

Date: 8/6/20

2020 Summer National Meeting
Virtual Meeting

PROPERTY AND CASUALTY INSURANCE (C) COMMITTEE

Wednesday, August 12, 2020

3:00 – 4:30 p.m. ET / 2:00 – 3:30 p.m. CT / 1:00 – 2:30 p.m. MT / 12:00 – 1:30 p.m. PT

ROLL CALL

Vicki Schmidt, Chair	Kansas	James J. Donelon	Louisiana
Mike Chaney, Vice Chair	Mississippi	Kathleen A. Birrane	Maryland
Jim L. Ridling	Alabama	Jillian Froment	Ohio
Ricardo Lara	California	Glen Mulready	Oklahoma
Andrew N. Mais	Connecticut	Larry D. Deiter	South Dakota
David Altmaier	Florida	Mike Kreidler	Washington
Colin M. Hayashida	Hawaii	James A. Dodrill	West Virginia

NAIC Support Staff: Aaron Brandenburg/Jennifer Gardner

AGENDA

1. Consider Adoption of its June 10 Minutes—*Commissioner Vicki Schmidt (KS)* Attachment One
2. Consider Adoption of its Task Force and Working Group Reports Attachment Two
—*Commissioner Vicki Schmidt (KS)*
 - a. Casualty Actuarial and Statistical (C) Task Force—*Commissioner Steve Kelley (MN)*
 - b. Surplus Lines (C) Task Force—*Commissioner James J. Donelon (LA)*
 - c. Title Insurance (C) Task Force—*Commissioner Michael S. Pieciak (VT)*
 - d. Workers' Compensation (C) Task Force—*Commissioner James J. Donelon (LA)*
 - e. Cannabis Insurance (C) Working Group—*Commissioner Ricardo Lara (CA)*
 - f. Catastrophe Insurance (C) Working Group—*Commissioner Mike Chaney (MS)*
 - g. Climate Risk and Resilience (C) Working Group—*Commissioner Mike Kreidler (WA)*
 - h. Lender-Placed Insurance Model Act (C) Working Group—*Commissioner David Altmaier (FL)*
 - i. Pet Insurance (C) Working Group—*Don Beatty (VA)*
 - j. Terrorism Insurance Implementation (C) Working Group—*Martha Lees (NY)*
 - k. Transparency and Readability of Consumer Information (C) Working Group
—*Joy Hachette (MD)*
3. Consider Adoption of the *Workers' Compensation Policy and the Changing Workforce* Attachment Three
White Paper—Warren Byrd (LA)
4. Consider Adoption of the *State Disaster Response Plan—George Bradner (CT)* Attachment Four
5. Receive a Recap of the Federal Emergency Management Agency (FEMA) Department of Insurance (DOI) Flood Workshops—*Travis Grassel (IA) and Jason Hunter (FEMA)*
6. Receive a Preview of the Southeast Zone Flood Workshop—*Andy Case (MS)*
7. Hear a Presentation on Building Codes—*Ryan Colker (International Code Council—ICC)* Attachment Five
8. Hear a Report on Business Interruption Policies and Claims—*NAIC Staff and Amy Bach (United Policyholders)* Attachment Six
9. Discuss a Proposal to Collect Additional Homeowners and Auto Data—*Birny Birnbaum (Center for Economic Justice—CEJ)* Attachment Seven

10. Hear Presentation on Race and the Property and Casualty Insurance Industry
—*Robert Klein (Consultant)*

Attachment Eight

11. Discuss Any Other Matters Brought Before the Committee—*Commissioner Vicki Schmidt (KS)*

12. Adjournment

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Draft Pending Adoption

Attachment One
Property and Casualty Insurance (C) Committee
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Draft: 7/14/20

Property and Casualty Insurance (C) Committee
Conference Call
June 10, 2020

The Property and Casualty Insurance (C) Committee met via conference call June 10, 2020. The following Committee members participated: Vicki Schmidt, Chair, (KS); Mike Chaney, Vice Chair, (MS); Jim L. Ridling (AL); Ricardo Lara represented by Ken Allen (CA); Andrew N. Mais (CT); David Altmaier (FL); Colin M. Hayashida (HI); James J. Donelon represented by Warren Byrd (LA); Kathleen A. Birrane represented by Joy Hatchette and Robert Baron (MD); Jillian Froment (OH); Glen Mulready (OK); Larry D. Deiter (SD); and Mike Kreidler (WA). Also participating was: Gennady Stolyarov (NV); and Sandra Bigglestone (VT).

1. Adopted its 2019 Fall National Meeting Minutes

Director Froment made a motion, seconded by Commissioner Kreidler, to adopt the Committee's Dec. 9, 2019, minutes (Attachment One). The motion passed unanimously.

2. Adopted Edits to the NAIC Uniform Risk Retention Group Registration Form for Inclusion in the *Risk Retention and Purchasing Group Handbook*

Ms. Bigglestone explained that the Risk Retention Group (E) Task Force worked with state insurance regulators and interested parties to address concerns from non-domiciliary states and industry regarding the registration process of risk retention groups (RRGs) in non-domiciliary states. Concerns were discussed regarding extensive registration processing time and fees imposed as well as RRGs attempting to register that were in a hazardous financial condition or were not compliant with the federal Liability Risk Retention Act (LRRA). To help address some of the concerns, the Task Force proposed updates to the NAIC Uniform Risk Retention Group Registration Form (Registration Form), as it is the main way to provide information to non-domiciliary states. The Registration Form was changed to indicate a clear connection to the LRRA. The Registration Form asks for basic information about the RRG to ensure the RRG is operating legally under the LRRA. Ms. Bigglestone said all states should be encouraged to use the Registration Form.

Director Deiter made a motion, seconded by Commissioner Chaney, to adopt the proposed revisions to the Registration Form for inclusion in the *Risk Retention and Purchasing Group Handbook*. The motion passed unanimously.

3. Discuss Regulatory Actions Related to COVID-19

Commissioner Schmidt said the COVID-19 pandemic has greatly affected the insurance world. She noted that state insurance regulators issued a data call in early May to collect information on business interruption policies, including the degree to which the policies have pandemic exclusions or requirements for physical loss. She said claims data is due June 15, and additional information on that data call be found on the NAIC website. She said the NAIC will release some national aggregate data from this data call in the near future. She also noted that state insurance regulators will receive an email this week about how to access tools giving them the ability to analyze the data received in the data call.

Commissioner Schmidt said the states quickly took action on a wide variety of property and casualty related issues affected by COVID-19. She noted that the NAIC has been keeping track of state actions, and those can be found on the NAIC website. In addition, industry and consumer groups sent letters to the states asking for certain regulatory relief actions or actions to help policyholders. Commissioner Schmidt reported that the Committee met in regulator-to-regulator session on April 29 to review actions the states had taken on various issues to see if there was a need for any Committee-level activity.

Doug Heller (Consumer Federation of America—CFA) said the CFA and the Center for Economic Justice (CEJ) urged state insurance regulators to address auto insurance rates because they have become excessive as states have moved to lock downs. He said consumers need protections to ensure that they do not pay excessive auto premiums. He noted that most insurers gave some premium relief, but it was inconsistent and insufficient. He said about 30% average premium relief is needed, which is about double what most insurers have offered. California, Michigan and New Jersey have required refunds, but Mr. Heller believes all states should do this. He said driving has rebounded, but it is still down by 25%. He noted that only a few rate

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Attachment One
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reductions go beyond May 31. He believes that rates remain excessive and a monthly refund program should be created and mandated. As consumer credit scores decline, Mr. Heller said the states should issue a moratorium on the use of credit scores. He said the states need a plan to ensure that future rates account for the new normal. He said state insurance regulators need more data and should collect auto insurance accident and loss data on a monthly basis.

Erin Collins (National Association of Mutual Insurance Companies—NAMIC) said NAMIC appreciates the way the states have adjusted their workflow during the COVID-19 pandemic. She noted that adjuster restrictions have been eased and e-commerce has helped consumers. She asked that the NAIC be a force for collaboration and uniformity. She said uniformity in financial reporting has helped, and she encouraged flexibility in general. She said auto insurers have returned billions of dollars in premiums to policyholders. She encouraged state insurance regulators to not increase mandates, as what the industry is doing is working. She asked state insurance regulators to review temporary emergency measures before they expire. She also said state insurance regulators should consider what has worked in terms of virtual inspection and notarization and consider maintaining some regulatory changes.

Keri Kish (Wholesale & Specialty Insurance Association—WSIA) said WSIA agrees with what NAMIC said. She said WSIA has a concern about retroactive business interruption coverage, and it is appreciative of the NAIC statements regarding retroactive coverage. She said WSIA is appreciative of state insurance regulators working with industry on relief efforts related to the pandemic. She said state insurance regulators may wish to consider making some of the temporary relief measures, such as virtual delivery of policies and e-signatures, permanent.

David F. Snyder (American Property Casualty Insurance Association—APCIA) said industry members have seen a constructive relationship with state insurance regulators that has ensured market solvency. He said industry is appreciative that the NAIC opposed retroactive coverage for business interruption policies. He said auto insurers have refunded over \$10 billion in premium to policyholders. He said state insurance regulators allowed this while ensuring solvency. He emphasized that the states differ, and there should not be one-size-fits-all solution to these matters. He said some states have enacted the National Council of Insurance Legislators (NCOIL) model related to credit-based insurance scores that includes extraordinary life situation language protecting individuals from declines in their credit-based insurance scores. He said states without this model might consider it. He said efficiency could be enhanced by making some of the regulatory relief actions permanent. He also said the APCIA is in favor of the Private Passenger Auto Study and new tools allowing state insurance regulators to look at focused segments of the marketplace.

Ms. Stolyarov asked Mr. Snyder if there have been any federal mandates for lenders to offer forbearance on auto loans, credit cards or personal loans other than mortgages. He also asked whether the insurance industry has the capability to process hundreds of thousands of requests related to extraordinary life circumstances affecting credit. Mr. Snyder said consumers should exercise those rights, and companies do have the ability to respond. He said he would follow up on the federal activity related to loans, but he said the states have gone beyond what the federal government has done.

Birny Birnbaum (CEJ) said consumer representatives will speak before the NAIC/Consumer Liaison Committee about consumer protections in a pandemic era. He said state insurance regulators have done a tremendous job on grace periods and extending claims deadlines. He noted that some states have gone further in not allowing risk characteristics like credit-based insurance scores. He said federal legislation put a moratorium on lenders reporting negative scores to credit bureaus, and forbearance was offered on federal mortgages. He said in the future, bad credit information will appear and harm individuals' credit-based insurance scores. He said Pennsylvania issued a bulletin for insurers not to take action because of declining credit scores.

Mr. Birnbaum said industry would not be able to field millions of requests for extraordinary life events related to credit-based insurance scores, and state insurance regulators would not be able to monitor these. He said consumers should not have the burden of notifying industry of declining scores. He said insurers need accountability, and data collection can help with accountability. He said a transition to a digital interface raises consumer protection issues. He also said protections are needed to protect against biases in algorithms.

Lisa Brown (AICPA) applauded the NAIC for prompt responses related to the business interruption data call.

Amy Bach (United Policyholders) asked whether results from the business interruption data call would be released. Aaron Brandenburg (NAIC) said national aggregate data would be released soon.

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Attachment One
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4. Adopted the Private Passenger Auto Insurance Study

Commissioner Schmidt said work on auto insurance affordability issues began seven or eight years ago, and several documents were produced prior to discussions related to data collection. She said the Auto Insurance (C/D) Working Group, before it was disbanded in 2018, had previously agreed to receive data from statistical agents in January 2018 that was meant to help analyze the private passenger auto insurance market such as reviewing differences in premiums, as well as losses, compared to incomes at a ZIP Code level. She said the Working Group adopted an outline for the report at the 2018 Fall National Meeting, and NAIC staff completed an introductory narrative and a state-by-state analysis described in that outline in early 2019. The Committee then decided to update the study with more recent, 2016 and 2017, data that was received in 2019. Commissioner Schmidt said the NAIC finalized an updated study in Fall 2019, and the states reviewed the data through the end of the year. She said the NAIC has also loaded the data into an analytical tool on I-SITE, and the states are able to look at geographic areas to learn more about auto rates as they compare to demographic data. She said the Committee may wish to consider how to receive additional auto insurance data in the future, either through statistical agents, the Annual Statement, or some other mechanism such as data calls. She expressed her opinion that the Committee should adopt the study and move forward with future discussions about the possibility of getting additional data. Commissioner Chaney agreed that it is time to adopt the study and consider additional data collection later.

Mr. Birnbaum said the NAIC has not taken action to address proxy discrimination. He said the report is not as useful as it could be, and the data is handpicked by industry. He said the report does not include prices quoted. He noted that the data is stale, as 2017 is the most recent data. He said it is unclear how the report can be used to address affordability. He said state insurance regulators should collect timely data like they did with the business interruption data call. He recommended that the Annual Statement add columns to the State Page for written and earned exposures for auto and homeowners on a quarterly and annual basis. He said state insurance regulators could have 2019 data in the first quarter of 2020. He also said the Market Conduct Annual Statement (MCAS) should be collected on a quarterly basis.

Commissioner Schmidt said Mr. Birnbaum should take his MCAS request to the Market Regulation and Consumer Affairs (D) Committee, and the Property and Casualty Insurance (C) Committee should consider additional data collection in future conversations.

Commissioner Chaney made a motion, seconded by Director Deiter, to adopt the Private Passenger Auto Study. The motion passed unanimously.

Commissioner Schmidt said the Committee would hear an update at the Summer National Meeting on recent and upcoming workshops that states are holding with the Federal Emergency Management Agency (FEMA) regarding disaster preparedness and response.

Having no further business, the Property and Casualty Insurance (C) Committee adjourned.

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CASUALTY ACTUARIAL AND STATISTICAL (C) TASK FORCE
Wednesday, August 5, 2020
11:30 a.m. – 1:00 p.m.

Meeting Summary Report

The Casualty Actuarial and Statistical (C) Task Force met Aug. 5, 2020. During this meeting, the Task Force:

1. Adopted its 2019 Fall National Meeting minutes.
2. Adopted its July 14, May 19, Feb. 18 and Jan. 28 minutes, which included the following action:
 - a. Adopted a recommendation to the Casualty Actuarial Society (CAS)/Society of Actuaries (SOA) Task Force to defer implementation of the CAS/SOA continuing education (CE) log for 2020 and allow appointed actuaries to add a column to their existing CE log, indicating the categorization approved by the Task Force (“Appointed Actuary CE Log Categories”).
 - b. Adopted a response on Project #2019-40 regarding *Statement of Statutory Accounting Principles (SSAP) No. 53—Property Casualty Contracts—Premiums* to the Statutory Accounting Principles (E) Working Group.
 - c. Adopted a response to the Actuarial Standards Board’s (ASB’s) Request for Input on a Potential P/C Rate Filing ASOP on the *Best Practices for Regulatory Review of Predictive Analytics* white paper for a public comment period ending Nov. 22.
3. Adopted the report of the Actuarial Opinion (C) Working Group, which met June 11, and took the following action:
 - a. Discussed a risk repository in the *Financial Condition Examiners Handbook*.
 - b. Discussed *Financial Analysis Handbook* and *Financial Condition Examiners Handbook* changes.
4. Adopted the oral report of the Statistical Data (C) Working Group. The Working Group will begin its work in September.
5. Discussed Proposal 2019-49 (Retroactive Reinsurance Exception) of the Statutory Accounting Principles (E) Working Group.
6. Discussed the CAS/SOA Task Force’s Appointed Actuary CE Log.
7. Discussed comments on the *Best Practices for Regulatory Review of Predictive Analytics* white paper.
8. Heard reports from the American Academy of Actuaries (Academy) regarding the activities of its Committee on Property and Liability Financial Reporting (COPLFR) and its Casualty Practice Council.
9. Heard reports on actuarial professionalism from the Academy, the Actuarial Board for Counseling and Discipline (ABCD) and the ASB.
10. Heard reports from the CAS and the SOA on property/casualty (P/C) actuarial research.

