

## FILING MEMORANDUM

### ITEM B-1443—REVISIONS TO NCCI MANUAL RULES RELATED TO THE COVID-19 (CORONAVIRUS) PANDEMIC—REMOVAL OF EXPIRATION DATE

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#### PURPOSE

This item removes the December 31, 2020 expiration date for rules that were established or revised as a result of the COVID-19 (coronavirus) pandemic.

The following NCCI manuals are impacted by these rule changes:

- **Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)**
- **Statistical Plan for Workers Compensation and Employers Liability Insurance (Statistical Plan)**

#### BACKGROUND

##### Rules Related to the COVID-19 (Coronavirus) Pandemic

The World Health Organization categorized the COVID-19 outbreak as a pandemic when the rates of infection continued to rise in many locations around the world and across the United States.

The COVID-19 pandemic created unique workers compensation conditions that were addressed in Item B-1441—Revisions to NCCI Manual Rules Related to the COVID-19 (Coronavirus) Pandemic. Item B-1441 became effective for new, renewal, and outstanding policies effective on and after March 1, 2020. Most of the rules established or revised in this filing state that they expire on December 31, 2020, because it was anticipated that the rules established or revised as a result of the COVID-19 (coronavirus) pandemic would no longer be required after December 31, 2020.

Considering there are still so many unresolved questions about the spread of coronavirus and no firm date of the availability of a coronavirus vaccine, NCCI has determined that an expiration date for rule revisions related to the COVID-19 (coronavirus) pandemic cannot be determined at this time. Once an expiration date for the COVID-19 (coronavirus) pandemic rules is determined as circumstances warrant and in consultation with state regulatory authorities, a future filing will be made to establish the expiration date of the rules.

##### **Basic Manual State Exceptions for Rule 2-B-1-e for Arkansas, Illinois, Indiana, New Mexico, Oklahoma, Tennessee, and Utah**

There are several state exceptions to **Basic Manual** Rule 2-B-1-e that refer to **Basic Manual** Rule 2-B-2-n (Rule 2-B-2-o in New Mexico). Since Item B-1441 established a new national Rule 2-B-2-n, the **Basic Manual** Rule 2-B-1-e state exceptions must be revised to reference Rule 2-B-2-o (Rule 2-B-2-p in New Mexico).

#### PROPOSAL

This item proposes revising the following rules to remove the expiration date:

1. **Basic Manual** Rules 2-B-2-n, 2-F-1, and 2-F-3
2. **Statistical Plan** Parts 3-F-2-d, 3-F-3-c, 4-E-1-f(2)(d), and 6-E-3

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IMPACT

As a result of this item, exposure currently in Code 0012—Paid Furloughed Employees could remain in Code 0012 and additional employers could see a shift of exposure from various classification codes to Code 0012. The magnitude of this shift and the amount of current exposure that could remain in Code 0012 is unknown at this time because it will depend on various factors such as the nature of an individual employer's business and carrier reporting to Code 0012. To this extent, the premiums of individual employers could be lower than anticipated due to staff reductions during the COVID-19 (coronavirus) pandemic and/or decrease because of the shift of payments to paid furloughed employees assigned to Code 0012.

EXHIBIT COMMENTS AND IMPLEMENTATION SUMMARY

Exhibit	Exhibit Comments	Implementation Summary
<b>National Exhibits</b>		
1	<ul style="list-style-type: none"> <li>• Details the revisions to Rule 2-B-2-n in NCCI's <i>Basic Manual</i></li> <li>• Applies in all states except Oregon; refer to state exhibit for Oregon</li> </ul>	<ul style="list-style-type: none"> <li>• In all applicable states except Hawaii, this item is to become effective for new, renewal, and outstanding policies effective on and after 12:01 a.m. on November 1, 2020</li> <li>• In Hawaii, the effective date is determined upon regulatory approval of the individual carrier's election to adopt this change</li> </ul>
2	<ul style="list-style-type: none"> <li>• Details the revisions to Rule 2-F-1 in NCCI's <i>Basic Manual</i></li> <li>• Applies in all states except Oregon; refer to state exhibit for Oregon</li> </ul>	
3	<ul style="list-style-type: none"> <li>• Details the revisions to Rule 2-F-3 in NCCI's <i>Basic Manual</i></li> <li>• Applies in all states except Oregon</li> </ul>	
4	<ul style="list-style-type: none"> <li>• Details the revisions to Part 3-F-2-d in NCCI's <i>Statistical Plan</i></li> <li>• Applies in all states except Oregon</li> </ul>	
5	<ul style="list-style-type: none"> <li>• Details the revisions to Part 3-F-3-c in NCCI's <i>Statistical Plan</i></li> <li>• Applies in all states except Oregon</li> </ul>	
6	<ul style="list-style-type: none"> <li>• Details the revisions to Part 4-E-1-f(2)(d) in NCCI's <i>Statistical Plan</i></li> <li>• Applies in all states except Oregon</li> </ul>	

