

State: Texas **Filing Company:** National Council on Compensation Insurance, Inc.
TOI/Sub-TOI: 16.0 Workers Compensation/16.0004 Standard WC
Product Name: B-1449 Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities
Project Name/Number: /

Filing at a Glance

Company: National Council on Compensation Insurance, Inc.
Product Name: B-1449 Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities
State: Texas
TOI: 16.0 Workers Compensation
Sub-TOI: 16.0004 Standard WC
Filing Type: Rate/Rule
Date Submitted: 06/23/2023
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SERFF Status: Pending Industry Response
State Tr Num: S712720
State Status: ASIS-Assigned to Intake Staff
Co Tr Num: B-1449

Effective Date 01/01/2024

Requested (New):

Effective Date 01/01/2024

Requested (Renewal):

Author(s): Lesley O'Brien, Nancy Mattei, Tyler Santos, Andrew Scott, Mario Morales

Reviewer(s): Connie Adams (primary), Melissa Tomek

Disposition Date:

Disposition Status:

Effective Date (New):

Effective Date (Renewal):

State Filing Description:

WC 1

Intake

Previous TDI# S692689 - WC 1 (RT/RU)

Sent Objection Letter for rate data, marked copy, and confidential question

State: Texas **Filing Company:** National Council on Compensation Insurance, Inc.
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General Information

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Project Number: Domicile Status Comments:
Reference Organization: Reference Number:
Reference Title: Advisory Org. Circular:
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State Status Changed: 06/26/2023 Deemer Date:
Created By: Nancy Mattei Submitted By: Nancy Mattei
Corresponding Filing Tracking Number:
State TOI: Workers Compensation State Sub-TOI: Workers Compensation

Filing Description:

This item revises payroll rules related to service charges and automatic gratuities in NCCI's Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual).

Company and Contact

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Filing Company Information

National Council on Compensation Insurance, Inc. CoCode: State of Domicile: Florida
901 Peninsula Corporate Circle Group Code: Company Type:
Boca Raton, FL 33487 Group Name: State ID Number:
(561) 893-3186 ext. [Phone] FEIN Number: 65-0439698

State: Texas **Filing Company:** National Council on Compensation Insurance, Inc.
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Filing Fees

State Fees

Fee Required? No

Retaliatory? No

Fee Explanation:

State Specific

- [PII] Does this filing contain any personally identifiable information (PII)? (See SERFF General Instructions for the definition and examples of PII.) Answer either YES or NO:: No
- [Associated filing] Provide the TDI file number or SERFF tracking number for all associated filings:: N/A
- [Deemer date] Do you waive the deemer for form, endorsement, and certificate of insurance filings under 28 TAC 5.9325? Answer either YES or NO:: Yes
- Do you waive the limits on requests for information for rate/rule filings under 28 TAC 5.9336? Answer either YES or NO:: Yes
- [Replacement number] Provide the TDI file number or SERFF tracking number of the previously approved forms and endorsements or accepted rates, rules, or rate/rules that you are replacing:: S692689
- [Reference/adopt] Provide the TDI file number or SERFF tracking number that contains approved forms and endorsements or accepted rates, rules, or rate/rules that you are referencing/adopting.: N/A
- [Interline] State if this is an interline filing and list all lines of insurance the endorsement or rate/rules applies to.: N/A
- [Dual] For dual filings (monoline and multi-peril) state if this is a new program. If not, provide the TDI file number or SERFF tracking number for either the previous dual filing, or the previous monoline and multi-peril filings approved for this program:: N/A
- [Policy form] What policy form do these endorsements and forms go with? List the TDI file number or SERFF tracking number where the policy form was approved or referenced:: N/A
- [RPG] Will this filing be used for a Risk Purchasing Group? Answer either YES or NO. If yes, provide the name:: No

SERFF Tracking #:

NCCI-133714106

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Rate/Rule Schedule

Item No.	Schedule Item Status	Exhibit Name	Rule # or Page #	Rate Action	Previous State Filing Number	Attachments
1		Exhibit 1	Rules for including service charges and automatic gratuities in payroll	New		B-1449 Exhibit 1.pdf
2		Exhibit 2	Rules for excluding from payroll tips or other gratuities	Replacement	S692689	B-1449 Exhibit 2.pdf

Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Exhibit 1**Basic Manual—Effective 2021**

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

Rules for including service charges and automatic gratuities in payroll

Rule ID: BM-PAYI-SCF23

Effective Date: January 1, 2024

Include service charges and automatic gratuities received by employees in payroll. Only the amount of the service charge or automatic gratuity received by employees is included in payroll.

Service charges and automatic gratuities

Service charges and automatic gratuities are set percentages or fees added to a bill or contract where the customer does not

- determine the amount of the percentage or fee
- determine who receives the percentage or fee, and
- have the ability to reduce the payment amount below the set percentage or fee.

References**Refer to**

- [Rules for excluding from payroll tips or other gratuities, and](#)
- NCCI's *Basic Manual User's Guide* for an example of service charges and automatic gratuities.

Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Exhibit 2

Basic Manual—Effective 2021

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

Rules for excluding from payroll tips or other gratuities

Rule ID: BM-PAYE-RAE1F

Effective Date: ~~November 1, 2021~~ January 1, 2024

Exclude from payroll tips or other gratuities received by employees.

Tips or other gratuities

Tips or other gratuities are optional payments added to a bill or contract where the customer

- determines the amount of payment
- determines that the employees receive the payment for services provided, and
- has the option to not add a payment to the bill or contract.

References

Refer to [Rules for including service charges and automatic gratuities in payroll.](#)

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Supporting Document Schedules

Satisfied - Item:	Filing Memorandum (Rates/Rules)
Comments:	
Attachment(s):	B-1449 Memorandum.pdf
Item Status:	
Status Date:	

Satisfied - Item:	Side by Side
Comments:	
Attachment(s):	B-1449 Side_by_side.pdf
Item Status:	
Status Date:	

Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Filing Memorandum

Purpose

This item revises payroll rules related to service charges and automatic gratuities in NCCI's **Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)**.

Background

NCCI conducted a comprehensive review of **Basic Manual** rules related to payroll inclusions and payroll exclusions to determine the appropriate treatment for service charges and automatic gratuities.

NCCI's **Basic Manual** rule, Rules for excluding from payroll tips or gratuities, excludes from payroll tips or other gratuities that are received by employees. In all states except Montana, NCCI's **Basic Manual** rules do not address the treatment of service charges or automatic gratuities. Additionally, the **Basic Manual** rule that excludes tips and gratuities does not address whether the intent of the rule is meant to exclude only tips and gratuities that are given voluntarily.

Banquet halls, country clubs, and private clubs traditionally add a service charge to food and beverage sales. In some cases, members or patrons can adjust the service charge; in others, the amount is a set percentage in place of a tip or gratuity. Additionally, many restaurants have changed their business models to include service charges. These service charges can be in place of, or in addition to, a tip.

NCCI completed research and gathered valuable feedback related to the treatment of service charges and automatic gratuities. Key points of this research and feedback are as follows:

- Tips are "discretionary" payments by a customer that employees receive from customers.
- Service charges are "forced" fees added by the employer through a bill or contract.
- The Internal Revenue Service's (IRS) Publication 15, Employer's Tax Guide states "Service charges aren't tips; therefore, withhold taxes on service charges as you would on regular wages."
- Regarding the inclusion of service charges in payroll, NCCI received valuable feedback from carriers, including members of NCCI's Underwriting Committee and discussions at several Policy Research Advisory Committee (PRAC) meetings.

Based on NCCI's research and carrier feedback, NCCI determined that it is appropriate to establish a **Basic Manual** rule stating that service charges and automatic gratuities are included in payroll and define service charges and automatic gratuities.

