

No. **2023-8269**

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

Date: 10/06/2023

Subject considered:

**National Council on Compensation Insurance Filing
*Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and
Automatic Gratuities***

The subject of this order is the adoption of amendments as proposed in *Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities* (TDI ECase No. 32398; SERFF Tracking No. NCCI-133714106).

Background

NCCI filed *Item B-1449* to revise payroll rules related to service charges and automatic gratuities in the NCCI *Basic Manual for Workers Compensation and Employers Liability Insurance* (Basic Manual) effective January 1, 2024.

Current rules exclude tips and other gratuities received by employees from payroll. However, the Basic Manual does not address service charges or automatic gratuities that are sometimes in place of or in addition to a tip. The Internal Revenue Service determined that taxes should be withheld on service charges paid to employees, just as an employer would with regular wages. Based on feedback from carriers and their own research, NCCI determined it was appropriate to establish Basic Manual rules that would require these mandatory gratuities and service charges to be included in payroll.

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

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Findings of Fact

1. NCCI filed *Item B-1449* with TDI on June 23, 2023, under the workers' compensation manual rule filing procedure adopted in Commissioner's Order No. 3142, dated March 21, 2014.
2. The Basic Manual does not currently address service charges or automatic gratuities that are in place of or in addition to a tip.
3. *Item B-1449* revises payroll rules in the Basic Manual to clarify that service charges and automatic gratuities should be included with payroll.
4. NCCI proposed that the changes in *Item B-1449* apply to new and renewal policies that are effective on or after 12:01 a.m. on January 1, 2024.
5. *Item B-1449* has been available for public inspection in SERFF and at TDI since the filing date.
6. The filing, including exhibits, is incorporated by reference into this order.
7. On July 31, 2023, TDI published notice of the filing on the TDI website at www.tdi.texas.gov/rules/2023/nccimannual.html and distributed notice of the filing to electronic news subscribers.
8. TDI received no written comments or hearing requests on the filing during the comment period.

Conclusions of Law

1. TDI has jurisdiction over this matter under Insurance Code §§ 2051.002, 2051.201, 2053.151, 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-1449* to new and renewal policies that are effective on or after 12:01 a.m. on January 1, 2024, is reasonable.

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Order

It is ordered that NCCI's filing, *Item B-1449—Revisions to Basic Manual Rules Related to Service Charges and Automatic Gratuities*, is approved. The changes in *Item B-1449* 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

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Jessica Barta, General Counsel