



NYCIRB

New York Compensation
Insurance Rating Board
733 Third Avenue
New York, NY 10017
Tel: (212) 697-3535

May 1, 2020

R.C. 2512

Re: New Classification Code for Temporary Change in Duties (COVID-19)
Telecommuter Reassigned Employees - Classification 8873
Effective Date: May 1, 2020

COVID-19 Claims Excluded from Experience Rating
Effective Date: December 1, 2020

Members of the Rating Board:

I write to inform you that the New York State Department of Financial Services (“Department”) has approved amendments to the Rating Board’s New York Workers’ Compensation and Employers’ Liability (“Manual”) and the New York Experience Rating Plan (“Experience Rating Plan”), which are detailed herein, attached hereto, and are effective on May 1, 2020 and December 1, 2020, respectively.

I. Require Assignment of Classification 8873 for Temporary Change in Duties

The Department approved Manual Rule V(B)(4)(d) – Temporarily Reassigned Employees, which establishes new classification code 8873, Telecommuter Reassigned Employees, and requires that it be applied to the payroll of employees who, during New York’s stay-at-home order related to the COVID-19 pandemic (and future stay-at-home orders), are reassigned to either (a) not perform any work duties (idle), or (b) perform clerical work duties at home. The loss cost rate for Classification 8873 will mirror the rate for Classification 8810 (clerical office employees). Further, this provision is applicable at the start of New York’s stay-at-home order and for up to 30 days after its conclusion.

Employees who are classified to code 8871, Telecommuter Clerical Employees, are to remain classified as 8871. In other words, the new 8873 classification only applies to employees who are reassigned and meet one of the two conditions described above.

These amendments are effective for all new and renewal policies effective May 1, 2020, as well as to all in-force policies as of March 16, 2020. Please find enclosed the following modified and final Manual pages, reflecting the approved amendments: R-55; R-55a; C-28; C-570-a; and Loss Cost Page 3.



II. COVID-19 Related Claims Excluded from Experience Rating

The Department approved Experience Rating Plan Rule I(C)(4)(a)(iv), which requires that claims with a diagnosis of COVID-19 and an accident date on or after December 1, 2019 are to be excluded from the experience rating calculations of individual employers.

The occurrence of COVID-19 workers' compensation claims is unlikely to be a predictor of future claim costs incurred by an employer, and therefore their inclusion in an experience rating modification calculation would not meet the intended goal of experience rating.

Accordingly, please find enclosed the following modified and final Experience Rating Plan pages, effective as of December 1, 2020, reflecting the approved amendment: R-2 and R-2a.

If you have any questions, please contact Mr. Mark Battistelli, Vice President of Underwriting Services at (212) 697-3535, ext. 113 or at underwritingservices@nycirb.org.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Jeremy Attie", is written over a faint, larger version of the same signature.

Jeremy Attie
President and CEO

Enclosures

	<p>(b) Wages Paid to Key Employees</p> <p>When there are no jobs in progress, wages of key individuals of construction, erection, or stevedoring, such as superintendents, foremen or engineers are assigned to the classification applicable to the work the individual would have performed if the job were in progress.</p> <p>Exception:</p> <p>If work of key employees consists exclusively of drafting or other office work, or if the employee is completely idle, wages are to be assigned to Code 8810. Code 8810, however, is not available for office time of an Executive Supervisor who qualifies for Code 5606, since it is normally expected that such an employee will spend a considerable portion of his/her time performing office work.</p>
	<p>(c) Idle Time Other than by Construction, Erection or Stevedoring</p> <p>The entire amount of wages paid for idle time to an employee engaged in work other than construction, erection or stevedoring must be assigned, without division of payroll, to the classification which normally applies to that employee.</p>
★	<p><u>(d) Temporarily Reassigned Employees</u></p> <p><u>Payments made to employees temporarily reassigned as a result of a request or direct order by civil authorities are to be reported to Code 8873 "Telecommuter Reassigned Employees" for the actual duration of the reassignment, not to exceed thirty (30) days after the expiration or revocation of the aforementioned order by civil authorities.</u></p> <p><u>Code 8873 applies to employees who are unable to report to their regular place of business at the instruction of civil authorities and are either:</u></p> <p><u>(i) idle and not performing any work duties; or</u> <u>(ii) performing clerical work duties at home.</u></p> <p><u>Separate payroll records must be kept for this reclassification to be authorized.</u></p>