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SURPLUS LINES (C) TASK FORCE

Wednesday, August 5, 2020

11:00 a.m. – 12:00 p.m. ET / 10:00 – 11:00 a.m. CT / 9:00 – 10:00 a.m. MT / 8:00 – 9:00 a.m. PT

Meeting Summary Report

The Surplus Lines (C) Task Force met Aug. 5, 2020. During this meeting, the Task Force:

1. Adopted its 2019 Fall National Meeting minutes.
2. Adopted the report of the Surplus Lines (C) Working Group, which met June 29, March 10 and Dec. 18, 2019, in regulator-only session, pursuant to paragraph 3 (specific companies, entities and individuals) of the NAIC Policy Statement on Open Meetings. During these meetings, the Working Group approved seven applications for the NAIC *Quarterly Listing of Alien Insurers*.
3. Adopted its 2021 proposed charges. No substantive changes were proposed for the charges.
4. Discussed a memorandum that outlined three potential courses of action regarding modifications to the *Nonadmitted Insurance Model Act (#870)*. The chair directed staff to develop a drafting group to produce a summary document that outlines the significant updates needed to modernize Model #870.
5. Discussed comments received regarding a 2021 annual blanks proposal regarding the modification of Schedule T to include a new part 3 that would add details on “Home State” direct premiums written. Following a lengthy discussion, the Task Force tabled the proposal.

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WORKERS' COMPENSATION (C) TASK FORCE

Wednesday, August 5, 2020

4:00 – 5:00 p.m. ET / 3:00 – 4:00 p.m. CT / 2:00 – 3:00 p.m. MT / 1:00 – 2:00 p.m. PT

Meeting Summary Report

The Workers' Compensation (C) Task Force met Aug. 5, 2020. During this meeting, the Task Force:

- 1.. Adopted its July 22 and June 2 minutes, which included the following action:
 - a. Adopted the NAIC *Workers' Compensation Policy and the Changing Workforce* white paper.
 - b. Adopted its 2019 Fall National Meeting minutes.
 - c. Discussed possible collection of workers' compensation data related to COVID-19.
2. Heard a presentation from MDGuidelines on workers' compensation treatment guidelines and formularies. MDGuidelines discussed what it learned from applying these guidelines to California's workers' compensation system, as well as discussed the remaining challenges.
3. Heard a presentation from the National Council on Compensation Insurance (NCCI) regarding issues related to COVID-19 and the NCCI's Atlas Initiative. The NCCI discussed the actions it took regarding the COVID-19 pandemic, as well as discussed some of the presumptions and legislative actions occurring in various states.

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CATASTROPHE INSURANCE (C) WORKING GROUP

Friday, July 31, 2020

4:30 – 5:30 p.m. ET / 3:30 – 4:30 p.m. CT / 2:30 – 3:30 p.m. MT / 1:30 – 2:30 p.m. PT

Meeting Summary Report

The Catastrophe Insurance (C) Working Group met July 31, 2020. During this meeting, the Working Group:

- 1.. Adopted its May 29 minutes, which included the following action:
 - a. Adopted its 2019 Fall National Meeting minutes.
 - b. Adopted the NAIC *State Disaster Response Plan*.
2. Heard an update regarding federal flood insurance. The National Flood Insurance Program (NFIP) is under its 15th short-term extension, which will expire at the end of September. The NAIC sent a letter to U.S. House of Representatives and U.S. Senate leaders urging action on a long-term reauthorization. Additionally, the Federal Emergency Management Agency (FEMA) released a guide to help emergency managers and public health officials prepare for disasters while continuing to respond to the coronavirus.
3. Heard a presentation from Milliman on the concept of a catastrophe modelling clearinghouse.
4. Heard a presentation from the Reinsurance Association of America (RAA) on catastrophe modelling.
5. Heard a presentation from the American Property Casualty Insurance Association (APCIA) on catastrophe modelling.
6. Heard a presentation from the Center for Insurance Policy and Research (CIPR) regarding the CIPR wildfire catastrophe modelling project.

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CLIMATE RISK AND RESILIENCE (C) WORKING GROUP
Friday, July 31, 2020
1:00 – 2:30 p.m.

Meeting Summary Report

The Climate Risk and Resilience (C) Working Group met July 31, 2020. During this meeting, the Working Group:

- 1.. Adopted its June 18 minutes, which included the following action:
 - a. Received an update on the drafting of the *Insurance Regulatory Discussion Points on Catastrophic Events* document.
 - b. Heard an update on California’s development of a sustainable insurance roadmap.
 - c. Heard a high-level summary of Ceres’ recently released *Addressing Climate as a Systemic Risk: A Call to Action for U.S. Financial Regulators* report.
 - d. Discussed its work plan for 2020.
2. Heard an update on the *NAIC Climate Risk Disclosure Survey* analyses being done by the NAIC Center for Insurance and Policy Research (CIPR) and the American Academy of Actuaries (Academy). CIPR plans to report in September 2020 on quantitative and qualitative responses for 2018. The Academy plans to report in December 2020 on the 2018, 2015 and 2012 responses and in 2021 on responses that include the Task Force on Climate-Related Financial Disclosures (TCFD).
3. Heard an update on California’s Climate Smart Insurance Product Database. The Climate Smart database lists more than 400 internationally available products that address climate risks, harness new technologies, and build resilience.
4. Heard a presentation on Swiss Re’s approach to climate change and sustainable insurance products. Swiss Re uses an Insurance Resilience Index to measure the contribution to the financial stability of households and organizations. The index indicates the insurance gap has been increasing from 2000 – 2018, with the largest growing protection gap being health.
5. Heard a presentation on Allianz’s approach to climate change and sustainable insurance products. Allianz views climate change as a risk driver to be managed as part of overarching risk governance architecture. It’s focused on decarbonizing investments and strengthening its climate risk disclosure. It uses six criteria to identify sustainable products with a specific environmental and social added value.
6. Heard a presentation on the American Property Casualty Insurance Association’s (APCIA) domestic and international climate-risk related activities.

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TERRORISM INSURANCE IMPLEMENTATION (C) WORKING GROUP

Thursday, July 30, 2020

4:30 – 5:30 p.m. ET / 3:30 – 4:30 p.m. CT / 2:30 – 3:30 p.m. MT / 1:30 – 2:30 p.m. PT

Meeting Summary Report

The Terrorism Insurance Implementation (C) Working Group met July 30, 2020. During this meeting, the Working Group:

1. Adopted its March 12 minutes, which included the following action:
 - a. Adopted its Feb. 11 minutes.
 - b. Adopted the model bulletin and policyholder disclosures.
2. Received an update on the 2020 joint state insurance regulator/U.S. Department of the Treasury terrorism risk insurance data call, with data due to both entities by May 15, and the state supplement, which collects ZIP code-level data, with data due Sept. 30.
3. Heard an overview of the workers' compensation terrorism risk insurance market, including state-level data on average premiums and take-up rates from 2011–2017.
4. Heard a presentation from NAIC staff regarding results from the state supplement portion of the terrorism risk insurance data call, including take-up rates, average premium rates, portions of premium allocated to terrorism risk and percent of exposures covered by terrorism insurance, at a ZIP code level.

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TRANSPARENCY AND READABILITY OF CONSUMER INFORMATION (C) WORKING GROUP

Thursday, July 30, 2020

3:00 p.m. ET / 2:00 p.m. CT / 1:00 p.m. MT / 12:00 p.m. PT

Meeting Summary Report

The Transparency and Readability of Consumer Information (C) Working Group met July 30, 2020. During this meeting, the Working Group:

- 1.. Adopted its July 16 and June 16 minutes, which included the following action:
 - a. Discussed creating social media content and the best formats to use to communicate with consumers.
 - b. Discussed flood insurance disclosures.
 - c. Heard a presentation from the American Property Casualty Insurance Association (APCIA), the NAIC Communications Division and consumer representatives regarding best practices each have discovered when using social media to communicate with consumers.
2. Discussed the need for consumer disclosures regarding significant premium increases on property/casualty (P/C) insurance products. States discussed their concerns and solutions for communicating information to consumers regarding premium increases. The Working Group plans to collect and compile information from states regarding processes that are already in place.

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Workers' Compensation Policy and the Changing Workforce

ABSTRACT

This paper explores how changes in work and the evolving landscape of legal employment are shifting responsibility for coverage and benefits for occupational injuries, illnesses, and fatalities. Policymakers and regulators need to understand how these changes may create gaps in coverage for workers and leave employers vulnerable to uncertain liability for injuries and deaths on the job. The paper also explores alternative policy solutions to ensure workers have access to benefits if they suffer workplace injury.

INTRODUCTION

Today's workforce and workplace look very different from the workforce and workplace when the first workers' compensation laws were passed. The cumulative impact of these changes has made it important to consider the role public policy plays in protecting workers from the health and economic consequences of an occupational injury, illness, or fatality. For most of the past century, a significant portion of workers in the U.S. labor force were protected against economic strain and physical harm through state workers' compensation laws. As work relationships have grown increasingly complex, there is uncertainty in workers' compensation protections for some in the labor force. The changes and discussions in this paper are a part of broader discussions on how employment benefits and protections might be revised, redesigned, or reimaged to reflect the contemporary work environment more accurately.

The twenty-first century workforce is more diverse, more de-centralized and more mobile than ever before. This is often at odds with employment classification laws, which were adopted when workers were predominately male and work was conducted in centralized facilities with a rigidly defined management hierarchy. Increasing work fluidity and the application of often conflicting state and federal law are resulting in business uncertainty and legislative proposals across the country. This paper presents an overview of the existing employment classification models and describes the latest legislation aimed at clarifying employment status.

Finally, the paper raises important policy questions that must be considered in light of the new work environment. Policymakers, in addition to business and labor leaders, will also appreciate the description of models and pilot programs that seek to deliver health and economic benefits to injured workers beyond the traditional workers' compensation system. Discussion and development of solutions is essential for continued economic prosperity and social stability.

Part I: Changing Relationships with Work

Background

An individual's connection to work shapes his or her life in visible and invisible ways – from lifestyle habits to self-esteem to social benefits. Throughout the last two centuries, those connections to work have become more formal and enshrined in local, state, and federal law. This work, or employment relationship, is important to individuals and their families as benefits and social protections are frequently gained through employment.¹

The first workers' compensation laws in the United States arose out of changes in the nature and connection to work. The Industrial Revolution saw workers move from farms and villages to cities, transitioning from farm and community-based work to manufacturing and industrial jobs. These changes resulted in more workers in employee/employer relationships with defined wages, hours, and job requirements.

Workers' compensation insurance prevents employees from taking legal action against their employers for workplace injuries, illnesses and deaths. In return, employees get defined benefits for covered injuries, illnesses and deaths regardless of fault or liability.²

Industrial work was dangerous, and work injuries and fatalities rose, reaching more than 61,000 deaths at work in the U.S. in 1914.³ Recognizing the economic and social cost of these injuries and deaths, state policymakers successfully passed workers' compensation laws in the majority of states by 1920. Workers' compensation was no-fault, providing guaranteed wage replacement and medical benefits for employees injured or killed at work.

A Century of Change

The past century has witnessed a transformation across the workforce and the workplace. The number of women in the labor force has steadily increased since 1948. Women represented 57.1% of the U.S. labor force in 2018.⁴ The labor force has increased in ethnic diversity. Hispanics represented 17% of the U.S. labor force in 2016 and all minorities (African-Americans, Asian-Americans, Hispanics/Latinos, and Native Americans) are projected to make up 37% of the working-age population by 2020.⁵ The labor force is steadily getting older. Workers 55 and older are projected to be close to 25% of the labor force by 2024. Union participation has been in decline; 10.7% of wage and salary workers were union members in 2017 (Figure 1).⁶ Higher education has also played a part in the labor force. Between 1992 and 2016, workers with college degrees, including advanced degrees, has increased steadily.⁷

¹ Employment benefits can include health, disability, and/or life insurance, retirement contributions, paid time off, flexible spending accounts, and/or tuition reimbursement. Social protections can include unemployment, workers' compensation, accommodations, equal opportunity, etc.

² Workers' Compensation: Overview and Issues, <https://fas.org/sgp/crs/misc/R44580.pdf>

³ Bureau of Labor Statistics.

⁴ <https://www.bls.gov/opub/reports/womens-databook/2019/home.htm#:~:text=Women's%20labor%20force%20participation%20was%2057.1%20percent%20in%202018%2C%20little,unchanged%20from%20the%20previous%20year.>

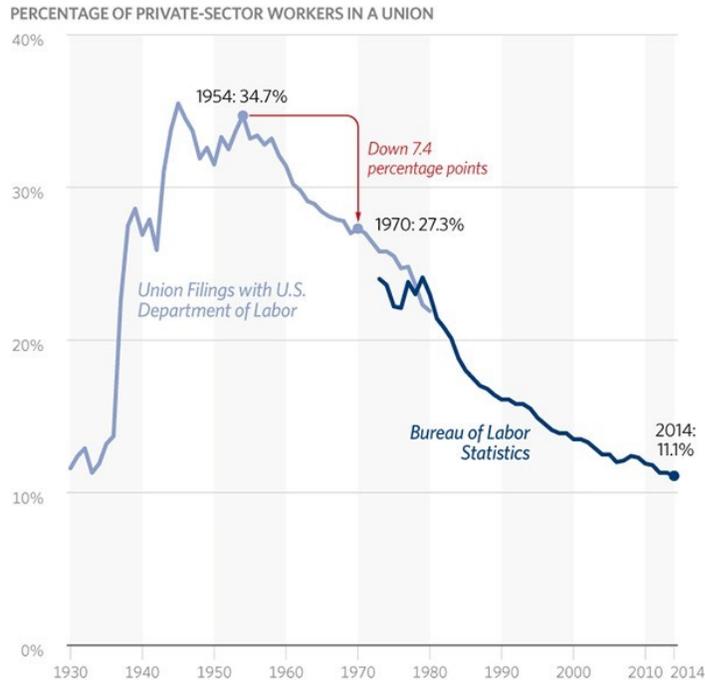
⁵ The National Center for Public Policy and Higher Education, figure 1. See:

https://www.google.com/url?sa=i&source=images&cd=&ved=2ahUKewi7iJymr9jlAhWOqp4KHcycDgUQjRx6BAgBEAQ&url=http%3A%2F%2Fwww.highereducation.org%2Freports%2Fpa_decline%2Fdecline-fl.shtml&psig=AOvVaw3uOJhMnZZkdRllmJCFoRP_&ust=1573225338643184

⁶ Union Rates: <https://www.bls.gov/news.release/union2.nr0.htm>

⁷ <https://www.bls.gov/spotlight/2017/educational-attainment-of-the-labor-force/pdf/educational-attainment-of-the-labor-force.pdf>

Figure 1. Union Membership Rates Began Falling in Mid-1950s



Sources: Data for 1930-1980: U.S. Department of Labor, assorted labor union reports/Haver Analytics. Note these figures exclude employee associations. Data for 1977-2014: Barry T. Hirsch and David A. Macpherson, "Union Membership and Coverage Database from the Current Population Survey," Unionstats.com, <http://www.unionstats.com> (accessed February 23, 2015), and U.S. Department of Labor, Bureau of Labor Statistics. Data was interpolated for 1982.

