

WCIRB Bulletin

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Application of July 1, 2020 COVID-19 Rule Change – Excluded Remuneration

The WCIRB has received numerous inquiries about the application of the July 1, 2020 rule regarding the treatment of payroll for employees who continue to be paid while they are performing no duties of any kind in service of the employer. The rule, found at Part 3, Section III, *General Classification Procedures, Rule 7, Coronavirus Disease 2019 (COVID-19)*, of the *California Workers' Compensation Uniform Statistical Reporting Plan—1995 (USRP)* states in pertinent part:

7. Coronavirus Disease 2019 (COVID-19)

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- b. Effective as of the date of a California statewide stay-at-home order and concluding thirty (30) days after the order is lifted, payments made to an employee, including but not limited to sick or family leave payments, while the employee is performing no duties of any kind in the service of the employer shall be excluded from remuneration; however, the excluded amounts shall be no greater than the employees' regular rate of pay.
- c. Employers must maintain records that document the change in duties and that segregate such payments during the timeframes specified above.

As a reminder, the rationale for this rule was the expectation that during the period of the COVID-19 California statewide stay-at-home order, some employees not engaged in any work activities may continue to be paid by their employer. Since these employees essentially have no work-related exposure, the payroll amounts paid to them should not be included in the basis of the employer's premium. Therefore, unlike typical sick leave, vacation pay, bonus pay and idle time pay, amounts paid to these employees during the COVID-19 stay-at-home order are an extraordinary payroll event that is not contemplated within the current basis of payroll rules.

This COVID-19 rule expressly distinguishes amounts paid to employees for time not worked due to either: (1) the stay-at-home order's impact on an employer's operation such that an employee no longer has duties to perform or (2) the employee's need for leave due to COVID-19. Such payroll amounts are to be excluded from the basis of payroll.

Pursuant to this rule, excluded payments include payments made under the Family First Coronavirus Response Act (FRCRA), the California COVID-19 Supplemental Paid Sick Leave requirement and, generally, under California paid sick or family leave laws to the extent the underlying health condition requiring the leave is COVID-19. This could also include vacation pay or paid time off if, at the time the paid time is taken, the employee no longer has any duties of any kind in the service of the employer as a result of COVID-19 either because the employer no longer has work for the employee to perform or the

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employee is taking a leave due to COVID-19. Excluded payments could also include vacation pay or paid time off made upon termination of employment if the termination is due to the California COVID-19 stay-at-home order's impact on the employer's operations.

The threshold for excluding any payroll under this rule is a determination that the payroll in question was for time not worked due to the stay-at-home order or to a COVID-19 leave. The USRP's other provisions regarding pay for time not worked, including pay for vacation, sick leave, family leave, severance, etc., were not amended and remain in effect. Accordingly, the only pay for time not worked to be excluded from reported remuneration is pay that can be directly attributed to the impact of COVID-19.

The WCIRB is aware that our communication on the application of this new rule has not been consistent and, in some instances, we advised that any vacation or sick pay during the COVID-19 stay-at-home order could be excluded based on this rule. However, this advice failed to take into account that the employee had to be performing no duties of any kind in the service of the employer as a result of COVID-19. We apologize for any miscommunications that have occurred.