<u>C. ESTIMATED PAYROLLS</u>	
★	<p><u>1. Estimated Payrolls by Classification</u></p> <p><u>For each classification shown on the Information Page, the total estimated annual payroll shall be stated in the column headed "Premium Basis Total Estimated Annual Remuneration."</u></p>
★	<p><u>2. Determination of Estimated Payrolls</u></p> <p><u>Estimated payrolls shown on the Information Page shall reflect actual remuneration anticipated by the insured during the policy period. Such estimates shall be subject to substantiation by records or inspections.</u></p>
<u>D. WHOLE DOLLAR: REMUNERATION</u>	
★	<p><u>All remuneration shall be shown to the nearest dollar. A remainder equal to or greater than \$.50 shall be rounded to the next higher dollar.</u></p>

	CLASS CODE	HAZARD GROUP	INDUSTRY GROUP	PHRASEOLOGY
	8831	C	7	Veterinary Hospital & Drivers
	8832	E	6	Physician & Clerical
	8833	C	6	Hospital – Professional Employees
	8838	B	6	Public Library or Museum – Professional Employees – Includes Attendants & Ushers
	8840	C	6	Religious House of Worship – Professional Employees
	8854	D	6	Health Care Services – Medical or Other Professional Services – Traveling
	8855	C	6	Bank and Trust Companies – All Employees & Clerical, Outside Salespersons, Drivers
	8857	C	6	Social Case Workers – Traveling
	8864	B	6	Developmental Organizations – All Employees & Salespersons, Drivers
	8865	C	7	Alcohol or Drug Rehabilitation Facility – All Employees & Clerical
	8866	B	7	Assisted Living Facility – All Employees & Clerical
	8868	B	6	School or College – Professional Employees & Clerical
	8869	B	6	Day Care Centers – Children – Professional Employees & Clerical, Salespersons
	8871	B	6	Telecommuter Clerical Employees
★	<u>8873</u>	<u>B</u>	<u>6</u>	<u>Telecommuter Reassigned Employees</u>
	8901	B	6	Telephone or Telegraph Co. – Office or Exchange Employees & Clerical
	9014	C	7	Exterminator & Drivers
	9015	C	7	Baths
	9016	B	8	Amusement Park or Exhibition Operation & Drivers
	9019	E	8	Bridge or Vehicular Tunnel Operation & Drivers

Original Printing

Effective May 1, 2020

	Telecommuter Reassigned Employees	8873
★	<u>Note: Separate payroll records must be kept for this reclassification to be authorized. Refer to Rule V "Premium Basis" (B)(4)(d) of this Manual.</u>	
	Description	
★	<p><u>Payments made to employees temporarily reassigned as a result of a request or direct order by civil authorities are to be reported to Code 8873 "Telecommuter Reassigned Employees" for the actual duration of the reassignment, not to exceed thirty (30) days after the expiration or revocation of the aforementioned order by civil authorities.</u></p> <p><u>Code 8873 applies to employees who are unable to report to their regular place of business at the instruction of civil authorities and are either:</u></p> <p><u>(a) idle and not performing any work duties; or</u> <u>(b) performing clerical work duties at home.</u></p>	
	Assignment By Analogy	
	Operations To Be Separately Rated	