The workplace is physically different. Offices that had rows of desks with telephones and typewriters have been replaced by flex workstations and collaboration rooms. It is estimated that 4.3 million employees, close to 3% of the U.S. labor force, worked at home at least half the time in 2016. Additionally, regular work-at-home by employees have grown 140% over the last decade.⁸ Manufacturing facilities have moved from manually operated heavy equipment to technology-run, highly automated processing. <https://globalworkplaceanalytics.com/telecommuting-statistics>

<https://qz.com/work/1392302/more-than-5-of-americans-now-work-from-home-new-statistics-show/>

The kind of work is changing. The last century saw steady decline in agricultural work, manufacturing has remained steady, and service work has dramatically increased. The U.S. Bureau of Labor Statistics (BLS) projects that nine out of 10 new jobs in the next decade will be in the service-providing sector.⁹ Healthcare, personal care, community and social services, and computer and mathematical employment are some of the expected fastest-growing occupations.

These changes have dramatically impacted the way people work and live across the U.S. The cumulative impact of these changes is an expansion of the U.S. economy. Real gross domestic product (GDP) has grown from approximately \$3 trillion in 1957 to \$19 trillion in 2019.¹⁰ Labor productivity was 3.8 times higher in 2016 than in 1950 (Figure 2).¹¹

⁸ Work at home: <http://globalworkplaceanalytics.com/telecommuting-statistics>

⁹ <https://www.bls.gov/news.release/pdf/ecopro.pdf>

¹⁰ Data source found at: <https://www.thebalance.com/us-gdp-by-year-3305543>

¹¹ Data source found at: <https://research.stlouisfed.org/publications/economic-synopses/2016/08/12/labor-compensation-and-labor-productivity-recent-recoveries-and-the-long-term-trend/>

Figure 2. Compensation and Productivity: Long-Term Trend



NOTE: Both lines are normalized to 1 at 1950:Q1. Labor productivity equals real total output divided by total hours worked. Labor compensation equals real total labor compensation divided by total hours worked.

SOURCE: BLS Labor Productivity and Costs dataset for the nonfarm business sector.

Over the century, work has also gotten safer. Workplace injuries and fatalities have declined dramatically. The workplace fatality rate was 3.5 workers per 100,000 in 2018¹² contrasted with 61 workers per 100,000 in 1914¹³. The rate of injuries/illnesses requiring time away from work was 2.8 per 100 workers in 2018 contrasted with five per 100 workers in 1914.¹⁴

The decrease in occupational injuries, illnesses, and fatalities is especially good for workers' compensation. These declines are keeping more employees engaged in the labor force and making it more affordable for businesses to obtain coverage. However, demographic and work changes have raised other challenges for the workers' compensation system. The kinds of injuries and illnesses are different, compensability questions are different, and treatment options are different. These, taken with the evolving employment relationship landscape, raise important questions about the central principles of workers' compensation and if and how they should evolve in the future.

Connections to Work

Another significant change happening within the U.S. labor force is how individuals are connected to work. From the legal perspective, there are two classifications of workers - employees and independent contractors. The common picture of an independent contractor is a person with specialized skills, talents, or expertise who works on a project basis. Independent contractors would typically have multiple clients and conduct their work with a fair degree of autonomy. Businesses would use independent contractors to supplement knowledge or experience of their existing workforce on a temporary basis to meet demand or deadlines.

Employee or Independent Contractor

Workers' compensation is generally compulsory for employers,¹⁵ and each state has rules that define employees for the purpose of workers' compensation coverage. Securing workers' compensation coverage for each of its employees is a direct business cost. In contrast, independent contractors are generally not required to have workers' compensation coverage.

¹² <https://www.bls.gov/news.release/pdf/cfoi.pdf>

¹³ <https://www.bls.gov/opub/mlr/2016/article/the-life-of-american-workers-in-1915.htm>

¹⁴ Bureau of Labor Statistics.

¹⁵ All states, except Texas and South Dakota, have compulsory workers' compensation requirements for employers. Exclusions for certain employers or kinds of employees exist in most states. The IAIABC/WCRI Inventory of Workers' Compensation laws describes coverage exclusions for each of the states.

Defining an employee or independent contractor has been a challenge within state workers' compensation systems, but classification has become more difficult as employment relationships have increased in complexity. These changes have important implications for workers' compensation, including which workers should be covered under workers' compensation and who should bear the costs of coverage. Additionally, policymakers are needed to explore how coverage requirements align incentives for businesses and workers.

While many businesses use independent contractors for highly specialized or project-based work, many organizations have made contract labor a more permanent part of their workforce. July 2018 headlines noted that the number of contractors now exceeds the number of employees at Google.¹⁶ Countless large businesses, including Apple, Facebook, and Amazon, have noted the same trend. Contract labor is used by businesses for everything from security and food service to coding and sales.

The decision by a business in how to classify its workers is significant as many protections and benefits for workers are tied to employment, including workers' compensation coverage requirements. Businesses weigh many factors when considering utilizing employees or independent contractors, but the direct cost to businesses for employees is estimated at 20-30% higher than independent contractors.

Table 1. Employee vs. Independent Contractor Status

	Business Considerations		Worker Considerations	
	Pros	Consequences	Pros	Consequences
Employees	<ul style="list-style-type: none"> Control over how, when, and where work is conducted. Less turnover Reduced litigation from employment classification disputes 	<ul style="list-style-type: none"> Higher cost (contributions to Medicare, SS, UI, WC, other payroll contributions) Compliance and enforcement with employment protections (ADA, minimum wage, FMLA, anti-discrimination, etc.) 	<ul style="list-style-type: none"> Employer contributions to Medicare, SS, UI, WC, other payroll contributions Employment protections (ADA, minimum wage, FMLA, anti-discrimination, etc.) Stability and security 	<ul style="list-style-type: none"> Diminished flexibility in how, when, and where work is conducted Limited ability to work for multiple businesses
Independent Contractors	<ul style="list-style-type: none"> Reduced cost More flexibility (on-demand labor) Gain specialized skills or experience 	<ul style="list-style-type: none"> Less control over how, when, and where work is conducted. Increased turnover Potential liability for injuries/illnesses/deaths by contractor Increased exposure to employment classification lawsuits 	<ul style="list-style-type: none"> Flexibility in how, when, and where work is conducted Ability to work with multiple businesses/clients 	<ul style="list-style-type: none"> Responsible for all required payroll contributions Not covered by many employment protections

¹⁶ <https://www.bloomberg.com/news/articles/2018-07-25/inside-google-s-shadow-workforce>

Alternative Work Arrangements

Whether a worker benefits from the protection of a workers' compensation policy depends on whether he or she is classified as an employee or an independent contractor. However, several alternative work relationships exist that fall along the spectrum of employee and independent contractor. These alternative work relationships create additional complexity in determining employment classification. The following alternative work arrangements are defined and tracked by the BLS:

Independent contractors: Workers identified as independent contractors, independent consultants, or freelance workers, regardless of whether they are self-employed or wage and salary workers.

On-call workers: Workers called to work only as needed, although they can be scheduled to work for several days or weeks in a row.

Temporary help agency workers: Workers paid by a temporary help agency, whether or not their job is temporary.

Workers provided by contract firms: Workers employed by a company that provides them or their services to others under contract, are usually assigned to only one customer, and usually work at the customer's work site.

For the purposes of this paper, alternative work arrangements refer to any work performed by anyone not legally defined as an "employee." Alternative work arrangements raise important questions about coverage for injuries, illnesses, or fatalities occurred while working.

Platform Work

Alternative work arrangements are not new; however, expanded internet connectivity has created new ways to connect to work. Companies allowing workers or service providers to connect to clients or customers via the internet are often described as online platforms. Online platforms have created additional complexity in defining the legal work relationship. The rise of online platforms is often seen as being synonymous with the sharing or "gig" economy; however, these platforms reflect an example of a way to facilitate an alternative work arrangement.

Some platform workers may use this type of work as supplemental income while having a full-time job. Others work for multiple platforms at one time, piecing together a living wage.¹⁷ Platform work has expanded broadly across industries, with many types of work and services offered.

Table 2. Examples of Online Platforms

Industry	Companies
Human Intelligence Tasks	Amazon Mechanical Turk
Service (cleaning, installation, etc.)	Taskrabbit, Handy, Shiftgig
Transportation	Uber, Lyft, Sidecar
Shipping/Logistics	Postmates, Airmule
Legal	UpCounsel, PowerUp Legal,
Design/Communications	Upwork, 99designs, freelancer

By the Numbers

Quantifying the number of individuals within these various work arrangements is important in understanding how many workers are not covered if they have an occupational injury, illness or fatality. A rising number of individuals in alternative work arrangements could necessitate the need for new private or public solutions to address coverage gaps. Design and implementation of new programs will be influenced by who and how many workers they will serve.

Numerous public and private research efforts have attempted to quantify individuals in various work arrangements. Estimates range from less than 3% to more than 40% of the workforce. There are many

¹⁷ It is estimated that 40% of platform workers work for multiple platforms at one time. *2015 1099 Economy Report* by Requests for Startups published May 2015.

reasons for the significant difference in estimates, including data sources, survey methodology, definitions of work arrangements, and counting primary or supplemental income.¹⁸

Estimates of Alternative Work Arrangements

Date	Publication	Description	Estimate
May 2019	MBO Partners: The State of Independence in America	Report by MBO Partners measures independent workers in the U.S. economy.	12.3% of workforce engages in “full-time independent work.”
June 2018	BLS Contingent Worker Supplement	Published by the Bureau of Labor Statistics, the supplement measures workers in contingent (short-term or temporary) or alternative arrangements (independent contractors, temporary, on-call, or contract) as their primary source of income.	10.1% workforce in alternative arrangements for “primary income source”
May 2018	Report on Economic Well-Being of U.S. Households in 2017	Released by the Federal Reserve System, the survey measures adults engaged in “gig work” including both offline and online services and sales. ¹⁹	31% adults engaged in “gig work”
2018	State of Independence in America 2018	Longitudinal study by MBO Income that quantifies workers with independent work arrangements, including consultants, freelancers, contractors, temporary and on-call workers.	26.9% of employed population in independent work
October 2017	Freelancing in America, 2017	Published by the Freelancers Union and Upwork, the publication estimates the number of workers in supplemental, temporary, project or contract-based work.	36% of the workforce in alternative work

This broad range and lack of research consensus has resulted in inconsistent focus and no clear mandate for policy change.

Beyond measuring the number of individuals in different types of work arrangements, it is also useful to examine multi-year trends. Besides the 2017 BLS Contingent Workforce Supplement, most studies have charted an increase over the last decade in the percentage of individuals engaged in independent or alternative work for primary or supplemental income. If this trend continues it may have important implications for labor and employment policy, including workers’ compensation programs.

Impact of Change

These changes and continued technological advancement will influence the U.S. workforce and workplace in the years to come.

Some of these changes have a direct impact on workers’ compensation systems. The long-term trend of declining injuries and illnesses has translated to stable or reduced premiums for employers and robust private insurance markets in most states. Other changes have influenced how care is delivered and return-to-work opportunities for those displaced from work.

Other changes, including labor force demographics and new work environments, could influence workers’ compensation both directly and indirectly. Demographic changes are influencing who, how, and where individuals are connecting to work. The differing needs (flexibility, portability, supplemental income, debt repayment, etc.) of these diverse workers may result in accelerating growth in alternative work arrangements. The ability to engage and perform services in new ways, virtual and remote, blurs lines between control and the direction of work.

Taken in whole, these changes are increasing the need to examine existing labor law and how social benefits and protections are delivered in the future. The workers’ compensation system does not exist in a vacuum. Coverage for an occupational injury, illness, or fatality must be considered in the context of the large-scale changes within the

¹⁸ Cornell University’s School of Industrial and Labor Relations and the Aspen Institute’s Future of Work Initiative maintain the Gig Economy Data Hub which catalogues public and private research efforts to quantify various alternative work arrangements.

¹⁹ Offline services could include caregiving or house-cleaning and offline sales could include flea markets or thrift sales; online services could include platform or app work and online sales could include selling items online.

economy. At the heart of this discussion is how workers are connecting to work and who will bear responsibility for any occupational injury, illness, or fatality that occurs.

Part II: Determining Employment Status

Employment status is essential for understanding the benefits and protections to which a worker is entitled and the financial obligations a business must pay. The rules for this determination are found in federal and state statute. This is a complex and nuanced area of the law, with determinations of employment status dependent on the application of various tests and characteristics.²⁰ There is no coordination of employment determination between federal and state law.

Federal Standard

Federal statutes define “employee” in many different ways. Employment related tests are considered by the Internal Revenue Service (IRS), U.S. Social Security system, Federal Insurance Contributions Act (FICA), federal Fair Labor Standards Act (FLSA), federal Civil Rights Act, federal Age Discrimination in Employment Act (ADEA), Americans with Disabilities Act (ADA), Federal Unemployment Tax Act (FUTA), and many others.

Three tests have been used in employment determination under federal law. Depending on the law, test used, and case-specific facts, a worker could be considered an employee under one law and an independent contractor under another. Employee determination under federal law does not influence workers’ compensation coverage obligations under state law. However, there are similarities in the many characteristics considered at the state and federal level. In addition, continued changes in how workers connect to work may result in pressure to clarify and/or align employment under various areas of the law.

Tests for Employment Determination under Federal Law²¹

Common law (control): The common law test hinges on control of the means and methods of work. This can include a variety of different factors including direction and supervision of work activities, tools and materials, payment, and intent of the relationship. The IRS uses the common law test and advises three broad categories of consideration: 1) behavioral control; 2) financial control; and 3) relationship of the parties.²²

Economic realities: The economic realities test looks at the financial dependence of a worker on services performed for a specific business. This can include a variety of different factors, including the level of financial risk, whether services are integral to the business operation, and investment in facilities and equipment. The economic realities test is commonly applied under the FLSA which governs minimum wage and overtime requirements. The economic realities test is broader than the control test and generally favors employee status.

