

No. **2023-8296**

**Official Order
of the
Texas Commissioner of Insurance**

Date: 10/25/2023

Subject considered:

**National Council on Compensation Insurance Filing
*Item B-1448—Revisions to Basic Manual Rules Related to Payroll Inclusions and
Payroll Exclusions***

The subject of this order is the adoption of amendments as proposed in *Item B-1448—Revisions to Basic Manual Rules Related to Payroll Inclusions and Payroll Exclusions* (TDI ECase No. 31818; SERFF Tracking No. NCCI-133617166).

Background

NCCI filed *Item B-1448* to clarify rules related to payroll inclusions and exclusions in the NCCI *Basic Manual for Workers Compensation and Employers Liability Insurance* (Basic Manual) effective January 1, 2024.

Employers are offering additional benefits to employees as part of their compensation plans. NCCI introduced rules in this filing to address concerns from carriers and premium audit groups about the difficulty in determining payroll for employees with these benefits.

Based on stakeholder feedback to NCCI, this filing also revises rules for payroll inclusions and exclusions related to expense allowances.

After considering the filing, the following findings of fact and conclusions of law are adopted.

Findings of Fact

1. NCCI filed *Item B-1448* with TDI on March 31, 2023, under the workers' compensation manual rule filing procedure adopted in Commissioner's Order No. 3142, dated March 21, 2014.
2. *Item B-1448* amends the Basic Manual to clarify and enhance rules related to payroll inclusions and exclusions. The new rules inform insurers whether to include or exclude specified items in payroll, including:
 - a. employee-authorized reductions for purchasing stock options or stock purchase plans;
 - b. employer contributions to the cashless exercise of stock options, stock purchase plans, and exercise of stock options; and
 - c. retroactive wages or salaries paid to current, retired, or terminated employees.
3. These rules also include revisions for clarity and consistency. This includes reorganizing and clarifying rules for including or excluding a maximum daily expense allowance for nonverified expenses incurred on overnight business.
4. NCCI proposed *Item B-1448* in response to several carriers' requests for clarification about the payroll inclusion and exclusion rules concerning alternate compensation plans, such as deferred compensation plans.
5. NCCI proposed that the changes in *Item B-1448* apply to new and renewal policies that are effective on or after 12:01 a.m. on January 1, 2024.
6. *Item B-1448* has been available for public inspection in SERFF and at TDI since the filing date.
7. The filing, including exhibits, is incorporated by reference into this order.
8. On May 3, 2023, TDI published notice of the filing on the TDI website at www.tdi.texas.gov/rules/2023/nccimanual.html and distributed notice of the filing to electronic news subscribers.
9. TDI received one written comment on the filing by the June 2, 2023, deadline. The commenter asked that TDI also consider changing the rule for excluding from payroll a maximum daily expense allowance for nonverified expenses incurred on overnight business. The current rule uses the IRS allowable amount per day to

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determine the amount excluded from payroll. The commenter's suggestion was to change the IRS allowable amount to \$75 per day, which would align with most other states.

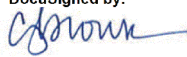
10. After receiving the comment, TDI sent an additional request for comments. TDI received no additional comments and declined to make a change.

Conclusions of Law

1. TDI has jurisdiction over this matter under Insurance Code §§ 2051.002, 2051.201, 2053.011, and Article 5.96.
2. TDI gave notice in compliance with Commissioner's Order No. 3142.
3. The amendments to the NCCI Basic Manual are consistent with Insurance Code Chapters 2051 and 2053, and Article 5.96.
4. Applying the changes in *Item B-1448* to new and renewal policies that are effective on or after 12:01 a.m. on January 1, 2024, is reasonable.

Order

It is ordered that NCCI's filing, *Item B-1448—Revisions to Basic Manual Rules Related to Payroll Inclusions and Payroll Exclusions* is approved. The changes in *Item B-1448* apply to new and renewal policies that are effective on or after 12:01 a.m. on January 1, 2024.

DocuSigned by:


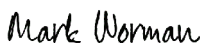
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Cassie Brown

Commissioner of Insurance

Recommended and reviewed by:

DocuSigned by:



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Mark Worman, Deputy Commissioner

DocuSigned by:



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Jessica Barta, General Counsel