Original-Printing 1st Reprint

Effective October 1, 2019

Code Number	Loss Cost	Code Number	Loss Cost	Code Number	Loss Cost	Code Number	Loss Cost	Code Number	Loss Cost
7710	3.27	8106	6.37	8745	6.02	9028	3.16	9403	11.55
7711	(e)	8107	3.49	8747	0.17	9029	5.32	9410	7.38
7716	(e)	8111	3.91	8748	1.08	9030	5.15	9501	1.89
7720	2.41	8116	1.78	8751	3.87	9040 #	4.89	9505	4.72
7723	1.53	8199	3.29	8755	0.62	9044	5.23	9519	4.09
7855	4.36	8209	7.26	8800	1.84	9048 §	2.31	9521	4.51
7998	1.97	8215	5.39	8802	1.20	9051	3.56	9522	1.49
7999	2.30	8227	12.20	8803	0.05	9052	3.13	9526	12.43
8001	2.71	8232	5.61	8809	0.19	9055	1.09	9527	29.51
8006	1.71	8235	5.30	8810 &	0.13	9058	4.33	9534	10.37
8008	0.93	8263	8.19	8820	0.12	9059	9.05	9539	9.74
8012	1.69	8264	6.88	8829	3.31	9060	1.47	9545	15.46
8013	0.33	8265	8.33	8831	1.23	9061	1.94	9549	3.48
8016	0.59	8280	14.33	8832	0.40	9063	0.94	9552	13.53
8017	1.42	8288	4.05	8833 @	1.26	9065	1.16	9553	6.03
8018	3.44	8291	6.78	8838	0.56	9071	1.84	9585	0.92
8021	5.66	8292	4.94	8840	0.50	9072	2.06	9586	0.56
8025	1.18	8293	9.04	8854	4.54	9074	1.17	9600	1.88
8031	2.35	8350	8.61	8855	0.13	9088	9.15	9610	0.93
8032	1.03	8353	5.23	8857	2.81	9089	0.40	9620	1.60
8033	3.62	8381	2.14	8864	3.06	9093	1.73		
8034	4.87	8382	1.90	8865	3.22	9101	2.91		
8039	1.95	8385	9.47	8866	2.59	9102	3.34		
8043	1.27	8391	3.32	8868	0.43	9149	1.35		
8044	3.59	8392	2.57	8869	0.88	9157	4.36		
8046	3.22	8394	5.20	8871	0.19	9158	2.05		
8047	1.60	8500	7.05	8873	0.13	9159	1.31		
8048	5.24	8601	0.43	8901	0.11	9160	1.54		
8068	0.23	8709 F	28.73	9014	4.95	9178	3.48		
8069	0.58	8719	2.28	9015	1.87	9179	6.79		
8072	0.82	8720	2.03	9016	4.10	9180	2.68		
8090	0.63	8723	0.13	9019	3.69	9182	1.41		
8102	6.67	8726 F	2.80	9025	16.97	9186	5.98		
8103	5.06	8731	2.74	9026	4.23	9220	7.29		
8105	2.35	8742	0.29	9027 PL	10.57	9402	6.35		

(e)	For Loss Costs for Class 7711 refer to Pages 8 through 10. For Loss Costs for Class 7716 refer to Page 10.	@	8833 – Ex-Medical Loss Cost for this classification is 0.91
F	Loss Cost provides coverage under the United States Longshore & Harbor Workers' Compensation Act.	#	9040 – Ex-Medical Loss Cost for this classification is 3.39
PL	Loss Cost is per location.	§	9048 – Camps: Any adjustment in tuition fee made in consideration of services rendered shall not be considered as remuneration.
&	8810 – Ex-Medical Loss Cost for this classification is 0.09	N	The table below displays codes which have a corresponding non-ratable element. The ratable and non-ratable components should be considered jointly when determining premium.

Class Code	Non-Ratable Element Code
4771	0771
7405	7445
7431	7453

	<p>(b) Wages Paid to Key Employees</p> <p>When there are no jobs in progress, wages of key individuals of construction, erection, or stevedoring, such as superintendents, foremen or engineers are assigned to the classification applicable to the work the individual would have performed if the job were in progress.</p> <p>Exception:</p> <p>If work of key employees consists exclusively of drafting or other office work, or if the employee is completely idle, wages are to be assigned to Code 8810. Code 8810, however, is not available for office time of an Executive Supervisor who qualifies for Code 5606, since it is normally expected that such an employee will spend a considerable portion of his/her time performing office work.</p>
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8102	6.67	8726 F	2.80	9025	16.97	9186	5.98		
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Class Code	Non-Ratable Element Code
4771	0771
7405	7445
7431	7453

2. Experience

The experience used to calculate a risk's modification is comprised of the payroll and losses that are reported according to the Statistical Plan. For purposes of this Manual, payroll and losses may also be referred to as data. The experience used to calculate a modification is determined by Rule 2-E.