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Exhibit	Exhibit Comments	Implementation Summary
7	<ul style="list-style-type: none"> <li>Details the revisions to Statistical Code 0012 in Part 6-E-3 in NCCI's <b>Statistical Plan</b></li> <li>Applies in all states except Oregon</li> </ul>	

Exhibit	Exhibit Comments	Implementation Summary
State Exhibits		
8	Details the revision to Arkansas's exception to <b>Basic Manual</b> Rule 2-B-1-e.	To become effective for new, renewal, and outstanding policies effective on and after 12:01 a.m. on November 1, 2020.
8	Details the revision to Illinois's exception to <b>Basic Manual</b> Rule 2-B-1-e.	
8	Details the revision to Indiana's exception to <b>Basic Manual</b> Rule 2-B-1-e.	
8	Details the revision to New Mexico's exception to <b>Basic Manual</b> Rule 2-B-1-e.	
8	Details the revision to Oklahoma's exception to <b>Basic Manual</b> Rule 2-B-1-e.	
8	Details the revisions to Oregon's exception to <b>Basic Manual</b> Rule 2-B-2.	
9	Details the revisions to Oregon's exception to <b>Basic Manual</b> Rule 2-F-1.	
8	Details the revision to Tennessee's exception to <b>Basic Manual</b> Rule 2-B-1-e.	
8	Details the revision to Utah's exception to <b>Basic Manual</b> Rule 2-B-1-e.	

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**EXHIBIT 1  
BASIC MANUAL—2001 EDITION  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
B. PAYROLL**

**(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)**

**2. Excludes:**

- a. Tips or other gratuities received by employees.
- b. Payments by an employer to group insurance or group pension plans for employees, other than those covered by Rule 2-B-1-f and Rule 2-B-1-m.
- c. Payments by an employer into third-party trusts for the Davis-Bacon Act or a similar prevailing wage law provided the pension trust is qualified under IRC Sections 401(a) and 501(a).
- d. The value of special rewards for individual invention or discovery.
- e. Dismissal or severance payments except for time worked or vacation accrued.
- f. Payments for active military duty.
- g. Employee discounts on goods purchased from the employee's employer.
- h. Expense reimbursements to employees if the employer's records confirm that the expense was incurred as a valid business expense.

Reimbursed expenses and flat expense allowances paid to employees may be excluded from the audit only if all three of the following conditions are met:

- (1) The expenses or allowances are incurred for the business of the employer
- (2) The amount of each employee's expense or allowance is shown separately in the records of the employer
- (3) The amount of the expense or allowance approximates the actual expense incurred by the employee in the conduct of their work

*Refer to NCCI's **User's Guide** for an example.*

**Note:** If an employer did not maintain verifiable receipts for incurred expenses for an employee that was away from home overnight on the business of an employer a maximum expense allowance is permitted to be excluded. *Refer to Rule 2-B-1-p Exception for the maximum employee expense allowance.*

Allowable travel expenses permitted by any contract with a federal, state, or local government entity, including, but not limited to, a city, borough, or village, are excluded from payroll. In lieu of verifiable receipts for incurred expenses, the employer must produce a copy of the contract provision permitting the travel expenses at audit. The allowable travel expenses must be in addition to the current wage of the employee.

- i. Meal money for late work.
- j. Work uniform allowances.
- k. Sick pay paid to an employee by a third party such as an employer's group insurance carrier that is paying disability income benefits to a disabled employee.
- l. Employer-provided perks such as:
  - Use of company-provided automobiles
  - Airplane flights
  - Incentive vacations (e.g., contest winners)
  - Discounts on property or services
  - Club memberships

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EXHIBIT 1 (CONT'D)  
BASIC MANUAL—2001 EDITION  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
B. PAYROLL

(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)

- Tickets to entertainment events
  - Educational assistance
  - Relocation and moving expenses
- m. Employer contributions to employee benefit plans such as:
- Employee savings plans
  - Retirement plans
  - Cafeteria plans (IRC 125)
  - Health savings accounts
  - Flexible spending accounts

These include contributions made by the employer, at the employer's expense, which are determined by the amount contributed by the employee.

