

No. 2019-5981

**Texas Department of Insurance
Exempt Filing Notification under Texas Insurance Code
Chapter 5, Article 5.96**

**Adoption of Amendments to the National Council on Compensation Insurance
Basic Manual for Workers Compensation and Employers Liability Insurance
to Retain Classification Code 0923—Domestic Workers—Residences—Payroll Basis**

Date: JUN 13 2019

The Texas Department of Insurance (TDI) adopts the amendments proposed by the January 28, 2019, petition filed by Texas Mutual Insurance Company (TMIC) (Petition No. W-0119-01) to permit the continued use of A-rated Classification Code 0923—Domestic Workers—Residences—Payroll Basis.

Background

Previous Commissioner's Orders reclassified domestic workers from a payroll basis to a per capita basis, based on petitions from the National Council on Compensation Insurance (NCCI). Those orders eliminated Code 0923 (payroll basis), effective July 1, 2019, and reclassified domestic workers to Code 0913 (per capita basis). A later order established Code 0908 for part-time domestic workers on a per capita basis, and revised Code 0913 to include only full-time domestic workers on a per capita basis.

TMIC asked that TDI continue to permit workers' compensation carriers to use either Code 0923 (payroll basis), or Codes 0913 and 0908 (per capita basis) for residential domestic employees. TMIC asserted that retaining this flexibility will allow carriers and their policyholders to continue to benefit from the availability of both payroll and per capita rate bases.

Domestic workers are employed directly by a resident homeowner, the resident homeowner's family, or the resident homeowner's estate. They perform duties exclusively in or around the home.

A payroll classification (Code 0923) uses total payroll during the policy period to measure exposure and calculate premium. For a policy covering domestic workers, the workers' compensation carrier would determine the premium for the policy by using the total amount the homeowner paid those workers during the policy period. Code 0923 uses an A-rate to calculate premium on a payroll basis. An A-rate is a rate calculated specifically for each policy, according to what the underwriter believes is an equitable rate commensurate with the risk. It is useful when there is not enough data to produce advisory loss costs for a classification.

In contrast, a per capita classification (Codes 0913 and 0908) uses the number of workers during the policy period to measure exposure and calculate premium. For a policy covering domestic workers on a per capita basis, the workers' compensation carrier would determine the premium for the policy by using the total number of employees during the policy period and pro-rating any that were only employed for part of the policy period. Codes 0913 and 0908 use NCCI's advisory loss costs to calculate premium on a per capita basis.

Regardless of the classification code used, under the Texas Workers' Compensation Act, loss of income benefits are payable to injured employees in amounts corresponding to the employee's wage.

The following findings of fact and conclusions of law are adopted:

Findings of Fact

1. Commissioner's Orders No. 2016-4795 and 2017-5055 were issued pursuant to NCCI *Item 01-TX-2016—Elimination of A-Rating Process for Classification and Statistical Codes in NCCI's Manuals*. Order No. 2017-5055 amended Order No. 2016-4795 *nunc pro tunc* due to an inadvertent omission in NCCI's filing. The omission was not related to Code 0923.
 - The orders eliminated A-rated Classification Code 0923—Domestic Workers—Residences—Payroll Basis and the associated classification wording, effective July 1, 2019.
 - The effective date was delayed in response to a comment that requested time to gather information and make required system upgrades.
 - The orders reclassified all domestic workers to Classification Code 0913—Domestic Workers—Residences—Per Capita Basis and removed references

to Code 0923 in the Texas exception to Rule 3-C in NCCI's *Basic Manual for Workers Compensation and Employers Liability Insurance (Basic Manual)*.

2. Commissioner's Orders No. 2016-4795 and 2017-5055 concluded that delaying the elimination of the A-rating process for Code 0923 until July 1, 2019, was reasonable, would provide better data, and would minimize adverse impacts for Texas policyholders and carriers.
3. TDI issued Commissioner's Order No. 2018-5569 on July 11, 2018, pursuant to NCCI *Item 01-TX-2017—Revisions to Domestic Classifications*.
4. Commissioner's Order No. 2018-5569 established Code 0908 for part-time domestic workers on a per capita basis and revised Code 0913 to include only full-time domestic workers on a per capita basis. It also revised the Texas exceptions to Rule 3-C in the *Basic Manual* to include Code 0908.
5. TMIC filed Petition No. W-0119-01 on January 28, 2019, requesting that TDI rescind, in part, Commissioner's Order No. 2016-4795 to permit the continued use of A-rated Classification Code 0923—Domestic Workers—Residences—Payroll Basis.
6. TMIC's petition states that when *Item 01-TX-2016* was filed, TMIC was unable to determine how the proposed changes would affect policyholders with employees assigned to Code 0923, because NCCI had not yet proposed Code 0908 or Texas loss costs for Code 0913, and the specific information needed to calculate premium on a per capita basis was not available. As a result, TMIC's comment requested that the Commissioner not eliminate Code 0923 at that time, or, alternatively, that the elimination be delayed until July 1, 2019.
7. Between the time Commissioner's Order No. 2016-4795 was issued on November 16, 2016, and the time TMIC filed its petition on January 28, 2019, TMIC has had over two years to gather information and assess the likely impact of the elimination of Code 0923.
8. TMIC's petition asserts that permitting the continued use of Code 0923 (payroll basis), in addition to permitting Codes 0913 and 0908 (per capita basis) for residential domestic employees, will allow insurers and their policyholders to continue to benefit from the availability of both rate bases.