3. Payroll

The audited payroll or other exposures for each classification in the experience period are those reported according to the Statistical Plan.

4. Losses

Losses as used in this Plan, are incurred losses which are defined as loss payments plus reserves for future payments as of the valuation date. Incurred losses for each classification in the experience period are those reported according to the Statistical Plan.

- a. No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.

Exceptions:

- i) Losses reported with Catastrophe Number 48 are excluded from experience rating calculations. Catastrophe Number 48 claims include all workers compensation claims directly attributable to the September 11, 2001 terrorists attacks with accident dates of September 11 through September 14, 2001.
- ii) Losses reported with Catastrophe Number 87 are excluded from experience rating calculations. Catastrophe Number 87 claims include all latent condition claims emanating from the rescue, recovery and clean-up operations at the World Trade Center that were undertaken between September 11, 2001 and September 12, 2002. *
- iii) A loss is not to be included in the experience of a risk if it is not required to be reported to the New York Workers' Compensation Board as defined in Section 110 of the New York Workers' Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.

Note: An employer is not required to file a claim notice with the Workers' Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.

- ★ iv) Losses reported with Catastrophe Number 12 are excluded from experience rating calculations. Catastrophe Number 12 claims include all workers' compensation claims directly attributable to the COVID-19 pandemic.

- b. Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2-C-13.

5. Entity

An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.

6. Risk

A risk is all entities eligible for combination under this Plan, regardless of whether insurance is provided by one or more policies or insurance carriers. A risk may be:

- a. A single entity, or
- b. Two or more entities that qualify for combination according to Rule 3-D.

RULE 1*Effective December 1, 2020*~~*Issued July 27, 2007*~~~~2nd Reprint~~Original Printing

- ★ Subject premium is reported according to the Statistical Plan. For experience rating purposes, subject premium, developed for an individual risk during its experience period, is used to determine a risk's eligibility in accordance with Rule 2-A.

* *Effective August 14, 2006 to comply with the provisions of A.11944 (Chapter 446 of the Laws of 2006)*

2. Experience

The experience used to calculate a risk's modification is comprised of the payroll and losses that are reported according to the Statistical Plan. For purposes of this Manual, payroll and losses may also be referred to as data. The experience used to calculate a modification is determined by Rule 2-E.

3. Payroll

The audited payroll or other exposures for each classification in the experience period are those reported according to the Statistical Plan.

4. Losses

Losses as used in this Plan, are incurred losses which are defined as loss payments plus reserves for future payments as of the valuation date. Incurred losses for each classification in the experience period are those reported according to the Statistical Plan.

- a. No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.

Exceptions:

- i) Losses reported with Catastrophe Number 48 are excluded from experience rating calculations. Catastrophe Number 48 claims include all workers compensation claims directly attributable to the September 11, 2001 terrorists attacks with accident dates of September 11 through September 14, 2001.
- ii) Losses reported with Catastrophe Number 87 are excluded from experience rating calculations. Catastrophe Number 87 claims include all latent condition claims emanating from the rescue, recovery and clean-up operations at the World Trade Center that were undertaken between September 11, 2001 and September 12, 2002. *
- iii) A loss is not to be included in the experience of a risk if it is not required to be reported to the New York Workers' Compensation Board as defined in Section 110 of the New York Workers' Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.

Note: An employer is not required to file a claim notice with the Workers' Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.

- ★ iv) Losses reported with Catastrophe Number 12 are excluded from experience rating calculations. Catastrophe Number 12 claims include all workers' compensation claims directly attributable to the COVID-19 pandemic.
- b. Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2-C-13.

5. Entity

An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.

6. Risk

A risk is all entities eligible for combination under this Plan, regardless of whether insurance is provided by one or more policies or insurance carriers. A risk may be:

- a. A single entity, or
- b. Two or more entities that qualify for combination according to Rule 3-D.

7. Subject Premium

- ★ Subject premium is reported according to the Statistical Plan. For experience rating purposes, subject premium, developed for an individual risk during its experience period, is used to determine a risk's eligibility in accordance with Rule 2-A.

* *Effective August 14, 2006 to comply with the provisions of A.11944 (Chapter 446 of the Laws of 2006)*