- n. Payments made by an employer or any public governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations. However, any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees are not excluded.

*Refer to Rule 2-F-3 for the definitions of paid furloughed employees and payments to paid furloughed employees.*

This Rule 2-B-2-n is effective March 1, 2020. This rule will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this rule as determined and approved by the regulator. The expiration date of this rule will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities. This rule will be removed from the **Basic Manual** automatically, upon the applicable expiration date.

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**EXHIBIT 2  
BASIC MANUAL—2001 EDITION  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
F. WAGES FOR TIME NOT WORKED****(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)****1. Idle Time**

Idle time is downtime that occurs when employees are not working and the employer pays the employees for the time not worked.

All wages paid to the employee for idle time must be included in payroll. Wages paid during this time are assigned to the classification for work normally performed by the employee under the following circumstances:

- Suspension or delay of work due to weather conditions
- Delays while waiting for materials
- Delays while waiting for another party to complete certain work
- Delays arising from breakdown in equipment
- “Stand-by” time where employees such as operators of cranes, hoists or other equipment are on the job, but their active services are not required continuously
- Special union requirements or agreements between employer and employees calling for pay for idle time under specific circumstances
- Inability of non-striking employees to perform normal duties due to other employees who are on strike. If non-striking employees perform absolutely no work for their employer and are not present at their employer’s premises or job sites during a strike period, their payroll must be assigned to Code 8810—Clerical Office Employees, provided adequate records are maintained by the employer.
- All other causes of a similar nature

For purposes of this Rule 2-F-1, idle time does not include “paid furloughed employees” or “payments to paid furloughed employees” as provided in **Basic Manual** Rule 2-F-3. ~~This paragraph will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this paragraph as determined and approved by the regulator. The expiration date of this paragraph will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities. This paragraph in this Rule 2-F-1 will be removed from the **Basic Manual** automatically, upon the applicable expiration date.~~

*Refer to **User’s Guide** for an example.*

*Refer to Rule 2-F-2 for the treatment of idle time by construction, erection or stevedoring risks.*

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EXHIBIT 3  
BASIC MANUAL—2001 EDITION  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
F. WAGES FOR TIME NOT WORKED

(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)

3. **Payments to Paid Furloughed Employees During Federal, State, and/or Local Emergency Orders, Laws, or Regulations Issued Due to the COVID-19 (Coronavirus) Pandemic**

For purposes of this Rule 2-F-3, "paid furloughed employees" and "payments to paid furloughed employees" are defined within this rule. "Paid furloughed employees" means employees who continue to receive payments during a temporary layoff or an involuntary leave and are not performing any work duties for an employer.

"Payments to paid furloughed employees" means payments made by an employer or any public governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations. Such payments do not include any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees.

Payments to paid furloughed employees must be assigned to Code 0012, in accordance with the **Statistical Plan**. Payments to paid furloughed employees made in accordance with this Rule 2-F-3 are excluded from the premium and experience rating calculations only if the employer keeps separate, accurate, and verifiable records. If separate, accurate, and verifiable records are not maintained, payroll is assigned to the classification for work normally performed by the employee prior to any emergency orders, laws, or regulations issued due to the COVID-19 (coronavirus) pandemic.

If an employee is requested to perform any duties for an employer, the employee is not deemed a paid furloughed employee for any period of time they are performing duties for the employer. If the employee is not deemed a paid furloughed employee, payroll must be assigned to the classification applicable to the work being performed in accordance with **Basic Manual** Rule 1-A.

This Rule 2-F-3 is effective March 1, 2020. ~~This rule will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this rule as determined and approved by the regulator. The expiration date of this rule will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities. This rule will be removed from the **Basic Manual** automatically, upon the applicable expiration date.~~

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**EXHIBIT 4  
STATISTICAL PLAN—2008 EDITION  
PART 3—EXPOSURE INFORMATION  
F. EXPOSURE AMOUNT  
2. Nonpayroll Exposure**

**(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)**

**d. Paid Furloughed Employees**

Paid furloughed employees means employees who continue to receive payments during a temporary layoff or an involuntary leave and are not performing any work duties for an employer. Effective March 1, 2020, payments by an employer or any public governmental entity to paid furloughed employees as a result of federal, state, and/or local emergency orders, laws or regulations, issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations must be reported to Statistical Code 0012—Paid Furloughed Employees. Such payments do not include any appropriated funds or loans received by an employer as authorized by any law or regulation, or public governmental entity, that are used by an employer specifically to retain or hire working employees.