Hybrid: The hybrid test looks at both economic and common law factors. Under the hybrid test, economic realities are more heavily weighted than common law characteristics. The hybrid test has been applied in employment determinations under Title VII of the Civil Rights Act. (*see* <https://www.bls.gov/opub/mlr/2002/01/art1full.pdf>)

Numerous cases have tested the interpretation of federal law in determining employment status. A series of FedEx cases across 20 states²³ found the company improperly classified ground delivery drivers as independent contractors. The decisions hinged largely on the direction and control of drivers. Factors considered included requirements by FedEx drivers to wear uniforms, adhere to appearance standards, drive approved vehicles, and deliver packages on specific days and within certain times.

Decisions of the National Labor Relations Board (NLRB) have also been influential in the interpretation of federal law in this area. Most recently, a January 2019 ruling overturned a 2014 decision²⁴ in favor of employee status based on the application of factors related to entrepreneurial opportunity. The NLRB decision in SuperShuttle DFW noted the independence of drivers in setting hours, ownership/lease of vans, and control of payment methods results in

²⁰ Even the courts have expressed frustration in the lack of clarity in employment determinations. The Supreme Court, for example, has referred to the definition of an employee under the Americans with Disabilities Act as a “mere ‘nominal definition,’” *Clackamas Gastroenterology Assocs. v. Wells*, 538 U.S. 440, 444 (2003), and has stated that the definition of an employee under the Employee Retirement Income Security Act is “completely circular and explains nothing,” *Nationwide Mut. Ins. Co. v. Darden*, 503 U.S. 318, 323 (1992)

²¹ See [https://www.law.upenn.edu/journals/jbl/articles/volume14/issue3/Rubinstein14U.Pa.J.Bus.L.605\(2012\).pdf](https://www.law.upenn.edu/journals/jbl/articles/volume14/issue3/Rubinstein14U.Pa.J.Bus.L.605(2012).pdf)

²² See IRS at <https://www.irs.gov/newsroom/understanding-employee-vs-contractor-designation>

²³ Numerous lawsuits against FedEx were filed beginning in 2004. Two class action lawsuits were heard and decided by the Seventh Circuit Court of Appeals and the Ninth Circuit Court. The decisions resulted in mediated settlements with FedEx of more than \$400 million.

²⁴ NLRB in a 2014 FedEx case found in favor of employee status for drivers based on application of the common law test emphasizing direction and control.

significant entrepreneurial opportunity. The greater the entrepreneurial opportunity the more likely it is an independent business which would favor independent contractor status. (*see SuperShuttle DFW, Inc. and Amalgamated Transit Union Local 1338.*)

This decision was influential in shaping the NLRB Advice Memorandum related to Uber and Uber drivers' ability to unionize. The memo finds drivers for Uber are independent contractors based on the factors discussed in SuperShuttle DFW, with significance placed on control over manner and means and how the driver is compensated. Both decisions cite entrepreneurial independence as a key consideration in independent contractor status.

The NLRB notes, "Whether to take advantage of these opportunities were among the many entrepreneurial judgments UberX drivers made due to their freedom to set their work schedules, choose log-in locations, and pursue earnings opportunities outside the Uber system." The ability to work for competitors beyond Uber outweighed other factors of control asserted by the platform, including baseline fares, inability to subcontract work or repeated rejection of trips. Additionally, they noted that minimum service standards and driver ratings had little impact on the driver's earning potential. (*see Uber Technologies, Inc. Cases 13-CA-163062, 14-CA-158833, and 29-CA-177483.*)

In considering platform workers, the U.S. Department of Labor (DOL) issued an opinion letter in April 2019 which designated service providers of one platform as independent contractors under the FLSA. In applying the "economic realities" test, the U.S. DOL considered six factors²⁵ of service providers who secured jobs through the virtual platform. The opinion letter described the platform as a referral service not an employer.

These recent opinions have been interpreted by many as a signal of the current administration's leaning toward liberal application of independent contractor status. It is noted again these interpretations have no bearing in employment classification status under state workers' compensation laws. It remains to be seen if state courts will evaluate control or economic realities tests in similar ways.

State Standards

In 2017, more than 140 million U.S. jobs were covered under state workers' compensation systems (NASI, Workers' Compensation Benefits, Cost, and Coverage, 2019). State law defines workers' compensation coverage requirements across the U.S. In all states but Texas and South Dakota,²⁶ coverage is compulsory for employers. However, coverage exemptions are common. Many states do not require that workers' compensation coverage be purchased for domestic and agricultural workers²⁷ and small employers.²⁸

The general trend over the past century has been expansion of coverage to increase the number of workers protected under the workers' compensation system. The rise of alternative employment relationships may signal a reversal of this trend. The more workers that find themselves in alternative work arrangements, the more likely they will fall outside the protection of workers' compensation.

Much like federal law, there may be multiple definitions of "employee" within a state that apply to different areas of the law. This can include intra-state variation across the department of revenue, unemployment insurance, and/or workers' compensation.

In an effort to simplify and reduce confusion from differing "employment" determinations across state agencies, some states have sought to develop a statewide definition of "employee." One such effort was in Maine, when the governor created a cross-agency task force comprised of the Maine DOL, Maine Workers' Compensation Board, and the Maine Attorney General's Office, to develop a single definition of "employee." The result was the following:

Services performed by an individual for remuneration are considered to be employment subject to this chapter unless it is shown to the satisfaction of the bureau, that the individual is free from the essential direction and control of the employing unit, both under the individual's contract of service and in fact, the employing unit proves that the individual meets all of the criteria in Number 1 and three (3) of the criteria in Number 2 as listed below. (See https://www.maine.gov/labor/misclass/employment_standard.shtml)

²⁵ The six factors included control; permanency of relation; investment in facilities, equipment, and helpers; skill, initiative, judgment, or foresight required; opportunity for profit and loss; and integrality.

²⁶ Workers' compensation is voluntary in both Texas and South Dakota. In both states, employers lose the right to the exclusive remedy if they fail to purchase coverage.

²⁷ Recently, exemptions for agricultural workers have been challenged. The New Mexico Supreme Court ruled in 2016 that the agricultural exemption was unconstitutional.

²⁸ A list of state-by-state exemptions can be found in Table 2 of the WCRI/IAIABC Workers' Compensation Laws as of January 1, 2019.

A similar effort is underway in Alaska, which is in response to the adoption of a new eight-part independent contractor test passed in 2018. (See HB 79).

State Employment Classification

Classification of a worker as an employee or independent contractor is essential for the workers' compensation system as it determines the coverage obligation²⁹. From the legal perspective, states are varied in their approach to employment classification. In general, states fall into the following categories:

“Employee” Presumption: Twenty-five states presume a worker is an employee unless they meet the requirements of an independent contractor. A worker may be found to be an independent contractor by meeting certain criteria as defined by law (i.e. they meet all nine provisions set forth in statute) or as determined by an opinion of a judicial body (i.e., determination by a commissioner or judge based on case specific facts).

“Independent Contractor” Presumption: Two states presume independent contractor status for those workers who have completed necessary requirements before beginning work. These requirements generally include a written contract/form filed with the state confirming independent contractor status. The presumption of independent contractor status can be overcome.

Silent: Twenty-three states have no presumption of status for a worker. The criteria for determining employment status may be described but are applied to cases individually.

Appendix A compiles the state standards used to determine employment classification status for purposes of workers' compensation coverage.

State Employment Tests

Similar to federal law, states have developed a variety of tests and/or criteria that are used in the decision of employment status. There are numerous factors considered in state law but generally states evaluate based on:

Control of the means, manner, and methods of work: Rooted in common-law, decisions about *what work must be accomplished* and *how it should be done* are central to considering control in the employment relationship. Factors of control vary across states but include who sets days/hours of work, manner in how work is conducted, service standards, appearance requirements, quality specifications or other factors interpreted as giving direction to a worker.

Relative nature of work: Considers the type of work and how it relates to core business functions. Examines how fundamental the work is to what the business does or how it operates.

Hybrid: Weighs factors of both control and the relative nature of work.

Each state has a body of case law that interprets statutes and rules based on case-specific facts. A single decision may be precedential, resulting in more or less workers considered employees for purposes of workers' compensation coverage. The opinion of the California Supreme Court in *Dynamex* demonstrates the time, cost, complexities and impact a case can have with respect to employment classification.

In 2004, *Dynamex* converted its delivery drivers to independent contractors. The company was sued, and the final ruling was issued in 2018, which found the delivery drivers were in fact employees of the company. In the decision, the California Supreme Court applied the ABC test, which requires **all** three factors be met to be considered an independent contractor. The three factors include:

- (1) Freedom from control or direction in the performance of work under the contract or engagement.
- (2) Work is outside the work of the hiring entities normal business.
- (3) Worker is engaged in an independently established trade, occupation or business of which they are performing the work.

Many have interpreted the application of the ABC test as significantly expanding those workers considered employees³⁰ in California.

²⁹ Employment status may also affect the funding mechanism of state worker' compensation agencies. In many states, the agency is funded through a maintenance tax or surcharge of gross workers' compensation insurance premiums. Typically, workers' compensation premium is calculated based on an employer's payroll. The lower the payroll, the lower the premium, which results in less maintenance tax collected to support the workers' compensation system administration in the state.

³⁰ The ABC test standard for employment classification in California took effect on January 1, 2020 as a result of the passage of House Bill 5.

In contrast, courts in other states did not find an employer-employee relationship based on similar factors. In 2018, the New York Appellate Division held there was no employer-employee relationship in *Vega vs. Postmates Inc.* because couriers failed to provide sufficient proof of Postmates' control over the way work was performed. *Sebago vs. Boston Cab Dispatch* in 2015 found that taxicab drivers were independent contractors because they were free from control and direction of the cab companies.

Marketplace Contractors

The state-by-state nature of employment law, uncertainty, cost and time to confirm employment status creates a volatile business environment. In the past several years, platform companies have worked to change laws to clarify the status of platform service providers as independent contractors. A new term of art, marketplace contractors, was defined, which applies to service providers who are connecting to work through a virtual platform.

Between 2016 and 2018, eight states successfully passed legislation or rule related to marketplace contractors. The eight states are: Arizona, Florida, Indiana, Iowa, Kentucky, Tennessee, Texas,³¹ and Utah. Under these new laws, platform service providers are independent contractors if they meet certain requirements. Common marketplace contractor criteria include:

- Written agreement between the platform and the marketplace contractor that says the marketplace contractor is providing services as an independent contractor and not an employee. Most of the legislation granted retroactive status if these agreements were in place previously.
- The platform must be virtual: a web, mobile application or software program. Some legislative language specifically excludes phone or fax services or prohibits services being carried out in a physical location within the state.
- Payment for services performed must be paid on a contract or rate basis. The marketplace contractor is responsible for all tax obligations.
- The marketplace contractor is responsible for providing their own tools or materials to complete the work.
- The marketplace contractor can set his or her own hours.

Some states may have exclusions include transportation networking companies (TNCs), freight transportation, political subdivisions, religious/charitable/educational organizations, and American Indian tribes.

Impact of Legal Uncertainty of Employment Classification

Changes in the workforce noted in Part I raise questions about the application and applicability of current methods of determining employment status, especially as related to control of means and methods of work. Work is being organized and performed in ways that allow both independence and oversight in ways that does not fit neatly within current legal frameworks described in Part II. The continued evolution of workers connecting and performing work in new ways may require revision³² or a redesigned framework for employment classification.

Part III: Alternative Coverage Models

Changes in work relationships raise important public policy questions about the protections and benefits currently linked to employment. A continued increase in alternative work arrangements may necessitate new models and programs for social protections, including wage replacement and medical care for occupational injuries, illnesses and fatalities. New programs might exist within the current workers' compensation system or outside of it. Regardless, consideration of the human, economic and social costs of injuries, illnesses and fatalities at work is an important element to be included in future policy conversations.

Several ideas have emerged that consider benefits and protections in new forms. The following are strategies considered for protecting workers and businesses from the health and economic costs of a work injury:

Independent Contractor Coverage

One way to extend coverage is to amend the state workers' compensation statute to allow a business to optionally provide workers' compensation coverage to designated independent contractors. Elective coverage for an independent contractor would extend exclusive remedy for the business and be considered

³¹ The Texas Workforce Commission adopted a rule (40 T.A.C. § 815.134) which defines a "Marketplace Contractor" as an independent contractor and makes those individuals ineligible for unemployment benefits. Since workers' compensation is optional in Texas it has no impact on workers' compensation coverage.

³² There have been discussion papers on alternative options for employment classification. Some have argued for dependent contractor and others have lobbied for independent workers. Any new direction would clearly need to identify which benefits and protections, including workers' compensation, would be conferred by that status.

a benefit for the contractor. If properly structured, this would not affect the individual's independent contractor status for unemployment insurance and wage purposes. Texas allows this option for hiring contractors in Texas Labor Code, Section 406.144.

Black Car Fund

The **Black Car Fund** is a mechanism that provides workers' compensation coverage for more than 70,000 black car drivers in New York. The Fund was created in 1999 and is funded by a surcharge paid by the customer on each ride provided by an eligible driver.³³ Drivers obtain coverage through their dispatch organizations, which are members of the Fund. The unique statutory nature of the Black Car Fund designates drivers as "employees," so they are eligible for workers' compensation benefits under New York state law. They retain independent contractor status for all other purposes.

More generically, this concept could be considered a "guild model" where workers providing services in a specific industry (transportation, hairdressing, engineering, etc.) could access workers' compensation coverage collectively. This could be an attractive alternative for platform companies because the statutory nature of the fund gets around paying "benefits" that could be interpreted as "employee status."

Occupational Accident Insurance

The private insurance market offers **occupational accident insurance** policies for those workers not eligible for workers' compensation. These policies are often associated with high-risk industries with a significant number of independent operators/contractors (i.e. long-haul trucking). An occupational accident insurance policy offers defined coverage for a work-related injury or fatality by the policyholder. Coverage can be purchased directly by an operator/independent contractor or offered by a platform/contracting company.

As a general matter, occupational accident insurance typically includes coverages and benefits associated with workers' compensation insurance including medical, wage replacement and death benefits. However, there are important differences in a workers' compensation policy and an occupational accident policy. Occupational accident policies generally have a total benefits cap: a cap on medical benefits, and a cap on wage replacement. In addition, there may be no compensation for permanent impairment or consideration of vocational rehabilitation. There are often exclusions for kinds of injuries/illnesses covered, and abbreviated injury or claim reporting requirements. While there is limited access to an external dispute resolution system, occupational accident insurance is subject to the standard insurance claim dispute processes (e.g., a claimant is permitted to file a complaint with his/her state insurance department, and the insurer is subject to fair claims handling and bad faith laws).

