, there is no vaccine or known cure, which creates great uncertainty for our stakeholders. Pandemics have been rare and are generally considered catastrophes because of their scope and severity. The presence or absence of a pandemic in a recent historical period is not believed to be a reliable good predictor of whether one will return in a given future year, after the current one runs its course. Pandemics share this aspect with other catastrophic perils in the workers compensation line, such as terrorism and earthquake, and each peril presents a unique catastrophic exposure. Those other catastrophes have a non-ratable provision outside of the manual loss costs and rates that represent the long-term average expected cost, and the claims arising from those events are excluded from experience rating.

## 17. Does the Families First Coronavirus Response Act address workers compensation, including the treatment of payroll? Will payments by employers for qualified paid sick leave and qualified family and medical leave expansion under the Act be used in the calculation of workers compensation premium?

None of the provisions of the Families First Coronavirus Response Act (Act) expressly apply to workers compensation. The Act does not define payroll, and the treatment of payroll for purposes of workers compensation is not specifically addressed in the Act. As discussed more fully below, NCCI is proposing to exclude qualified sick leave and/or family and medical leave payments under the Act from the calculation of premium.

In March 2020, Congress passed the Act in response to the COVID-19 pandemic. In general, the Act expands food assistance, addresses unemployment benefits, and provides emergency

paid sick leave, emergency expanded family and medical leave, and tax credits.

In general, the section in the Act on Emergency Family and Medical Leave Expansion (EFMLA) modifies and expands coverage under the existing Family and Medical Leave Act by requiring employers with fewer than 500 employees to provide paid leave to eligible employees for a qualifying need related to a public health emergency.

- “Qualifying need related to a public health emergency” means an employee is unable to work (or telework) due to a need for leave to care for a son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.
- “Public health emergency” means an emergency with respect to COVID-19 declared by a federal, state, or local authority.

In general, the section in the Act on Emergency Paid Sick Leave (EPSLA) provides that an eligible employer will provide an employee with paid sick time if the employee is unable to work or telework for reasons stated in the Act such as:

- The employee is subject to a federal, state, or local quarantine or isolation order related to COVID-19
- The employee has been advised by a healthcare provider to self-quarantine due to concerns related to COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis
- The employee is caring for an individual who is subject to an order or has been advised to self-quarantine as described above

The Act also allows a tax credit (payroll credit) against the taxes imposed for Social Security and railroad retirement benefits for each calendar quarter in an amount equal to 100% of the qualified sick leave wages and qualified family leave wages paid by an employer pursuant to the Act, and the amount of the tax imposed for hospital insurance taxes or Medicare.

NCCI recognizes that circumstances around COVID-19 are extraordinary and existing NCCI manual rules on payroll inclusion/exclusion do not directly contemplate pandemic-related situations. As such, Item Filing B-1441, which will be filed shortly, addresses the treatment of payroll as the basis of premium for any qualified sick leave and/or family and medical leave wages paid by eligible employers as defined and/or provided under the Act.

If approved, this rule change will be added to Rule 2-F, Wages for Time Not Worked, in NCCI’s **Basic Manual**, and a corresponding statistical code 0012 is being created for reporting this payroll. These qualified sick leave and/or family and medical leave payments will not be used in the calculation of premium.

Please review the [Families First Coronavirus Response Act](#).

Please review the [US Department of Labor \(DOL\) Guidance](#) related to the Act, in the form of FAQs.



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<sup>1</sup>An example could be a retail store that remains open for delivery of goods but closes the showroom to consumers. Several of the retail showroom employees will work from home to assist with phone orders, customer service calls, and related clerical paperwork. These employees may be reassigned to Code 8871—Clerical Telecommuter Employees. In addition, this same employer has other showroom employees delivering goods to customers. These employees would be reassigned to Code 7380—Drivers, Chauffeurs, Messengers, and Their Helpers NOC—Commercial while they are in their new role as delivery drivers. In both situations, the employees' original job descriptions were included in the applicable store code, but their new job descriptions place them in a new code. Once the employees return to their former roles after the pandemic has passed, their payroll would return to the store code that was assigned before the employer closed the showroom. In accordance with **Basic Manual** Rules 1-D-3 and 2-G, the employer would be responsible for maintaining properly segregated payroll records for the wages earned while the employees were in their new job descriptions. If these records are not maintained, then all payroll would be assigned to the highest rated applicable classification.