



April 14, 2020

DCRB CIRCULAR NO. 977

To All Members of the DCRB:

RE: CORONAVIRUS (COVID-19) – DCRB UPDATE

As the DCRB continues to work through issues surfacing from the COVID-19 impacts on the Workers Compensation marketplace, we take this opportunity to provide an update on some of the most common questions surfacing since the start of the crisis. COVID-19 has created unique workers compensation insurance issues that need to be addressed. The DCRB has identified these issues, some still needing to be addressed. As a result, the DCRB is publishing the following update in response to these questions. The comments in this update are intended to clarify and/or provide instruction on DCRB's current handling and insights. This continues to be a fluid situation and we are researching and evaluating appropriate treatment as more information becomes available.

General Questions

PAYROLL / PREMIUM HANDLING

1. Due to the pandemic, there are questions surrounding payroll adjustments and classification assignments for WC policy premium calculations. Specifically, with the implementation of governmental stay-at-home orders, job duties have changed, so what specific classification adjustments are permissible with these situations?

At present, the DCRB continues to work through provisional adjustment(s) to current rules on classification assignments and reporting.

The current classification system and Basic Manual rules do not contemplate the situation where there are temporary changes in job duties or operations due to an unusual payroll event, such as a pandemic. The Basic Manual only addresses changes or corrections in classifications due to (permanent) changes in an employer's operations. Given the unprecedented nature of this event, the temporary interruption or suspension of normal business activities caused by COVID-19 may qualify as a change in operations. For example, if a manufacturing company continues to pay employees while they are working from home, carriers may consider a change from the employer's governing classification to Code 953 – Telecommuters 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 would be applied.

2. If payroll is adjusted due to classification changes, or excluded in certain situations (paying workers who are not working), how should it be accounted for at audit?

Additional guidance related to the reporting and handling of payroll is being developed which may require Basic Manual and Statistical Plan filings. We consider this a high

priority with the intention of it being formally addressed in the near future. The DCRB is committed to trying to standardize with other state rating organizations across the country, but must also ensure that those requirements meet the needs of our state regulators and members for purposes of fulfilling our objectives as a rating organization. With that said, the Basic Manual emphasizes the importance of maintaining separate payroll records for any change in operations or wages earned for employees where work has changed.

PREMIUM AUDIT

1. What is the guidance on how carriers should handle physical audits versus other types of audits such as those conducted virtually or via mail, email or telephone?

Delaware does not have a physical audit requirement for the voluntary market. Audits can be completed by mail (self-audit), virtually, or by other means as carriers see fit. Carriers, per Part Five — Premium, Section G. (Audit) of the policy, have up to three years to complete an audit.

Assigned Risk carriers are permitted to forego the physical audit requirement specified in the Standards. Carriers should attempt to perform virtual audits when possible. For any employer that is unable to complete the audit or loss control survey, during the state of emergency, the carrier is permitted to postpone these services until the current situation improves and the state of emergency is lifted. Pool carriers are also reminded that it is very important to document the insured's file when there is a deviation from any established performance standard.

2. If an employer is unable to comply with completing an audit because of the COVID-19 situation, is the employer considered noncompliant and subject to the Audit Noncompliance Charge (ANC)?

The Delaware Department of Insurance (Department) has requested that carriers and the marketplace exercise flexibility in these types of situations. Additionally, in this case, a carrier's use of the Audit Noncompliance Charge (ANC) has always been optional in Delaware. Therefore, a carrier could opt not to apply the ANC during this time.

POLICY CANCELLATIONS AND NON-RENEWALS

1. Are there new rules as a result of the COVID-19 situation?

In light of the ongoing COVID-19 pandemic, the Department addressed the financial impact of the pandemic on Delaware employers. The Department issued the following Bulletin regarding the handling of policy cancellations and non-renewals, highlighting the importance of flexibility. Refer to the "[Delaware Department of Insurance - COVID-19 statement, Bulletin 117.](#)" An excerpt from that statement is provided below for your convenience.

"The provisions in this Order are intended to grant covered policyholders an extension of time for the payment of premium due under covered insurance policies during the pendency of the declared state of emergency without penalty or interest. The provisions in this Order are not intended to vary the terms and conditions of any covered insurance policy. No provision contained in this Order is intended to be considered a forgiveness of premium due by a covered policyholder under a covered insurance policy prior to-, post-, or during the pendency of the declared state of emergency. Upon the termination of the

COVID19 State of Emergency, any premium due by a covered policyholder will remain due under a covered insurance policy. Covered policyholders should contact their insurer regarding repayment of premium.

Accordingly, the Department encourages insurers to reach out to their insureds and work with them to modify payment schedules or otherwise make premium payment modifications during the duration of the Governor's State of Emergency. Insurers can, and should, obtain validation that the hardship of the insured or policyholder are directly related to the COVID-19 pandemic and the State of Emergency, or any subsequent Executive Orders issued by the Governor which closed businesses or ordered residents to remain at home unless performing an essential activity, by obtaining evidence in writing, or otherwise, from an employer, policyholder, insured or other appropriate source before foregoing a cancellation or nonrenewal."

The DCRB requests that all Delaware workers compensation insurers comply with the Department's guidance.

CLAIMS HANDLING / REPORTING

1. Are there special COVID-19 related reporting instructions?

New coding values 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 to be reported for the applicable data types. Refer to Circular **#976** for more information.

GENERAL

1. Claims compensability – Are COVID-19 related claims covered?

It depends on the situation. An illness caused by work exposures can be considered an injury or an occupational disease. A compensable occupational disease arises out of the employment and the exposure occurs in connection with the employment (19 Del. C. § 2301 (4)). The claimant has the burden to prove exposure to a disease causing agent in the work place. The standard of review is the proximate causation is determined in a case of compensable occupational disease by the "but for" standard. Occupational diseases are those identified by the DE Workers' Compensation Laws, as well as the diseases that occur more often in specific jobs or industries. Exposure to COVID-19, which resulted in the worker's illness, would most likely be considered an injury, but could also be an occupational disease depending on the type of work performed. At this point, COVID-19 is not stated as an occupational disease within the DE Workers' Compensation Law for any specific classification codes, however this may change in the future.

All other diseases, not specifically enumerated as occupational diseases, may also be entitled to coverage if an employee can prove that he sustained an injury during the course and scope of employment and that injury occurred at a fixed time and place. The standard of proof applied is "but for" the accident the injury would not have occurred. *Reese v. Home Budget Center*. Del. Supr., 619 A. 2d 907 (1992).

2. Experience and Merit Rating, Rates and Loss Costs – How will these be handled in the future following the known and anticipated impacts of COVID-19?

Given the unprecedented nature of this pandemic, the DCRB will work with stakeholders to determine whether the inclusion of such claims in these various calculations would meet the intent and purpose of these computations. For now, the DCRB's ability to track and identify these claims via the established new coding, will allow flexibility needed to remove these claims, if that is deemed the appropriate course of action.

3. Delaware Department of Insurance Guidance – Is there further information offered by the Department regarding COVID-19?

The Delaware Department of Insurance is issuing Bulletins related specifically to the Coronavirus issue. Thus far, the Bulletins specific to these issues are: 115,116,117, and 118. Please refer to this area of the DOI website for future releases.

https://insurance.delaware.gov/information/bulletins/#domestic_foreign

We greatly appreciate your patience as we continue to develop further details on some of these items and thank you for your anticipated cooperation. Please direct your questions regarding these issues to your customary topical contact representative.

President
William V. Taylor

WVT/BP/dn

Remember to visit our web site at www.dcrb.com for more information about this and other topics.