One example is the **driver injury protection** policy offered to Uber drivers by Aon and Atlantic Specialty Insurance. Uber drivers pay \$0.03 per mile, and coverage includes medical benefits, wage replacement benefits and death benefits if they suffer a covered injury while on the app is on. Likewise, as of June 2019, DoorDash now maintains occupational accident insurance on behalf of all U.S. "Dashers" while on a delivery.

Occupational accident insurance is regulated under a different line of insurance than workers' compensation. This may create a disconnect or confusion for both businesses and workers regarding benefits across the two types of coverage.

Disability Insurance

Another mechanism for providing coverage is expanded use of disability insurance. Disability insurance provides wage replacement benefits for an individual who suffers a sickness or injury. Disability insurance has both private and public insurance options, and five states³⁴ have mandatory disability insurance programs.

There are key differences between disability insurance and workers' compensation: Disability insurance does not pay medical benefits, wage replacement is capped, and there is no consideration of either permanent partial or total disability or fatalities.

Portable Benefits

³³ The current surcharge is 2.5%, <https://www.nybcf.org/faqs>

³⁴ California, Hawaii, New Jersey, New York, and Rhode Island

Portable Benefit accounts de-couple social protections from the employer and offer coverages to an individual worker. An account is funded, and can then be used to obtain various coverages including healthcare, disability or occupational accident insurance, and/or workers' compensation. Funding of the account could be designed in many ways but could include contributions from an employer(s), platform(s), contract organization(s), client(s), and/ or the worker.

Portable benefit accounts have been conceptually supported by policymakers, businesses, labor leaders, and think tank organizations but have not been widely piloted. Important policy, design, and administrative questions must be defined in order to understand if portable accounts would be effective in deliver benefits for work-related injuries, illnesses, and fatalities.

Each of these mechanisms could serve as a model for extending work-related injury, illness and fatality coverage for workers in alternative work arrangements.

Policy Questions and Considerations

Exclusive remedy: One of the central principles of workers' compensation is exclusive remedy. Employees who have a work-related injury, illness or fatality receive the medical and wage replacement benefits afforded to them by state law. Once those have been received, employers have no further liabilities. If alternative coverage mechanisms are developed, should exclusive remedy be afforded to those businesses? What provisions or standards must be met to have exclusive remedy?

Universal coverage: Workers' compensation started off as a voluntary program but trended toward universal coverage (with some exceptions). Coverage had clear benefit for both employers and employees. If universal coverage is desirable, you must decouple the mandate from the employment relationship (i.e., employee only) and determine how coverage can be delivered in different environments (i.e., Do independent contractors have to purchase a workers' compensation policy?).

Standard benefits: Workers' compensation benefits (wage replacement and medical) are defined in state statute and applied in the same way for all employees in a state. The advantage of a statutory benefit scheme is that it creates equity across all employees/employers and promotes societal stability (given adequacy of benefits). The disadvantage of this scheme is that benefits may not always be "fair" (i.e., account for pain/suffering; maximums penalize high income earners, etc.).

Funding/Delivery: Workers' compensation policies are funded by employers who pay premiums or self-fund. In nonstandard work arrangements, the financial responsibility for an occupational injury is ambiguous and, therefore, who funds coverage bears discussion. Is it the contracting firm's responsibility (i.e. for all workers regardless of employment status), or is there a cost-sharing obligation by classification or work type?

Market Access: Workers' compensation has developed market solutions for businesses who are unable to purchase coverage in the voluntary market (residual market or insurer of last resort). Is a solution like this required or desired for workers in alternative work arrangements? Should the cost of coverage be a consideration in developing or determining solutions (i.e., if you are making \$1,000 a year in additional income should you have to buy a policy that costs you some fraction of that?).

Safe Harbor: Should safe harbor provisions exist for businesses who purchase or offer some coverages (health, workers' compensations, etc.) to ensure they are not interpreted as employment status? What provisions would need to be met for safe harbor? What liabilities would the business and worker face in these situations?

Conclusions

Workers' compensation is an essential element of the protections and benefits businesses and workers have had in the last century. Employers gain certainty and limit their liability to injuries, illnesses, or fatalities that occur at work. Employees receive healthcare and wage replacement to heal and recover with lessened financial burden. This fragile balance has resulted in sustained stability and equity for most American businesses and their workers.

The employee-employer framework on which the U.S. workers' compensation system is built has become increasingly complex. Businesses are relying more and more on a labor force that does not neatly fit within legally defined employees and independent contractors. These external changes have the potential for significantly changing employment related protections and benefits.

This presents real questions for the workers' compensation system. Policymakers, labor, management, and other system stakeholders need to begin considering and preparing for these impacts. 100 years ago, workers' compensation was adopted after countless lives were lost or seriously damaged by a work injury. Proactively

addressing new changes in work and the workplace are the key to responding without more lives lost by American workers.

Appendix A: State Standards Used to Determine Independent Contractor Status (2019)

State	Presumption employee status	Special Rules Specific Occupations	General Description of Criteria
AL	No provision	ALA. CODE § 25-5-50 (2017)	<p>If the employer’s right of control over the individual extends no further than directing what is to be ultimately accomplished, the individual is an independent contractor. The employer must not retain the right to dictate the manner of operation or how the work should be done. The factors to be considered in determining whether an individual or an entity has retained the right of control include:</p> <ol style="list-style-type: none"> (1) Direct evidence demonstrating a right or an exercise of control. (2) The method of payment for services. (3) Whether equipment is furnished. (4) Whether the other party has the right to terminate the employment. <p>ALA. CODE § 25-5-1 (2017); <i>Atchison v. Boone Newspapers, Inc.</i>, 981 So.2d 427 (Ala. Civ. App. 2007).</p>
AK	<p>No</p> <p><i>Alaska Pulp Corp. v. United Paperworkers Int’l Union</i>, 791 P.2d 1008 (Alaska 1990)</p>	ALASKA STAT. § 23.30.230 (2017)	<p>The Alaska Supreme Court has adopted the “relative nature of the work” test for distinguishing between employees and independent contractors. The test first considers the character of the individual’s work or business, which is determined by considering three factors:</p> <ol style="list-style-type: none"> (1) The degree of skill involved. (2) Whether the individual holds himself out to the public as a separate business. (3) Whether the individual bears the accident burden. <p>The test then considers the relationship of the individual’s work or business to the purported employer’s business, which is also broken into three factors:</p> <ol style="list-style-type: none"> (1) The extent to which the individual’s work is a regular part of the employer’s regular work. (2) Whether the individual’s work is continuous or intermittent. (3) Whether the duration of the work is such that it amounts to hiring of continuous services rather than a contract for a specific job. <p><i>Odsather v. Richardson</i>, 96 P.3d 521 (Alaska 2004).; ALASKA STAT. § 23.30.055 (2017).</p> <p>The Alaska Workers’ Compensation Board applies a similar “relative nature of the work” test. The test weighs six factors, the first two being the most important; at least one of these two factors must be resolved in favor of an “employee” status for the board to find that a person is an employee. The six factors are whether the work:</p> <ol style="list-style-type: none"> (1) Is a separate calling or business. If the person performing the services has the right to hire or terminate others to assist in the performance of the service for which the person was hired, there is an inference that the person is not an employee. If the employer: <ol style="list-style-type: none"> (a) Has the right to exercise control of the manner and means to accomplish the desired results, there is a strong inference of employee status. (b) And the person performing the services has the right to terminate the relationship at will, without cause, there is a strong inference of employee status. (c) Has the right to extensive supervision of the work, then there is a strong inference of employee status. (d) Provides the tools, instruments and facilities to accomplish the work and they are of substantial value, there is an inference of employee status; if the tools, instruments and facilities to accomplish the work are not significant, no inference is created regarding the employment status. (e) Pays for the work on an hourly or piece rate wage rather than by the job, there is an inference of employee status.

			<p>(f) And person performing the services entered into either a written or oral contract, the employment status the parties believed they were creating in the contract will be given deference. However, the contract will be construed in view of the circumstances under which it was made and the conduct of the parties while the job is being performed.</p> <ol style="list-style-type: none"> (2) Is a regular part of the employer’s business or service. If it is a regular part of the employer’s business, there is an inference of employee status. (3) Can be expected to carry its own accident burden. This element is more important than factors (4)-(6). If the person performing the services is unlikely to be able to meet the costs of industrial accidents out of the payment for the services, there is a strong inference of employee status. (4) Involves little or no skill or experience. If so, there is an inference of employee status. (5) Is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job. If the work amounts to hiring of continuous services, there is an inference of employee status. (6) Is intermittent, as opposed to continuous. If the work is intermittent, there is a weak inference of no employee status. <p>ALASKA ADMIN. CODE tit. 8, § 45.890 (2017); ALASKA STAT. § 23.30.395 (2017).</p>
AZ	<p>Rebuttable presumption of independent contractor status created upon the execution of a written agreement compliant with ARIZ. REV. STAT. ANN. § 23-902 (2017).</p>	<p>ARIZ. REV. STAT. ANN. § 23-909-910 (2017)</p>	<p>An independent contractor is a person engaged in work for a business who is:</p> <ol style="list-style-type: none"> (1) Independent of that business in the execution of the work and not subject to the rule or control of the business for which the work is done. (2) Engaged only in the performance of a definite job or piece of work. (3) Subordinate to that business only in effecting a result in accordance with that business design. <p>As for the first element, Arizona courts have adopted the “right to control” test, which examines the following factors:</p> <ol style="list-style-type: none"> (1) The duration of the employment. (2) The method of payment. (3) Who furnishes necessary equipment. (4) The right to hire and fire. (5) The extent to which the employer may exercise control over the details of the work. (6) Whether the work was performed in the usual and regular course of the employer’s business. <p>Home Ins. Co. v. Indus. Comm’n, 599 P.2d 801 (Ariz. 1979).</p> <p>A business or independent contractor may prove the existence of an independent contractor relationship by executing a written agreement stating that the business:</p> <ol style="list-style-type: none"> (1) Does not require the independent contractor to perform work exclusively for the business. (2) Does not provide the independent contractor with any business registrations or licenses required to perform the specific services set forth in the contract. (3) Does not pay the independent contractor a salary or hourly rate instead of an amount fixed by contract. (4) Will not terminate the independent contractor before the expiration of the contract period, unless the independent contractor breaches the contract or violates the Arizona law. (5) Does not provide tools for the independent contractor. (6) Does not dictate the time of performance. (7) Pays the independent contractor in the name appearing on the written agreement. (8) Will not combine business operations with the person performing the services rather than maintaining these operations separately. <p>ARIZ. REV. STAT. ANN. § 23-902 (2017).</p>

AR	<p>Yes</p> <p><i>Silvcraft, Inc. v. Lambert</i>, 661 S.W.2d 403 (Ark. Ct. App. 1983)</p>	<p>ARK. CODE ANN. § 11-9-102 (2017)</p>	<p>Various factors are considered to determine the status of a worker:</p> <ol style="list-style-type: none"> (1) The right to control the means and the method by which the work is done. (2) The right to terminate the employment without liability. (3) The method of payment. (4) The furnishing, or the obligation to furnish, the necessary tools, equipment, and materials. (5) Whether the person employed is engaged in a distinct occupation or business. (6) The skill required in a particular occupation. (7) Whether the employer is a business. (8) Whether the work is an integral part of the regular business of the employer. (9) The length of time for which the person is employed. <p>However, the “right to control” test is usually sufficient to decide most disputes. The ultimate question in these cases is whether the employer has the right to control over the doing of the work, not whether the employer actually exercises such control.</p> <p>ARK. CODE ANN. § 11-9-102 (2017); <u>Riddell Flying Service v. Callahan</u>, 206 S.W.3d 284 (Ark. Ct. App. 2005).</p>
CA	<p>Yes</p> <p>CAL. LAB. CODE § 2750.5 (2017)</p>	<p>CAL. LAB. CODE § 3352 (2017)</p>	<p>California adopted Assembly Bill No. 5, effective Jan. 1, 2020.</p> <p>This bill addresses employment status when a hiring entity claims that the person it hired is an independent contractor. AB 5 requires the application of the “ABC test” to determine if workers are employees or independent contractors.</p> <p>Under the ABC test, a worker is considered an employee and not an independent contractor, unless the hiring entity satisfies all three of the following conditions:</p> <ol style="list-style-type: none"> (1) The worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact. (2) The worker performs work that is outside the usual course of the hiring entity’s business. (3) The worker is customarily engaged in an independently established trade, occupation or business of the same nature as that involved in the work performed. <p>Cal. Labor Code § 2750.3 (West 2019)</p>
CO	<p>Yes</p> <p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017)</p>	<p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017)</p>	<p>Colorado courts have adopted both the “control” test and the “relative nature of the work” test for purposes for determining a worker’s status. If either test is met, the worker is considered an employee for workers’ compensation purposes.</p> <p>The “control” test primarily considers whether the alleged employer exercises control over the means and methods of accomplishing the contracted service. Other factors include:</p> <ol style="list-style-type: none"> (1) Whether compensation is measured by time or lump sum. (2) Which party furnishes the necessary tools and equipment to perform the work. <p>The “relative nature of the work” test considers the following factors:</p> <ol style="list-style-type: none"> (1) The character of the individual’s work. (2) The relationship of the individual’s work to the alleged employer’s business. <p>COLO. REV. STAT. ANN. § 8-40-202 (West 2017); <u>Brighton Sch. Dist. v. Lyons</u>, 873 P.2d 26 (Colo. App. 1993); <u>Frank C. Klein & Co. v. Colo. Comp. Ins. Auth.</u>, 859 P.2d 323 (Colo. App. 1993).</p>

CT	No provision	CONN. GEN. STAT. § 31-275 (2017)	<p>Connecticut courts have adopted the “right to control” test to determine a worker’s status. The test asks whether the employer has “the right to control the means and methods” used by the worker in the performance of his or her job. As such, an independent contractor is defined as one who, exercising an independent employment, contracts to do a piece of work according to his or her own methods and without being subject to the control of his employer, except as to the result of his work.</p> <p>Hanson v. Transp. Gen. Inc., 716 A.2d 857 (Conn. 1998); Chute v. Mobil Shipping & Transportation Co., 627 A.2d 956 (Conn. App. Ct. 1993); CONN. GEN. STAT. § 31-275 (2017).</p>
DE	No provision	DEL. CODE. ANN. tit. 19, §§ 2301; 2307; 2308; 2316 (2017)	<p>Delaware courts have adopted § 220 of the Restatement (Second) of Agency in determining a worker’s status. The Restatement requires consideration of the following factors:</p> <ol style="list-style-type: none"> (1) The extent of control, which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the discretion of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the person is employed. (7) The method of payment, whether by the time or by the job. (8) Whether or not the work is a part of the regular business of the employer. (9) Whether or not the parties believe they are creating the relation of master and servant. (10) Whether the principal is or is not in business. <p>Falconi v. Coombs & Coombs, Inc., 902 A.2d 1094 (Del. 2006); Restatement (Second) of Agency § 220 (1958); DEL. CODE. ANN. tit. 19, § 2301 (2017).</p>
DC	No provision	D.C. CODE § 32-1501 (2017)	<p>The Department of Employment Services (DOES) applies the “relative nature of the work” test to determine a worker’s status, which focuses on whether the individual is hired to do work in which the company specializes. There are two prongs to the test. First, the nature and character of the individual’s work or business is considered by analyzing three factors:</p> <ol style="list-style-type: none"> (1) The degree of skill involved. (2) The degree to which it is a separate calling or business. (3) The extent to which it can be expected to carry its own accident burden. <p>The second prong analyzes the relationship of the individual’s work to the purported employer’s business. 3 factors are considered:</p> <ol style="list-style-type: none"> (1) The extent to which the individual’s work is a regular part of the employer’s regular work. (2) Whether individual’s work is continuous or intermittent. (3) Whether the duration is sufficient to amount to the hiring of continuous services, as distinguished from contracting for the completion of a particular job. <p>D.C. CODE § 32-1501 (2017); Gross v. D.C. Dept. of Emp’t Serv., 826 A.2d 393 (D.C. 2003).</p>
FL	No provision	FLA. STAT. § 440.02 (2017)	<p>A worker is considered an independent contractor provided at least 4 of the following criteria are met:</p> <ol style="list-style-type: none"> (1) The independent contractor maintains a separate business with his or her own work facility, truck, equipment, materials, or similar accommodations. (2) The independent contractor holds or has applied for a federal employer identification number, unless the independent contractor is a sole proprietor who is not required to obtain a federal employer identification number under state or federal regulations. (3) The independent contractor receives compensation for services rendered or work performed, and such compensation is paid to a business rather than to an individual.

