



NYCIRB

New York Compensation
Insurance Rating Board

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Frequently Asked Questions (FAQs) – COVID-19

Classification 8873 - Telecommuter Reassigned Employees

How is payroll treated for employees whose job changed to clerical during the stay-at-home order?

The payroll of employees whose job duties changed to performing duties consistent with clerical operations is to be assigned to Classification 8873, Telecommuter Reassigned Employees. This provision applies while New York’s stay-at-home order is in place and for up to 30 days thereafter.

Would Classification 8873 be applied to employees who are normally assigned to Classification 8810, Clerical Office Employees – NOC, if they are working from home during the COVID-19 stay-at-home order?

No, employees normally assigned to Classification 8810 would not be eligible for Classification 8873 because their duties would not have been reassigned.

Would Classification 8873 be applied to an executive officer normally assigned to Classification 8809 Executive Officers – NOC – Not Foremen, Workers or Salespersons, if they are working from home during the COVID-19 stay-at-home order?

No, executive officers normally assigned to Classification 8809 would not be eligible for Classification 8873 because the executive’s duties would not have been reassigned, their executive status would not have changed, and the minimum/maximum payroll charge would apply.

If an employer’s governing classification specifically includes clerical operations, such as a doctor’s office subject to Classification 8832, Physician & Clerical, would Classification 8873 apply?

Yes, if employees are being paid and performing clerical work at home, and the classification that normally applies to the work performed by employees includes clerical operations, as in this example of a doctor’s office, then Classification 8873 would apply.

If employees are being paid but not working (idle), then the payroll for these employees should also be assigned to Classification 8873. To be considered idle, employees must not be performing any work duties.



Could Classification 8873 apply in the situation where employers are paying employees full time wages for part time work? For example, a tow truck company has a diminished need for having multiple drivers on call each day due to the COVID-19 pandemic. The company now has just one driver on call each day, but each driver would receive a full weeks' wages. Can the wages for the other 4 days be placed in Classification 8873?

No, Classification 8873 would not apply to the other 4 days as the employee's duties are not reassigned. These employees are still engaged in performing their regular job duties and then they have idle time. Idle Time Rule V(B)(4)(a) would apply and the wages are to be assigned in their entirety to the classification that applies to the work normally performed by the employee involved.

Should "extra pay" that some employers are paying their essential health care workers be assigned to Classification 8873? For example, some health care employers are paying their essential workers an additional eight hours' worth of wages a day in addition to the eight hours of wages that they actually worked in a given day.

This "extra pay" should not be assigned to Classification 8873. In this instance, the employees are receiving this extra pay because they are working their regular jobs. It is paid by the employer to the employee as wages. Classification 8873 would not apply to employees who are working their regular jobs. There is no separation of payroll allowed with Classification 8873 as this classification is a "standard exception classification" and, therefore, the entire payroll/remuneration/compensation would be assigned in its entirety to the classification applicable to the employee's normal job duties / governing classification.

Is payroll which is allocated to Classification 8873 subject to the maximum average weekly wage per employee for those classifications, such as 9610, which are normally subject to this maximum wage?

No, Classification 8873 is a standard exception classification and the maximum average weekly wage per employee would not apply.

Is the payroll associated with Classification 8873 to be included in the total payroll used to calculate the Terrorism (9740) and Catastrophe Other Than Certified Acts of Terrorism (9741) premium charges?

Yes, the payroll assigned to Classification 8873 is to be included in the calculation of the Terrorism and Catastrophe Other Than Certified Acts of Terrorism, premium charges.



Classification 8873 is applicable to in-force policies as of March 16, 2020 and, therefore, would impact certain policies that became effective prior to October 1, 2019. For policies effective prior to October 1, 2019, would the loss cost of Classification 8810, which was 0.14 pursuant to the October 1, 2018 loss cost revision, be used instead of the 0.13 Classification 8873 loss cost?
No, the loss cost that is applicable to Classification 8873 is 0.13 in all instances.

Will payments by employers for qualified paid sick leave and qualified family and medical leave expansion under the Families First Coronavirus Response Act be used in the calculation of workers' compensation premium?

No, payments by employers for qualified paid sick leave and qualified family and medical leave expansion under this Act are not to be used in the calculation of workers' compensation premium.

Will funds or loans obtained by employers from the SBA Paycheck Protection Program ("PPP") that are used specifically to retain or hire employees be used in the calculation of workers' compensation premium?

Yes, these funds or loans obtained by employers are to be used in the calculation of workers' compensation premium.

Manual Rule V(B)(4)(d) – *Temporarily Reassigned Employees*, refers to "employees temporarily reassigned as a result of a request or direct order by civil authorities..." What determines when the "order" is no longer relevant, and the use of Classification 8873 should begin to be discontinued? For example, do phased re-openings impact this determination?

We direct you to New York Governor's Executive Order No. 202 "Declaring a Disaster Emergency in the State of New York" and the various updates thereto, for determination when the "order" is no longer relevant and the use of Classification 8873 should begin to be discontinued. Phased re-openings do not impact this determination.

**** As of July 25, 2021, Classification 8873 is discontinued for use. Pursuant to the New York Workers' Compensation and Employers' Liability Manual Rule V(B)(4)(d), use of Classification 8873 is not to exceed thirty (30) days after the expiration of an order by civil authorities. On March 7, 2020, Governor Cuomo issued Executive Order No. 202, declaring a State disaster emergency for the entire State of New York. Such Executive Order was last extended on May 25, 2021 for an additional thirty (30) days via Executive Order No. 202.109. On June 24, 2021, Executive Order No. 202.109 expired and the declaration of a State disaster emergency was not further extended. Accordingly, use of Classification 8873 cannot exceed thirty (30) days following the June 24, 2021 expiration of Executive Order No. 202.109 or July 25, 2021.