Proposal

This item proposes the following revisions to NCCI's **Basic Manual**:

1. Establish a new rule, Rules for including service charges and automatic gratuities in payroll, to specify that service charges and automatic gratuities are included in payroll when the customer does not
 - determine the amount of the payment
 - determine who receives the payment, and
 - have the ability to reduce the payment amount below the set percentage or fee.
2. Revise the rule, Rules for excluding from payroll tips or gratuities, to add a definition for tips and other gratuities.
3. Revise state rules in Connecticut and Nevada as described in the Exhibit Comments and Implementation Summary section.

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Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities

Filing Memorandum

Impact

As part of NCCI's continuing effort to simplify and clarify manual rules, we anticipate that the proposed changes will enhance the understanding of NCCI's **Basic Manual**. An employer may see an increase in premium, dependent on whether the newly established rule related to payroll service charges and automatic gratuities is different from how the policy is currently being written.

Statewide premium impact is not quantifiable but is expected to be negligible.

Exhibit Comments and Implementation Summary

Exhibit	Exhibit Comments	Implementation Summary
1	Details the establishment of the rule, Rules for including service charges and automatic gratuities in payroll (Rule ID: BM-PAYI-SCF23), in NCCI's Basic Manual . <ul style="list-style-type: none"> • Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV • Refer to state exhibits for CT and NV 	<ul style="list-style-type: none"> • In all states where applicable, except Hawaii, this item is to become effective for new and renewal policies with effective dates on and after 12:01 a.m. on January 1, 2024. • In Hawaii, the effective date is determined upon regulatory approval of the individual carrier's election to adopt this change.
2	Details the revisions to the rule, Rules for excluding from payroll tips or gratuities (Rule ID: BM-PAYE-RAE1F), in NCCI's Basic Manual . <ul style="list-style-type: none"> • Applies in: AK, AL, AR, AZ, CO, DC, GA, HI, IA, ID, IL, IN, KS, KY, LA, MD, ME, MO, MS, NE, NH, NM, OK, OR, RI, SC, SD, TN, TX, UT, VA, VT, WV • Refer to state exhibits for CT and NV 	
State Exhibits		
3	Details the revisions to the rule, Rules for excluding from payroll tips or gratuities (Rule ID: BM-PAYE-RAE1F), in NCCI's Basic Manual for Connecticut to add the term "service charges."	This item is to become effective for new and renewal policies with effective dates on and after 12:01 a.m. on January 1, 2024.
3	Details the revisions to the rule, Rules for including tips or gratuities in payroll (Rule ID: BM-PAYI-R79CC), in NCCI's Basic Manual for Nevada to conform with NV ADC 616A.200(13) & (14).	

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COMPARISON OF RULES RELATED TO SERVICE CHARGES AND GRATUITIES AND ITEM B-1449*

Current	Proposed	Comments
<p>Rules for excluding from payroll tips or gratuities Rule ID: BM-PAYE-RAE1F <i>Effective Date: November 1, 2021</i></p> <p>Exclude from payroll tips or other gratuities received by employees.</p>	<p>Rules for excluding from payroll tips or other gratuities Rule ID: BM-PAYE-RAE1F <i>Effective Date: January 1, 2024</i></p> <p>Exclude from payroll tips or other gratuities received by employees.</p> <p>Tips or other gratuities Tips or other gratuities are optional payments added to a bill or contract where the customer</p> <ul style="list-style-type: none"> • determines the amount of payment • determines that the employees receive the payment for services provided, and • has the option to not add a payment to the bill or contract. <p>References Refer to Rules for including service charges and automatic gratuities in payroll.</p>	<p>Revised title to be consistent with the rule content.</p> <p>Added a definition for tips or other gratuities.</p> <p>Added a rule reference.</p>

*This Comparison is provided as a reference only in order to show the differences between the existing rule(s) or form(s), and the changes being proposed in the item filing. In the unlikely event that there is a conflict between the item filing Exhibits and this Comparison, the item filing Exhibits will control.