			<p>(4) The independent contractor holds one or more bank accounts in the name of the business entity for purposes of paying business expenses or other expenses related to services rendered or work performed for compensation.</p> <p>(5) The independent contractor performs work or is able to perform work for any entity in addition to or besides the employer at his or her own election without the necessity of completing an employment application or process.</p> <p>(6) The independent contractor receives compensation for work or services rendered on a competitive-bid basis or completion of a task or a set of tasks as defined by a contractual agreement, unless such contractual agreement expressly states that an employment relationship exists.</p> <p>If four of the criteria above do not exist, an individual may still be presumed to be an independent contractor and not an employee based on full consideration of the nature of the individual situation with regard to satisfying any of the following conditions:</p> <p>(1) The independent contractor performs or agrees to perform specific services or work for a specific amount of money and controls the means of performing the services or work.</p> <p>(2) The independent contractor incurs the principal expenses related to the service or work that he or she performs or agrees to perform.</p> <p>(3) The independent contractor is responsible for the satisfactory completion of the work or services that he or she performs or agrees to perform.</p> <p>(4) The independent contractor receives compensation for work or services performed for a commission or on a per-job basis and not on any other basis.</p> <p>(5) The independent contractor may realize a profit or suffer a loss in connection with performing work or services.</p> <p>(6) The independent contractor has continuing or recurring business liabilities or obligations.</p> <p>(7) The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures.</p> <p>FLA. STAT. § 440.02 (2017).</p>
GA	No provision	GA. CODE ANN. § 34-9-2 (2017)	<p>An individual is an independent contractor if such person meets all of the following criteria:</p> <p>(1) Is a party to a contract which intends to create an independent contractor relationship.</p> <p>(2) Has the right to exercise control over the time, manner, and method of the work to be performed.</p> <p>(3) Is paid on a set price per job or a per unit basis, rather than on a salary or hourly basis.</p> <p>GA. CODE ANN. § 34-9-2 (2017).</p>
HI	No provision	HAW. REV. STAT. § 386-1 (2017)	<p>Both the “control” and “relative nature of the work” tests are used to determine an individual’s status.</p> <p>Under the “control” test, an employment relationship exists when the person in whose behalf the work is done has the power to dictate the means and methods by which the work is to be accomplished. Conversely, “[o]ne who contracts with another to do a specific piece of work for him [or her], and who furnishes and has the absolute control of his [or her] assistants, and who executes the work entirely in accord with his [or her] ideas, or with a plan previously given him [or her] by the person for whom the work is done, without being subject to the latter's orders in respect of the details of the work, with absolute control thereof...is an independent contractor.”</p> <p>The “relative nature of the work test” involves a balancing of factors regarding the general relationships which the employee has with regard to the work performed for each of his employers. Relevant factors include:</p> <p>(1) Whether the work done is an integral part of the employer’s regular business.</p> <p>(2) Whether the worker, in relation to the employer’s business, is in a business or profession of his own.</p>

			HAW. REV. STAT. §§ 386-73.5; 386-1 (2017); <i>Locations, Inc. v. Haw. Dept. of Labor</i> , 900 P.2d 784 (Haw. 1995).
ID	Yes <i>Moore v. Moore</i> , 269 P.3d 802 (Idaho 2011)	IDAHO CODE ANN. §§ 72-102; 72-212 (2017)	The test to determine an individual's status is whether the contract gives, or the employer assumes, the right to control the time, manner and method of executing the work, as distinguished from the right merely to require certain definite results. The Idaho courts use a four-factor test to determine an individual's status: <ol style="list-style-type: none"> (1) There must be evidence of the employer's right to control the employee. (2) The method of payment. (3) Whether the employer or individual furnishes major items of equipment. (4) Whether either party has the right to terminate the relationship at will, or whether one is liable to the other in the event of a preemptory termination. IDAHO CODE ANN. § 72-102 (2017); <i>Shriner v. Rausch</i> , 108 P.3d 375 (Idaho 2005); <i>Kiele v. Steve Henderson Logging</i> , 905 P.2d 82 (Idaho 1995).
IL	No provision	820 ILL. COMP. STAT. 305/1 (2017)	A number of factors are considered in determining an individual's status. The most important factor is whether the purported employer has a right to control the actions of the individual, followed by the nature of the work performed by the individual in relation to the general business of the employer. Additional relevant, albeit less important, factors include: <ol style="list-style-type: none"> (1) The method of payment. (2) The right to discharge. (3) The skill the work requires. (4) Which party provides the needed instrumentalities. (5) Whether income tax has been withheld. (6) The label the parties place upon their relationship. 820 ILL. COMP. STAT. 305/1 (2017); <i>Esquinca v. Ill. Workers' Comp. Comm'n</i> , 51 N.E.3d 5 (Ill. App. Ct. 2016).
IN	Yes <i>Walker v. State</i> , 694 N.E.2d 258 (Ind. 1998)	IND. CODE §§ 22-3-2-9; 22-3-6-1 (2017)	The Indiana Supreme Court has adopted the test articulated in § 220 of the Restatement (Second) of Agency in determining a worker's status. The Restatement requires consideration of the following factors: <ol style="list-style-type: none"> (1) The extent of control which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the person is employed. (7) The method of payment, whether by the time or by the job. (8) Whether the work is a part of the regular business of the employer. (9) Whether the parties believe they are creating the relation of master and servant. (10) Whether the principal is or is not in business. <i>Moberly v. Day</i> , 757 N.E.2d 1007 (Ind. 2001); Restatement (Second) of Agency § 220 (1958); IND. CODE § 22-3-6-1 (2015).
IA	Yes <i>Daggett v. Nebraska-Eastern Exp., Inc.</i> , 107 N.W.2d 102 (Iowa 1961)	IOWA CODE § 85.61 (2016)	Iowa courts have adopted two tests for determining a worker's status. First, in determining the existence of an employer-employee relationship, the courts analyze the following five factors: <ol style="list-style-type: none"> (1) The right of selection, or to employ at will. (2) Responsibility for payment of wages by the employer. (3) The right to discharge or terminate the relationship. (4) The right to control the work. (5) The identity of the employer as the authority in charge of the work or for whose benefit it is performed. Second, in determining whether a worker qualifies as an independent contractor, the courts consider the following eight factors:

			<ol style="list-style-type: none"> (1) The existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price. (2) The independent nature of the business or of a distinct calling. (3) The employment of assistants, with the right to supervise their activities. (4) The obligation to furnish necessary tools, supplies and materials. (5) The right to control the progress of the work, except as to final result. (6) The time for which the worker is employed. (7) The method of payment, whether by time or by job. (8) Whether the work is part of the regular business of the employer. <p>Above all, the “right to control” is the most important consideration.</p> <p>The parties’ intent may also be considered as a factor in the analysis, although the courts have warned that this analysis should not be determinative and should only be considered if the “right to control” factor is debatable.</p> <p>IOWA CODE § 85.61 (2016); Stark Constr. v. Lauterwasser, 847 N.W.2d 612 (Iowa Ct. App. 2014).</p>
KS	No provision	KAN. STAT. ANN. § 44-508 (2014)	<p>Kansas courts have adopted the Restatement factors in determining a worker’s status. However, the single most important factor is whether the employer controls, or has the right to control, the manner and methods of the worker in doing the particular task. Additional considerations include:</p> <ol style="list-style-type: none"> (1) Whether or not the one employed is engaged in a distinct occupation or business. (2) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (3) The skill required in the particular occupation. (4) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work. (5) The length of time for which the person is employed. (6) The method of payment, whether by the time or by the job. (7) Whether the work is part of the regular business of the employer. (8) Whether the parties believe they are creating the relation of master and servant. (9) Whether the principal is or is not in business. <p>Travelers Indem. Co. of Ill. v. Challenger Fence Co., Inc., 119 P.3d 666 (Kan. Ct. App. 2005); Restatement (Second) of Agency § 220 (1958); KAN. STAT. ANN. § 44-508 (2014).</p>
KY	Yes KY. REV. STAT. ANN. § 342.640 (2014)	KY. REV. STAT. ANN. § 342.640 (2014)	<p>Kentucky courts analyze four predominant factors to determine a worker’s status:</p> <ol style="list-style-type: none"> (1) The alleged employer’s right to control the details of the work. (2) The nature of the work as related to the business generally carried on by the alleged employer. (3) The professional skill of the individual. (4) The true intent of the parties. <p>The “right to control” factor is the most important in the analysis, which is determined by analyzing the following factors:</p> <ol style="list-style-type: none"> (1) Method of payment. (2) Which party furnishes the equipment. (3) Whether the alleged employer has the right to discharge the individual performing the work. <p>Steinrock v. Cook, No. 2011-SC-000032-WC (Ky. Aug. 25, 2011); Uninsured Emp’rs’ Fund v. Garland, 805 S.W.2d 116 (Ky. 1991).</p>
LA	Yes LA. REV. STAT. ANN. § 23:1021 (2013)	LA. REV. STAT. ANN. § 23:1021 (2013)	<p>Louisiana courts consider the following factors in determining a worker’s status:</p> <ol style="list-style-type: none"> (1) Whether there is a valid contract between the parties. (2) Whether the work being done is of an independent nature such that the individual may employ non-exclusive means in accomplishing it. (3) Whether the contract calls for specific piecework as a unit to be done according to the individual’s own methods without being subject to the control and direction of the principal, except as to the result of the services to be rendered. (4) Whether there is a specific price for the overall undertaking.

			<p>(5) Whether the specific time or duration is agreed upon and not subject to termination at the will of either side without liability for breach.</p> <p>Steinfelds v. Villarubia, 53 So.3d 1275 (La. Ct. App. 2010); LA. REV. STAT. ANN. § 23:1021 (2013).</p>
ME	<p>Yes</p> <p>ME. REV. STAT. tit. 39-A, § 102 (2013)</p>	<p>ME. REV. STAT. tit. 39-A, § 102 (2013)</p>	<p>An individual is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit. In order for an individual to be an independent contractor, the following criterial must be met:</p> <ol style="list-style-type: none"> (1) The person has the essential right to control the means and progress of the work except as to final results. (2) The person is customarily engaged in an independently established trade, occupation, profession or business. (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity. (4) The person hires and pays the person’s assistants, if any, and, to the extent such assistants are employees, supervise the details of the assistants’ work. (5) The person makes the person’s services available to some client or customer community even if the person’s right to do so is voluntary not exercised or is temporarily restricted. <p>Additionally, at least three of the following criteria must be met:</p> <ol style="list-style-type: none"> (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work. (2) The person is not required to work exclusively for the other individual or entity. (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work. (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work. (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person. (6) The work is outside the usual course of business for which the service is performed. (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service (IRS). <p>ME. REV. STAT. tit. 39-A, § 102 (2013).</p>
MD	<p>Yes</p> <p>MD. CODE ANN. LAB. & EMP. § 9-202 (2009)</p>	<p>MD. CODE ANN. LAB. & EMP. §§ 9-203 to 9-236 (2009)</p>	<p>Maryland courts consider five criteria in determining a worker’s status. The decisive consideration is the “control” test: whether the employer has the right to control and direct the employee in the performance of the work and in the manner in which the work is done. The following factors are also relevant:</p> <ol style="list-style-type: none"> (1) The power to select and hire the employee. (2) The payment of wages. (3) The power to discharge. (4) Whether the work is part of the regular business of the employer. <p>Injured Workers’ Ins. Fund v. Orient Exp. Delivery Serv., Inc., 988 A.2d 1120 (Md. Ct. Spec. App. 2010); MD. CODE ANN. LAB. & EMP. § 9-202 (2009).</p>
MA	<p>Yes</p> <p>MASS. GEN. LAWS ch. 149, § 148B (2004)</p>	<p>MASS. GEN. LAWS ch. 152, § 1 (2011)</p>	<p>The standard in determining a worker’s status is the same as the common law agency standard, the primary factor being the right to control. Massachusetts courts consider the factors set out in the Restatement (Second) of Agency, which are as follows:</p> <ol style="list-style-type: none"> (1) The extent of control which, by the agreement, the master may exercise over the details of the work. (2) Whether or not the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation.