9. TMIC's petition further asserts that use of a payroll basis maintains an equitable rate structure for policyholders and avoids wide premium swings. TMIC estimates that a change to a per capita basis will result in significant premium adjustments for the majority of TMIC's policyholders buying workers' compensation coverage for domestic employees.
10. TMIC's petition further asserts that use of a payroll basis allows TMIC to charge premium that is directly proportional to its expected loss. Income benefits paid to an employee are based on the employee's salary or wage, so the amount of payroll is directly proportional to the expected loss, while the number of employees is not.
11. TDI published a notice of filing and hearing on TMIC's petition in the February 22, 2019, issue of the *Texas Register* at 44 TexReg 910 and on the TDI website on February 13, 2019.
12. The comment period closed at 5:00 p.m., central time, on March 27, 2019. TDI received written comments from Service Lloyds Insurance Company and Service American Indemnity Company (Service Insurance Holdings Group), TMIC, and NCCI, as well as comments from TMIC and NCCI at the hearing. TDI held a hearing under Docket No. 2811 at 2:00 p.m., central time, March 27, 2019, in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.
13. The comment from Service Insurance Holdings Group asked to join in the petition to prevent the removal of Code 0923 and asserted that the payroll basis is a more accurate method of determining the exposure for rating and auditing purposes.
14. NCCI's comments opposed the petition. NCCI asserted that:
 - To ensure equitable policyholder treatment, multiple classifications simultaneously using the same phraseology (descriptive classification wording) should not be permitted.
 - To maintain consistency and foster competition within the market, A-rated codes should be eliminated whenever appropriate data exists to establish a loss cost.
 - To establish a loss cost most appropriate for domestic worker exposure to loss, a per capita exposure basis should be used.
 - 36 of the 38 jurisdictions where NCCI provides loss costs or ratemaking services use per capita exposure. Of the remaining jurisdictions, Oregon uses payroll-based exposure for its domestic code.

- TMIC used outdated and overstated loss costs in the analysis in the petition.
 - There is a lack of valid employee count data in TMIC's analysis.
 - Using a payroll basis adds complexities that may lead to higher underwriting costs.
 - TDI should deny the petition, but if TDI chooses to grant the petition, then Codes 0913 and 0908 should be eliminated, and an NCCI loss cost should be established for Code 0923, effective July 1, 2019.
15. TMIC's comments at the hearing reiterated its petition and its written comments responded to NCCI's comments. TMIC asserted that:
- TMIC's primary concern is that payroll is the correct rate basis, not per capita. TMIC is amenable to eliminating Codes 0908 and 0913 as NCCI proposed.
 - TMIC is willing to work with TDI and NCCI to establish a loss cost for Code 0923.
 - Currently 76 percent of the policies in Texas use payroll as an exposure base for domestic workers, and this data should be used for calculation of a loss cost for Code 0923.
 - TMIC's initial request for a delay in elimination of Code 0923 was to allow time to determine how existing policyholders would be affected and whether additional classification codes should be filed in Texas.
 - TMIC's analysis estimating the impact of the change from payroll basis to per capita was based on the currently approved NCCI loss costs (effective 7/1/2018) and was not based on outdated data.
 - TMIC captures employee counts on its policies, and TMIC's analysis relies on those captured employee counts. While TMIC had to make assumptions related to allocating employees on larger policyholders, the assumptions were appropriate and the analysis was sound.
 - Using a payroll basis does not add complexities that will lead to higher underwriting costs. Using a per capita basis will add complexity for the policyholder and could cause policyholders to stop buying workers' compensation coverage.
 - TMIC's primary concern is coming up with the best solution for Texas policyholders. NCCI's arguments seem to be largely focused on a nationwide solution and consistency across states in which NCCI operates.
16. For over 20 years, Texas carriers have had the option to use either a payroll or a per capita basis for domestic workers.

17. A copy of the full text of the petition has been on file with the TDI Office of the Chief Clerk since January 28, 2019. The petition is incorporated by reference into this order. Exhibit A, which is incorporated by reference into this order, contains the revisions to the *Basic Manual* necessary to retain Code 0923.