This code will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this code as determined and approved by the regulator. The expiration date of this code will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities.

Code 0012 may be used as a Statistical Code to report the payments only; or it may be used as a Classification Code to report the payments with a zero rate and zero premium.

Payments reported to Code 0012 are excluded from premium and experience rating calculations only if the employer keeps separate, accurate, and verifiable records.



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**EXHIBIT 5  
STATISTICAL PLAN—2008 EDITION  
PART 3—EXPOSURE INFORMATION  
F. EXPOSURE AMOUNT**

**3. Final or Estimated Premium**

**(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)**

**c. COVID-19**

If final premium based on audited exposure cannot be reported due to federal, state, and/or local emergency orders, laws, or regulations issued due to the COVID-19 (coronavirus) pandemic which impact an employer's staffing or business operations, report the applicable exposure and premium in the class code(s) and the Estimated Audit Code as an "N."

~~This rule is effective March 1, 2020. This rule will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this rule as determined and approved by the regulator. The expiration date of this rule will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities.~~

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**EXHIBIT 6  
STATISTICAL PLAN—2008 EDITION  
PART 4—LOSS AND EXPENSE INFORMATION  
E. CLAIM COMPONENTS**

**1. Required Claim Components**

**f. Classification Code**

**(2) Additional Classification Code Loss Reporting**

**(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS,  
MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)**

**(d) Paid Furloughed Employees**

For any claims attributable to an employee occurring prior to or after a temporary layoff or an involuntary leave, report losses to the classification for work normally performed by the employee that corresponds to the employee's payroll. No claim can be reported to Code 0012—Paid Furloughed Employees.

This rule is effective March 1, 2020. This rule will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this rule as determined and approved by the regulator. ~~The expiration date of this rule will be December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation with state regulatory authorities.~~

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EXHIBIT 7  
STATISTICAL PLAN—2008 EDITION  
PART 6—CODING VALUES

(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)

E. STATISTICAL CODES

3. Premium Amount *Not Part* of Standard Premium

Phraseology	Stat Code	Premium Credit (-) or Debit (+)	Applicable States	Effective Date	Discontinued Date	Notes (If Applicable)
Paid Furloughed Employees	0012	N/A	AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV	03/01/2020	12/31/2020*	Refer to Part 3-F-2—Nonpayroll Exposure for details on Paid Furloughed Employees. Code 0012 may be used as a Statistical Code to report the payments only; or it may be used as a Classification Code to report the payments with a zero rate and zero premium.  <u>This code will continue to remain in effect and will not expire until determined at a later date as circumstances warrant and in consultation with state regulatory authorities. A future filing will be made to establish an expiration date to this code as determined and approved by the regulator. *Code 0012 will expire on December 31, 2020, which may be amended to an earlier or later date as circumstances warrant in consultation</u>

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EXHIBIT 7 (CONT'D)  
STATISTICAL PLAN—2008 EDITION  
PART 6—CODING VALUES

(Applies in: AK, AL, AR, AZ, CO, CT, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, MT, NE, NH, NM, NV, OK, RI, SC, SD, TN, TX, UT, VA, VT, WV)

Phraseology	Stat Code	Premium Credit (-) or Debit (+)	Applicable States	Effective Date	Discontinued Date	Notes (If Applicable)
						with state regulatory authorities.

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EXHIBIT 8  
BASIC MANUAL—2001 EDITION  
INDIANA RULE EXCEPTIONS  
RULE 2—PREMIUM BASIS AND PAYROLL ALLOCATION  
B. PAYROLL

**1. Includes:**

Change Rule 2-B-1-e as follows:

- e. Pay for holidays, vacations, or periods of sickness. *Refer to:*
- *Rule 2-G-3 for allocation of payroll for employees subject to more than one classification*
  - *Indiana's exception to Rule 2-B-2-~~no~~ for employers assigned to Code 1016.*