			<p>(5) Whether the employer or the workman supplies the instrumentalities, tools, and the place of work for the person doing the work.</p> <p>(6) The length of time for which the person is employed.</p> <p>(7) The method of payment, whether by the time or by the job.</p> <p>(8) Whether or not the work is part of the regular business of the employer.</p> <p>(9) Whether the parties believe they are creating the relation of master and servant.</p> <p>(10) Whether the principal is or is not in business.</p> <p>Travelers Prop. Cas. Co. of Am. v. Universal Drywall, LLC., 10 N.E.3d 178 (Mass. App. Ct. 2014); Restatement (Second) of Agency § 220 (1958); MASS. GEN. LAWS ch. 152, § 1 (2011).</p>
MI	No provision	MICH. COMP. LAWS §§ 418.115 to 418.120; 418.161 (2017)	<p>In order for a worker to be considered an employee, three criteria must be met. The worker must not:</p> <ol style="list-style-type: none"> (1) Maintain a separate business. (2) Hold himself or herself out to and render service to the public. (3) Be an employer subject to the worker’s compensation act. <p>MICH. COMP. LAWS § 418.161 (2012); Auto-Owners Ins. Co. v. All Star Lawn Specialists Plus, Inc., 857 N.W.2d 520 (Mich. 2014).</p>
MN	No provision	<p>Minnesota regulations set forth criteria for 34 specific occupations. Minn. R. 5224.0010 to 5224.0340 (2017).</p> <p>MINN. STAT. § 181.723 (2009) sets forth criteria for construction contractors.</p> <p>MINN. STAT. § 176.043 (2009) sets forth criteria for trucking and messenger/courier industries.</p>	<p>Minnesota courts have adopted a five-factor test to determine the status of workers not specifically engaged in the occupations enumerated in MINN. R. 5224.0010 to 5224.0340 (2017):</p> <ol style="list-style-type: none"> (1) The right to control the means and manner of performance. (2) The mode of payment. (3) The furnishing of tools and materials. (4) Control over the premises where the work was done. (5) The right of discharge. <p>Of the factors, the right to control is the most important. A number of considerations are used to determine whether the employer possesses such a right to control, including:</p> <ol style="list-style-type: none"> (1) Employer’s authority over the individual’s assistants. (2) The individual’s compliance with instructions. (3) Whether oral or written reports are required to be submitted to the employer. (4) Whether the work is performed on the employer’s premises. (5) Whether services must be personally rendered to the employer. (6) Whether there exists a continuing relationship between the parties. (7) Whether the employee has set hours of work. (8) Whether the individual has been trained by the employer. (9) The amount of time the individual dedicates to the work. (10) Whether the individual has simultaneous contracts with different firms. (11) Whether tools and materials have been furnished by the employer. (12) Whether the individual’s expenses are reimbursed. (13) Whether the employer is required to enforce standards or restrictions imposed by regulatory and licensing agencies. <p>Guhlke v. Roberts Truck Lines, 128 N.W.2d 324 (Minn. 1964); Hunter v. Crawford Door Sales, 501 N.W.2d 623 (Minn. 1993); MINN. R. 5224.0330 (2017); Minn. Dept. of Lab. And Indus., Workers’ Compensation – Determining Independent Contractor or Employee Status, https://www.dli.mn.gov/business/workers-compensation/work-comp-independent-contractor-or-employee</p>
MS	No provision	MISS. CODE ANN. §§ 71-3-3; 71-3-5 (West 2017)	<p>Mississippi courts have adopted the “right to control” test to determine a worker’s status. The test consists of the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of right or exercise of control. (2) The method of payment. (3) The furnishing of equipment. (4) The employer’s right to fire. <p>Se. Auto Brokers v. Graves, 210 So.3d 1012 (Miss. Ct. App. 2015); MISS. CODE ANN. § 71-3-3 (West 2011).</p>
MO	No	MO. REV. STAT. § 287.020 (2017)	<p>The primary test to determine a worker’s status is the right to control. If an employer has the right to control the means and manner of a worker’s service, the</p>

	McCracken v. Wal-Mart Stores East, LP, 298 S.W.3d 473 (Mo. 2009)		<p>worker is an employee rather than an independent contractor. A number of factors are considered in this analysis:</p> <ol style="list-style-type: none"> (1) The extent of control. (2) The actual exercise of control. (3) The duration of the employment. (4) The right to discharge. (5) The method of payment. (6) The degree to which the alleged employer furnished equipment. (7) The extent to which the work is the regular business of the employer. (8) The employment contract. <p>Where the control analysis does not settle the issue, the “relative nature of the work” test is also applied. This test analyzes the economic and functional relationship between the nature of the work and a business’ operation. The following factors are considered:</p> <ol style="list-style-type: none"> (1) The amount of skill the worker’s job requires. (2) The degree to which the work is a separate calling or enterprise. (3) The extent to which the job might be expected to carry its own accident burden. (4) The relation of the job to the employer’s business. (5) Whether the job being performed is continuous or intermittent. (6) Whether the job’s duration amounts to the hiring of continuous services rather than a contract for the completion of a particular job. <p>Missouri law allows some independent contractors to recover under worker’s compensation law. Individuals having work done under contract on or about their premises that is an operation of the usual business that they carry are considered an employer and are liable to all workers, regardless of status, for worker’s compensation.</p> <p>Leach v. Bd. of Police Comm’rs of Kansas City, 118 S.W.3d 646 (Mo. Ct. App. 2003); MO. REV. STAT. § 287.040 (2017).</p>
MT	Yes	MONT. CODE ANN. § 39-71-118 (2017)	<p>In determining whether an individual is an independent contractor, the court will consider the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of right or exercise of control. (2) Method of payment. (3) Furnishing of equipment. (4) Right of employer to fire. <p>Under MONT. CODE ANN. § 39-71-417 (2011), a worker can apply for an “Independent Contractor Certification” if, among other things, the worker swears to and acknowledges:</p> <ol style="list-style-type: none"> (1) That the applicant has been and will continue to be free from control or direction over the performance of the person’s own services, both under contract and in fact. (2) That the applicant is engaged in an independently established trade, occupation, profession or business and will provide sufficient documentation of that fact to the department. <p>Doig v. Graveley, 809 P.2d 12 (Mont. 1991); MONT. CODE ANN. §§ 39-71-118 (2017); 39-71-417 (2011).</p>
NE	Yes	NEB. REV. STAT. § 48-106 (2010) Industry Exceptions	<p>Nebraska’s workers’ compensation law and case law suggest there is no single test for determining whether one is an employee or independent contractor, but instead the following factors will be considered in the determination of status:</p> <ol style="list-style-type: none"> (1) The extent of control that the employer may exercise over the details of the work. (2) Whether the one employed is engaged in a distinct occupation or business. (3) The kind of occupation, with reference to whether, in the locality, the work is usually done under the direction of the employer or by a specialist without supervision. (4) The skill required in the particular occupation. (5) Whether the employer or the one employed supplies the instrumentalities, tools, and the place of work for the person doing the work. (6) The length of time for which the one employed is engaged. (7) The method of payment, whether by time or by the job.

			<p>(8) Whether the work is part of the regular business of the employer.</p> <p>(9) Whether the parties believe they are creating an agency relationship.</p> <p>(10) Whether the employer is or is not in business.</p> <p>NEB. REV. STAT. § 48-101 (2010); Omaha World-Herald v. Dernier, 570 N.W.2d 508 (Neb. 1997).</p>
NV	No	NEV. REV. STAT. §§ 616A.105 to 616A.360 (2013)	<p>Nevada’s worker’s compensation law defines an independent contractor as any person who renders service for a specified recompense for a specified result, under the control of the person’s principal as to the result of the person’s work only and not as to the means as to which the result is accomplished.</p> <p>Under Nevada’s Industrial Insurance Act, if a worker meets three or more of the following criteria, there is a presumption that the worker is an independent contractor:</p> <ol style="list-style-type: none"> (1) The person has control and discretion over the means and manner of the performance of any work and the result of the work, rather than the means or manner by which the work is performed, and is the primary item bargained for by the principal in the contract. (2) The person generally has control over the time the work is performed. (3) The person is not required to work exclusively for one principal unless a law, regulation or ordinance otherwise prohibits the person from providing services to more than one principal or the person has entered into a written contract to provide services to only one principal. (4) The person is free to hire employees to assist with the work. (5) The person contributes a substantial investment of capital in the business of the person, including without limitation: <ol style="list-style-type: none"> (a) Purchase or lease of ordinary tools, material and equipment. (b) Obtaining of a license or other permission from the principal to access any work space of the principal to perform the work. (c) Lease of any work space from the principal required to perform the work for which the person was engaged. <p>The fact that a person does not satisfy three or more of the listed criteria does not automatically create a presumption that the person is an employee.</p> <p>NEV. REV. STAT. §§ 608.0155 (2015); 616A.255.</p>
NH	Yes	N.H. REV. STAT. ANN. § 281-A:2 (2017)	<p>Under New Hampshire’s worker’s compensation law, the presumption of employee status can be rebutted if a person meets all of the following criteria:</p> <ol style="list-style-type: none"> (1) The person possesses or has applied for a federal employer identification number or a social security number, or in the alternative, has agreed in writing to carry out the responsibility imposed on employers under this chapter. (2) The person has control and discretion over the means and manner of performance of the work, in that the result of the work, rather than the means or manner by which the work is performed, is the primary element bargained for by the employer. (3) The person has control over the time when the work is performed, and the time of performance is not dictated by the employer, although the employer may still prescribe a completion schedule, range of work hours and maximum number of work hours to be provided by the person. (4) The person hires and pays the person’s assistants, if any, and to the extent such assistants are employees, supervises the details of the assistants’ work. (5) The person holds himself or herself out to be in business for himself or herself or is registered with the state as a business and the person has continuing or recurring business liabilities or obligations. (6) The person is responsible for satisfactory completion of work and may be held contractually responsible for failure to complete the work. (7) The person is not required to work exclusively for the employer. <p>N.H. REV. STAT. ANN. § 281-A:2 (2017).</p>

NJ	Yes	N.J. STAT. ANN. § 43:21-19 (2010)	<p>Under New Jersey’s unemployment law, services provided for remuneration shall be deemed to be under an employment relationship unless it is shown that:</p> <ol style="list-style-type: none"> (1) An individual has been and will continue to be free from control or direction over the performance of such service, both under his contract of service and in fact. (2) Such service is either outside the usual course of the business for which such service is performed, or that such service is performed outside of all the places of business of the enterprise for which such service is performed. (3) Such individual is customarily engaged in an independently established trade, occupation, profession or business. <p>The New Jersey Supreme Court in <i>Hargrove v. Sleepy’s, LLC</i>, 106 A.3d 449 (2015) adopted the above test for worker’s compensation purposes and stated that for determining whether an individual is an employee or an independent contractor, the courts must consider twelve factors:</p> <ol style="list-style-type: none"> (1) The employer’s right to control the means and manner of the worker’s performance. (2) The kind of occupation and whether the work is supervised or unsupervised. (3) The amount of skill involved. (4) Who furnishes the equipment and workplace. (5) The length of time in which the individual has worked. (6) The method of payment. (7) The manner of termination of the work relationship. (8) Whether there is annual leave. (9) Whether the work is an integral part of the business of the employer. (10) Whether the worker accrues retirement benefits. (11) Whether the employer pays social security taxes. (12) The intention of the parties. <p>N.J. STAT. ANN. § 43:21-19 (2010), <i>Hargrove v. Sleepy’s, LLC</i>, 106 A.3d 449 (N.J. 2015).</p>
NM	Yes	No provision	<p>New Mexico courts will first employ a “right-to-control” test to determine whether a worker is an employee or independent contractor. If the right-to-control test points to independence, the court will then apply a “relative-nature of the work” test.</p> <p>Factors that may be considered in determining existence of employment relationship include:</p> <ol style="list-style-type: none"> (1) Direct evidence of exercise of control. (2) The right to terminate employment relationship at will by either party without liability (3) The right to delegate work or to hire and fire assistants. (4) The method of payment whether by time or by job. (5) Whether the party employed engages in distinct operation or business. (6) Whether the work is part of employer’s regular business. (7) Skill required in particular occupation. (8) Whether the employer supplies instrumentalities, tools or place of work. (9) Duration of person’s employment. (10) Whether the person works full-time or part-time of control by one and submission to control by the other. <p>N.M. STAT. ANN. § 52-1-22 (1978); <i>Romero v. Shumate Constructors, Inc.</i>, 888 P.2d 940 (N.M. 1994); <i>Harger v. Structural Services, Inc.</i>, 916 P.2d 1234 (N.M. 1996).</p>
NY	Yes	<p>Presumption for employment for construction workers unless the worker is a “separate business entity”</p> <p>§ 861-c; N.Y. WORKER’S</p>	<p>An independent contractor is one who is:</p> <ol style="list-style-type: none"> (1) Free from control and direction in performing the job, both under his contract and in fact. (2) The service is performed outside the usual course of business for which the service is performed. (3) The individual is customarily engaged in an independently established trade, occupation, profession or business that is similar to the service at issue. <p>When making a determination of whether an employer-employee relationship exists, the New York courts will consider factors such as the right to control the</p>

		COMPENSATION LAW § 21	work, the method of payment, the right to discharge, the furnishing of equipment and supplies, and the relative nature of the work. No single factor is dispositive. N.Y. WORKER’S COMPENSATION LAW §§ 2, 21 (2017); Sang Hwan Park v. Lee, 53 A.D.3d 936 (2008).
NC	Yes	§ 97-5.1 (2013) Presumption that taxicab drivers are independent contractors	North Carolina courts define “independent contractor” as one who exercises an independent employment and contracts to do certain work according to his own judgment and method, without being subject to his employer except as to the result of his work. The determinative factor in North Carolina courts as to whether a person is an employee or independent contractor for purposes of workers’ compensation is control. North Carolina courts will use the “right to control” when determining whether a person is an employee or an independent contractor for purposes of the Workers’ Compensation Act. Generally, where an employer has the right to control over the means and the methods of an employee’s work, there will be an employer-employee relationship. The requirement of control is sufficiently met where its extent is commensurate with that degree of supervision that is necessary and appropriate considering the type of work to be done and the capabilities of the person doing it. The North Carolina courts will also look at eight factors which indicate classification as independent contractor, including if: <ol style="list-style-type: none"> (1) The worker is engaged in independent business, calling, or occupation. (2) The worker has independent use of his or her special skill, knowledge, or training in execution of work. (3) The worker is doing specified piece of work at fixed price or for lump sum or upon quantitative basis. (4) The worker is not subject to discharge because he adopts one method of doing work rather than another. (5) The worker is not in regular employ of other contracting party. (6) The worker is free to use such assistants as he or she may think proper. (7) The worker has full control over such assistants. (8) The worker is able to select his or her own time. N.C. GEN. STAT. § 97-2 (2000); Youngblood v. North State Ford Truck Sales, 364 S.E.2d 433 (N.C. 1988); Alford v. Victory Cab Co., Inc., 228 S.E.2d 43 (N.C. 1976); McCown v. Hines, 537 S.E.2d 242 (N.C. 2000).
ND	Yes	N.D. CENT. CODE § 65-01-03	N.D. ADMIN CODE § 92-01-02-49 (2012) states that 20 factors are to be considered when determining whether a worker is an independent contractor or an employee: <ol style="list-style-type: none"> (1) The amount of instructions given to the employee by the employer. (2) The amount of training given to the employee. (3) The amount of integration of a person’s services into the business operations. (4) Services rendered personally. If the services must be rendered personally, the person whom the services are performed for are interested in the methods used, which goes towards employee-employer relationship. (5) The ability to hire, supervise, and pay assistants. (6) The continuing relationship between the person and person(s) for whom the services are performed. (7) Set hours of work. (8) Whether full-time is required. An independent contractor is one who is free to work when and for whom he or she chooses. Full-time required suggests an employer-employee relationship. (9) Where the work is performed. (10) The order or sequence set the work must be performed. (11) Whether there is a requirement for regular oral or written reports. (12) How the worker is paid. (13) Whether there is payment of business or traveling expenses, or both. (14) Who is responsible for furnishing of tools and materials. (15) Whether there is significant investment in facilities used by the workman. (16) Realization of profit or loss: A person who may realize a profit or suffer a loss as a result of the person's services (in addition to the profit or loss ordinarily realized by employees) is generally an independent contractor, but the person who cannot is an employee.

