

WACA ALERT

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11127 11th St., Suite 747 • Sacramento, CA 95814 • (916) 444-3770 • FAX (916) 442-6437 • www.politicogroup.com

Insurance Commissioner Approves Critical COVID-19 Workers Compensation Rules

The California Insurance Commissioner has approved the industry supported special regulatory filing to make rule changes to the California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP) and the California Workers' Compensation Experience Rating Plan—1995 (ERP). **The most significant rule change is the approval of the regulations that would exclude COVID-19 claims from a contractor's experience modification rate (EMR).**

In light of [Executive Order N-62-20](#) which declared that COVID-19-related illness of an employee shall be presumed to have occurred at work (covered by workers' compensation), these proposed regulations were of critical importance in protecting contractors from significant increases in their EMR related to COVID-19 incidents. Below is a summary of all aspects of the approved rules:

Exclude COVID-19 Claims from Experience Rating

Claims arising directly from a diagnosis of COVID-19 with an accident date on or after December 1, 2019, will be excluded from the experience rating calculations of individual employers.

Exclude Payments to Employees Who Continued to Be Paid While Not Working

Payments made to employees who continued to be paid while not engaged in any work activities will be excluded from reportable payroll. This exclusion will apply during the time California's statewide stay-at-home order is in place, and for up to 30 days thereafter, if the employee continues not to work.

Allow Assignment of Classification 8810 for Temporary Change in Duties

The temporary assignment of Classification 8810, Clerical Office Employees, will be allowed for employees whose job duties meet the definition of a Clerical Office Employee due to increased work from home. This provision applies while California's statewide stay-at-home order is in place, and for up to 60 days thereafter, if the employee continues to meet the definition of a Clerical Office Employee. However, it does not apply to the payroll of employees whose payroll is otherwise assignable to a standard classification that specifically includes Clerical Office Employees.

California Issues Statewide Mask Order

California Department of Public Health has issued updated guidance for the use face coverings. The new rules mandate that face coverings be worn state-wide in the circumstances and with the exceptions outlined below. **It is important to note that the rules provide an exemption for persons who are engaged in outdoor work when they are able to maintain a distance of at least six feet from others or are working alone.** Specifics of the rules include:

People in California must wear face coverings when they are in the high-risk situations listed below:

- Inside of, or in line to enter, any indoor public space;
- Obtaining services from the healthcare sector in settings including, but not limited to, a hospital, pharmacy, medical clinic, laboratory, physician or dental office, veterinary clinic, or blood bank;
- Waiting for or riding on public transportation or paratransit or while in a taxi, private car service, or ride-sharing vehicle;
- Engaged in work, whether at the workplace or performing work off-site, when:
 1. Interacting in-person with any member of the public;
 2. Working in any space visited by members of the public, regardless of whether anyone from the public is present at the time;
 3. Working in any space where food is prepared or packaged for sale or distribution to others;
 4. Working in or walking through common areas, such as hallways, stairways, elevators, and parking facilities;
 5. In any room or enclosed area where other people (except for members of the person's own household or residence) are present when unable to physically distance.
- Driving or operating any public transportation or paratransit vehicle, taxi, or private car service or ride-sharing vehicle when passengers are present. When no passengers are present, face coverings are strongly recommended.
- While outdoors in public spaces when maintaining a physical distance of 6 feet from persons who are not members of the same household or residence is not feasible.

The following individuals are exempt from wearing a face covering:

- Persons age two years or under. These very young children must not wear a face covering because of the risk of suffocation.
- Persons with a medical condition, mental health condition, or disability that prevents wearing a face covering. This includes persons with a medical condition for whom wearing a face covering could obstruct breathing or who are unconscious, incapacitated, or otherwise unable to remove a face covering without assistance.
- Persons who are hearing impaired, or communicating with a person who is hearing impaired, where the ability to see the mouth is essential for communication.
- Persons for whom wearing a face covering would create a risk to the person related to their work, as determined by local, state, or federal regulators or workplace safety guidelines.
- Persons who are obtaining a service involving the nose or face for which temporary removal of the face covering is necessary to perform the service.
- Persons who are seated at a restaurant or other establishment that offers food or beverage service, while they are eating or drinking, provided that they are able to maintain a distance of at least six feet away from persons who are not members of the same household or residence.
- Persons who are engaged in outdoor work or recreation such as swimming, walking, hiking, bicycling, or running, when alone or with household members, and when they are able to maintain a distance of at least six feet from others.