Conclusions of Law

1. The Commissioner has jurisdiction over this matter under Insurance Code Article 5.96 and Sections 2051.002, 2051.201, 2052.002, 2053.002, 2053.011, 2053.051, 2053.053, and 36.001.
2. TDI gave proper and timely notice of the petition and hearing in compliance with Article 5.96.
3. TMIC has provided information that supports retaining Classification Code 0923—Domestic Workers—Residences—Payroll Basis and adopting the necessary conforming changes to NCCI's *Basic Manual*, including reinstating the references to Code 0923 in the Texas exception to Rule 3-C. The proposed actions are consistent with Texas workers' compensation statutes and rules.
4. Granting the petition would maintain the current rate and class code structure.
5. TDI agrees that there is enough data to develop a loss cost for Code 0923.
6. TDI certifies that the amendments to the manuals have been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

Order

It is ordered that Texas Mutual Insurance Company's petition (No. W-0119-01) to permit the continued use of A-rated Classification Code 0923—Domestic Workers—Residences—Payroll Basis is granted. It is further ordered that the amendments to the *NCCI Basic Manual for Workers Compensation and Employers Liability Insurance* necessary to retain Code 0923, as laid out in Exhibit A to this order, are effective on July 1, 2019.



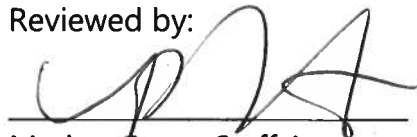
Kent C. Sullivan
Commissioner of Insurance

Recommended by:



Mark Worman, Deputy Commissioner

Reviewed by:



Marion Grant, Staff Attorney

**BASIC MANUAL – 2001 EDITION
TEXAS SPECIAL CLASSIFICATIONS**

0923 Domestic Workers – Residences – Payroll Basis

Applies to domestic workers employed inside or outside a private residence who are employed directly by the resident owner, the estate of the owner, or family of the resident. Employees of commercial nursing services, maid services, or companion services, as well as employees whose duties are within the scope of a farm classification, must not be assigned to this classification. Refer to the **Basic Manual** for additional information about the treatment of domestic workers.

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BASIC MANUAL – 2001 EDITION

APPENDIX E

CLASSIFICATION BY HAZARD GROUP

TABLE OF CLASSIFICATIONS BY HAZARD GROUP

Class Code	Applies In:	Discontinued In:	Hazard Group A-G
0923	6/1/14: TX		C

BASIC MANUAL—2001 EDITION

TEXAS RULE EXCEPTIONS

RULE 3—RATING DEFINITIONS AND APPLICATION OF PREMIUM ELEMENTS

C. DOMESTIC WORKERS—RESIDENCES

1. Explanation

Add the following to Rule 3-C-1:

- Code 0923 – Domestic Workers – Residences – Payroll Basis are domestic workers, inside or outside. The insured must maintain payroll records for domestic workers if workers compensation premium is to be determined for domestic workers on a payroll basis rather than on a per capita basis.

Change Rule 3-C-1 as follows:

Exception:

If commercial farm operations are conducted, Codes 0908, 0913, and 0923 do not apply to any operations at the farm location. Any outside domestic workers at a commercial farm location are assigned to the appropriate farm classification.

2. Other Classifications – Maintenance, Repair, or Construction Operations

Change Rule 3-C-2 as follows:

Codes 0908, 0913, and 0923 include ordinary repair or maintenance of the employer's premises or equipment by domestic workers.

Extraordinary repairs, alterations, new construction, and erection, or demolition of structures must be assigned to construction or erection classifications.

3. Coverages

Change Rule 3-C-3 as follows:

Statutory workers compensation obligations of an employer with regard to domestic workers may be insured by attaching the Texas Exempt Employees Coverage Endorsement (WC 42 03 05 A) to the workers compensation and employer's liability insurance policy.

5. Advisory Loss Costs, Rates, and Premium

Change Rule 3-C-5 as follows:

Advisory loss costs for Codes 0908 and 0913 are per capita premium charges. A per capita classification is one that uses number of workers rather than payroll to measure exposure.

Add the following to Rule 3-C-5:

The A-rate for Code 0923 is applied on a payroll basis.

a. Requirements for Maintenance of Records

Change Rule 3-C-5-a as follows:

The employer must maintain a record of the names, duties, and period of service of each domestic worker. Domestic workers need not to be named on the policy or on the Information Page. The substitution of one worker for another requires no notice to the carrier.

a. Premium Determination

Add the following to Rule 3-C-5-b:

- **Domestic Workers – Residences – Payroll Basis – Code 0923**

Premium is calculated on the total payroll for domestic workers during the policy period.