

# WACA ALERT

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## Exclude COVID-19 Claims From EMRs – Take Action

Early into the COVID-19 pandemic, we identified potential negative impacts of the virus on contractors relating to Cal/OSHA recording/reporting and workers' compensation rates. We responded by securing clarity on what Cal/OSHA would consider a recordable and reportable event relating to COVID-19 (See [this letter](#) from Cal/OSHA Chief, Doug Parker) and pushed Cal/OSHA to issues industry specific [guidance](#) to help minimize exposure and liability. In addition, we began working with the Workers' Compensation Insurance Rating Bureau of California (WCIRB) on [proposed regulations](#) that would exclude COVID-19 claims from a contractor's experience modification rate (EMR). Following a lengthy committee process, the WCIRB proposed regulations are now pending final approval on May 18<sup>th</sup> at a hearing before the California Insurance Commissioner.

As these proposed regulations are of critical importance in protecting contractors from significant increases in their EMR related to COVID-19 incidents, we ask that you please take a moment to cut and paste the draft letter below on your letterhead and email a copy of the letter to the following email addresses:

[brentley.yim@insurance.ca.gov](mailto:brentley.yim@insurance.ca.gov)

[bernacchi@politicogroup.com](mailto:bernacchi@politicogroup.com)

Please feel free to further personalize any letter you submit.

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**DATE**

The Honorable Ricardo Lara  
Insurance Commissioner  
1901 Harrison Street, 4th Floor  
Oakland, CA 94612

**RE: California Workers' Compensation Insurance Regulatory Filing - CDI File No REG-2020-00007 - SUPPORT**

Dear Commissioner Lara:

On behalf of **INSERT YOUR COMPANY HERE**, I write in support of CDI File No REG-2020-00007.

CDI File No REG-2020-00007 addresses important workers' compensation insurance issues that will impact the construction industry related to the COVID-19 pandemic. The need for your approval of this special regulatory package is even greater now that Governor Newsom has issued Executive Order N-62-20 declaring that COVID-19-related illness of an employee shall be presumed to have occurred in the place of employment for purposes of awarding workers' compensation benefits.

Section B of the filing includes an amendment to the California Workers' Compensation Experience Rating Plan which would exclude from experience ratings all claims directly arising from a diagnosis of COVID-19. This change is of critical importance to the construction industry. Under current policy, experience ratings include all compensable claims for workplace

injuries. Experience ratings is a significant determining factor in the cost of a contractor's future workers' compensation policy premium. Due to the pandemic nature of COVID-19, claims associated with the virus are likely not predictive of a contractor's future claim costs but would have an extremely detrimental effect on a contractor's future policy costs. In addition, many public works projects are subject to prequalification requirements that promote jobsite safety and limit the use of construction contractors to only those who have experience modification rates of 1 or less. The impact of including COVID-19 incidents in the experience modification calculations of construction contractors would result in many contractors no longer being deemed "qualified" to bid on public works contracts. This would be disastrous for both the construction industry and the state. It is very important to exclude from contractors' experience modification calculations all claims directly arising from a diagnosis of COVID-19.

For these reasons, we are in strong support of CDI File No REG-2020-00007 and urge your approval.

Sincerely,

**YOUR NAME & TITLE**