

Oregon Division of Financial Regulation Bulletin No. DFR 2020-9

TO: All Workers' Compensation Insurers and Employers

DATE: April 10, 2020

RE: Rerating businesses that have changed operations in response to the COVID-19 pandemic and suspension of field audits

Purpose

This bulletin provides guidance to employers and workers compensation insurers regarding changes in operations due to public health measures in response to the COVID-19 pandemic. It addresses when a change in classification code is appropriate for employees reassigned to work from home, when insurers should rerate a business, and the suspension of field audits.

Authority

- Executive Order No. 20-03
- ORS 737.320
- ORS 742.003
- OAR 836-043-0101 to 836-043-0170

Background

On March 8, 2020, Gov. Kate Brown declared a state of emergency in Oregon to address the spread of COVID-19. State and federal officials have implemented numerous public health measures to slow the spread of COVID-19 and to protect people who are at highest risk for contracting the disease. These measures include the full or partial closure of certain businesses and prohibiting certain types of employees from accessing their place of work.

In order to comply with these measures, some employers have directed employees to work from home, in some instances changing their scope of work. Workers' compensation insurance rates, rating plans, and rating systems are prior approval under ORS 737.320. Workers' compensation rates are typically based on several factors, such as the employer's classification, plan payroll, experience rating modification, and an evaluation of the employer's loss control efforts.

OAR 836-043-0101 to 836-043-0170 sets requirements for premium audits and specifies when field audits are required.

Guidance

Changes in a business's operations due to state mandated public health measures in response to a pandemic may affect payroll classification for some subject workers. Employers directing employees to work from home may be eligible to assign payroll to a different classification code if their scope of work has changed. Employers must document the time period in which

employees are reassigned and the change in scope of work. Insurers may also reduce an employers payroll assignment or bill the employer at reduced rate based on preliminary information. An insurer who makes this type of accommodation on an ad hoc basis should inform employers what information is necessary to verify payroll during a premium audit and develop a plan to help employers comply.

At the request of the policyholder, insurers must rerate a business to reflect a change in operation due to the COVID-19 pandemic and related public health measures.

The COVID-19 pandemic and related public health measures will likely inhibit insurers' ability to conduct premium field audits. For the purposes of enforcing premium audit requirements under OAR 836-043-0101 to 836-043-0170, the Division of Financial Regulation (DFR) will deem insurers as having met the field audit requirement if the insurer:

- Had a previously scheduled field audit or a field audit that would have been scheduled from the time the state of emergency was declared until 60 days after its expiration or termination;
- Is unable to complete a field audit due to the COVID-19 pandemic and related public health measures;
- Provides prior notice to DFR that it plans to waive field audits during the state of emergency by emailing david.f.dahl@oregon.gov;
- Completes a desk audit or payroll report review, as defined under OAR 836-043-0105; and
- Provides a list of waived field audits performed as either a desk audit or payroll review within 120 days of the expiration or termination of the state of emergency.

This bulletin is effective upon issuance.



Lou Savage
Administrator
Division of Financial Regulation

April 10, 2020

Date