			<p>(17) Whether the worker provides services for more than one employer at a time.</p> <p>(18) Whether the worker's services are available to the general public.</p> <p>(19) Whether the right of the employer to terminate/discharge exists.</p> <p>(20) The right to dismissal.</p> <p>There is no certain number of the 20 factors of the common-law test that must be met to qualify as an independent contractor, and the degree of each factor varies depending on the occupation and the factual context in which the services are performed.</p> <p>N.D. CENT. CODE. § 65-01-02 (2017); Myers-Weigel Funeral Home v. Job Ins. Div. of Job Serv. N.D., 578 N.W.2d 125 (N.D. 1998).</p>
OH	No provision	OHIO REV. CODE ANN. § 4123.01 (2015) Industry Exceptions	<p>OHIO REV. CODE ANN. § 4123.01 (2015) states that a person who meets at least 10 of the following criteria are excluded from the definition of employee:</p> <ol style="list-style-type: none"> (1) The worker is required to comply with instructions from the other contracting party regarding the manner or methods of performing services. (2) The person is required by the other contracting party to have particular training. (3) The person's services are integrated into the regular functioning of the other contracting party. (4) The person is required to perform the work personally. (5) The person is hired, supervised, or paid by the other contracting party. (6) A continuing relationship exists between the person and the other contracting party that contemplates continuing or recurring work even if the work is not full time. (7) The person's hours of work are established by the other contracting party. (8) The person is required to devote full time to the business of the other contracting party. (9) The person is required to perform the work on the premises of the other contracting party. (10) The person is required to follow the order of work set by the other contracting party. (11) The person is required to make oral or written reports of progress to the other contracting party. (12) The person is paid for services on a regular basis such as hourly, weekly, or monthly. (13) The person's expenses are paid for by the other contracting party. (14) The person's tools and materials are furnished by the other contracting party. (15) The person is provided with the facilities used to perform services. (16) The person does not realize a profit or suffer a loss as a result of the services provided. (17) The person is not performing services for a number of employers at the same time. (18) The person does not make the same services available to the general public. (19) The other contracting party has a right to discharge the person. (20) The person has the right to end the relationship with the other contracting party without incurring liability pursuant to an employment contract or agreement. <p>The general test for determining independent contractor status considers the following factors: who has the right to direct what shall be done and when and how it shall be done; the existence of a contract for the performance by a person of a certain piece or kind of work at a fixed price; the independent nature of the worker's business; the worker's employment of assistants with the right to supervise their activities; his or her obligation to furnish the necessary tools, supplies, and materials; his or her right to control the progress of the work except as to final results; the time for which the workman is employed; the method of payment, whether by time or by job; and whether the work is part of the regular business of the employer.</p> <p>Gillum v. Ind. Com'n, 141 Ohio St. 373 (1943).</p>

OK	No provision	<p>OKLA. ADMIN. CODE § 380:30-1-2 (2012)</p> <p>Department of Labor excludes business owners, volunteers, co-partners, and joint venturers from the definition of “employee”</p>	<p>Oklahoma’s case law and the DOL set out several factors to be considered when determining whether an employee/employer relationship exists, including:</p> <ol style="list-style-type: none"> (1) The nature of the contract between the parties. (2) The degree of control the employer may exercise on the details of the of the work. (3) Whether the one employed is engaged in a distinct occupation or business for others. (4) The kind of occupation with reference to whether in the locality the work is usually done under the direction of the employer. (5) The skill required in the particular occupation. (6) Whether the employer or the workman supplies the instrumentalities, tools and the place of work for the person doing the work. (7) The length of time for which the person is employed. (8) The method of payment. (9) Whether the work is part of the regular business of the employer. (10) Whether the parties believe they are creating the relationship of master and servant. (11) The right of either to terminate the relationship without liability. <p>No one factor is controlling, and the court will look into the set of particular facts of each case.</p> <p>Carbajal v. Precision Builders, Inc., 333 P.3d 258 (OK 2014); OKLA. ADMIN. CODE § 380:30-1-2 (2012).</p>
OR	No provision	<p>OR. REV. STAT. § 656.027 (2010)</p> <p>Certain holders of professional licenses</p>	<p>OR. REV. STAT. § 670.600 (2005) defines an independent contractor as a person who provides services for remuneration and who is:</p> <ol style="list-style-type: none"> (1) Free from direction and control over the means and manner of providing the services, subject only to the right of the person for whom the services are provided to specify the desired results. (2) Except as provided in subsection (4) of this section, is customarily engaged in an independently established business. (3) Is licensed under Oregon Revised Statutes Chp. 671 or 701 if the person provides services for which a licensed is required under those chapters. (4) Is responsible for obtaining other licenses or certificates necessary to provide services. <p>This definition of independent contractor has been adopted into the worker’s compensation statute. OR. REV. STAT. § 656.005 (2017)</p> <p>Oregon case law states that in determining whether a person is an independent contractor, the right to control is decisive. The principal factors in determining independent contractor status are:</p> <ol style="list-style-type: none"> (1) The evidence of the right to or actual exercise of control. (2) The method of payment. (3) The furnishing of equipment. (4) The right to fire. <p>See McQuiggin v. Burr, 119 Or. App. 202 (1993); Soderback v. Townsend, 57 Or.App. 366 (1982).</p>

PA	Yes	Domestic Service, Real Estate, Construction Workers 77 P.S. § 676; 43 P.S. § 933.3	<p>In determining employee or independent contractor status, the following factors should be considered, but all do not need to be present:</p> <ol style="list-style-type: none"> (1) Control of the manner in which work is to be done. (2) Responsibility for result only. (3) Terms of agreement between the parties. (4) Nature of the work or occupation. (5) Skill required for performance. (6) Whether one employed is engaged in distinct occupation or business. (7) Who supplies the party tools. (8) Whether payment is by time or by job. (9) Whether work is part of regular business or alleged employer. (10) Whether alleged employer had right to terminate employment at any time. <p>Control over the work to be completed and the manner in which it is to be performed are the primary factors in determining employee status for purposes of the worker's compensation act.</p> <p>77 P.S. § 22; Hammermill Paper Company v. Rust Engineering Company, 243 A.2d 389 (Pa. 1968); Johnson v. W.C.A.B. (Dubois Courier Exp.), 631 A.2d 693 (Pa. 1993).</p>
RI	No provision	28 R.I. GEN. LAWS. ANN. §§ 28-29-2; 28-29-7 to 28-29-7.2; 28-29-15 Certain industries have special status or are exempted	<p>Under Rhode Island's workers' compensation law, an independent contractor is a person who has filed a notice of designation as independent contractor with the director pursuant to or as otherwise found by the workers' compensation court.</p> <p>In determining whether a worker is an employee or independent contractor, the status depends on the employer's right or power to exercise control over methods and means of performing the work and not the exercise of actual control. Whether an injured worker is an employee or independent contractor must be decided by the employment contract in the particular case and the surrounding particular circumstances.</p> <p>28 R.I. GEN. LAWS. ANN. §§ 28-29-2; 28-29-17.1 (1956) Pasetti v. Brusa, 98 A.2d 833 (1953); Henry v. Mondillo, 142 A. 230 (1928).</p>
SC	Yes	S.C. CODE ANN. § 42-1-360 (2007) Exemption of casual employees and certain other employments from worker's compensation law	<p>Case law establishes the criteria for distinguishing between employee and independent contractor under South Carolina's worker's compensation law.</p> <p>Determination of whether a worker's compensation claimant is an employee or independent contractor focuses on the issue of control.</p> <p>In determining whether an employer had a right to control a workers' compensation claimant in performance of his or her work, there are four factors the court will look at:</p> <ol style="list-style-type: none"> (1) Direct evidence of the right or exercise of control. (2) Furnishing of equipment. (3) Method of payment. (4) Right to fire. <p>It is not actual control exercised, but whether there exists a right and authority to control and direct the particular work or undertake as to the manner or means of its accomplishment.</p> <p>S.C. CODE ANN. § 42-1-130 (1976); Nelson v. Yellow Cab Co., 343 S.C. 102, 538 S.E.2d 276 (S.C.App. 2000); Shatto v. McLeod Regional Medical Center, 406 S.C. 470 (2013).</p>
SD	No provision	S.D. CODIFIED LAWS §§ 62-1-4 to 62-1-5.1 Certain industry exceptions	<p>There are three primary factors South Dakota courts look at to determine whether one is employee or independent contractor include:</p> <ol style="list-style-type: none"> (1) Whether individual has been and will continue to be free from control or direction over performance of services. (2) Both under contract of service and in fact. (3) Whether the individual is customarily engaged in independent established trade, occupation, profession or business. <p>Specifically, courts will employ a "right of control" test is used to determine independent contractor status, which includes consideration of the following factors:</p> <ol style="list-style-type: none"> (1) Direct evidence of rate of control. (2) Method of payment.

			<p>(3) Furnishing of major items of equipment. (4) Right to terminate employment relationship at will and without liability.</p> <p>S.D. CODIFIED LAWS §§ 62-1-2 (1994); 62-1-3 (2008) Egemo v. Flores, 470 N.W.2d 817 (S.D. 1991); Davis v. Frizzell 504 N.W.2d 330 (S.D. 1993).</p>
TN	Yes	<p>Construction workers are exempt from the statutory classification test if requirements of TENN. CODE ANN. § 50-6-102(10) are met</p>	<p>Tennessee’s workers’ compensation law states that to determine whether an individual is an employee or independent contractor, the following factors will be considered:</p> <ol style="list-style-type: none"> (1) The right to control the conduct of the work. (2) The right of termination. (3) The method of payment. (4) The freedom to select and hire helpers. (5) The furnishing of tools and equipment. (6) Self-scheduling of working hours. (7) The freedom to offer services to other entities. <p>For purposes of determining whether employee’s relationship is employee or independent contractor, courts consider whether work being performed by contractor is same type of work usually performed by the company that hired the contractor and whether the company has right to control employees of contractor.</p> <p>TENN. CODE ANN. § 50-6-102 (2017); Barber v. Ralston Purina, 825 S.W.2d 96 (1991).</p>
TX	No provision	<p>TEX. INS. CODE ANN. §§ 406.091 to 406.098; 406.141 to 406.146; 406.161 to 406.165</p> <p>Special coverage to members of certain industries, construction workers and farm and ranch employees</p>	<p>Texas’ workers’ compensation act defines an independent contractor as a person who contracts to perform work or provide a service for the benefit of another and who ordinarily:</p> <ol style="list-style-type: none"> (1) Acts as the employer of any employee of the contractor by paying wages, directing activities, and performing other similar functions characteristic of an employer-employee relationship; (2) Is free to determine the manner in which the work or service is performed, including the hours of labor of or method of payment to any employee; (3) Is required to furnish or to have employees, if any, furnish necessary tools, supplies, or materials to perform the work or service. (4) Possesses the skills required for the specific work or service. <p>The Texas courts will also consider the following factors when considering whether one is an independent contractor: the independent nature of the worker’s business; the worker’s obligation to furnish necessary tools, supplies and material to perform the job; the worker’s right to control progress of work, except as to final results; the time for which (s)he is employed; and method of payment, whether by time or by job.</p> <p>TEX. INS. CODE ANN. § 406.121 (1993); Industrial Indem. Exchange v. Southard, 138 Tex. 531 (1942); INA of Texas v. Torres, 808 S.W.2d 291. (1991).</p>
UT	Yes	<p>UTAH CODE ANN. § 34A-2-104 (2017)</p> <p>Excludes certain industries from the definition of “employee” for purposes of the statute</p>	<p>Utah’s workers’ compensation law defines an independent contractor as any person engaged in the performance of any work for another who, while so engaged, is:</p> <ol style="list-style-type: none"> (1) Independent of the employer in all that pertains to the execution of the work. (2) Not subject to the routine rule or control of the employer. (3) Engaged only in the performance of a definite job or piece of work. (4) Subordinate to the employer only in effecting a result in accordance with the employer’s design. <p>The Utah court will consider whatever agreements exist concerning the right of control, as well as the actual dealings between the parties and the control that was in fact asserted. Determination of status of individual as an employee or an independent contractor is based on various factors, and of primary concern is the control, direction, supervision, or the right to control, direct or supervise on behalf of the employer.</p> <p>UTAH CODE ANN. § 34A-2-103 (2017); Utah Home Fire Ins. Co. V. Manning, 985 P.2d 243 (1999); Ruster Lodge v. Industrial Commission, 562 P.2d 227 (1977).</p>

VT	No provision	Vt. Stat. Ann. tit. 21, §§ 601; 706 Certain industry exceptions	<p>Vermont’s case law establishes the test for determining whether a worker is an employee or independent contractor and will utilize the “right to control” test.</p> <p>Factors that are taken into account when employing the “right to control” test include the location of the work, whether the employee chose their own hours, whether the employee used their own tools for the job, how the employee was paid and whether the type of work being carried out by a worker is the type of work that could have been carried out by the owner’s employees as part of the regular course of business.</p> <p>VT. STAT. ANN. tit. 21, § 601; Crawford v. Lumbermen’s Mut. Cas. Co., 220 A.2d 480 (1966); Klinker v. Furdiga, 22 F.Supp.3d 366 (2014).</p>
VA	Yes	VA CODE ANN. §§ 65.2-101- to 65.2-104	<p>Virginia case law defines an independent contractor as one who contracts to produce a specific result for a fixed price without outside control concerning the method use.</p> <p>The status of a worker as an employee or as an independent contractor is not governed by Virginia’s workers’ compensation act, but instead is governed by common law.</p> <p>The test applied in determining whether an employee of an independent contractor will be considered statutory employee of owner of project is whether the worker is “performing an indispensable activity normally carried on through employees, rather than independent contractors.”</p> <p>The ordinary test to determine whether one is an “employee” or an “independent contractor” is to ascertain who can control and direct servants in performance of their work. Factors that are considered in determination of a worker’s status include what the parties to an employment contract call their relationship.</p> <p>VA CODE ANN. § 65.2-101 (2015); Phillips v. Brinkley, 72 S.E.2d 339 (Va. 1952); Ramsburg v. Target Stores, Inc., 982 F.Supp. 1194 (Va. 1997); Nolde Bros. v. Chalkley, 1945, 35 S.E.2d 827, 184 Va. 553.</p>
WA	No provision	WASH. REV. CODE ANN. §§ 51.12.010 to 51.12.185 (1996) Industry Exception	<p>Under Washington’s workers’ compensation law, there are three elements that must be satisfied to be considered an independent contractor:</p> <ol style="list-style-type: none"> (1) The individual has been and will be free from control over performance of services, both under the contract and in fact. (2) The service is either outside the course of business or performed outside the place of business. (3) The individual is customarily engaged in an independently established trade of the same nature as that being performed. <p>In determining whether the worker is an employee or an independent contractor, the court will look to the employment contract, the work, the parties’ situation, and other concomitant circumstances.</p> <p>WASH. REV. CODE ANN. §§ 51.08.180; 51.08.181; 51.08.195 (West 2008); Department of Labor and Industries of State v. Lyons Enterprises, Inc., 347 P.3d 464 (Wash.App. 2015); Henry Industries, Inc. v. Department of Labor and Industries, 381 P.3d 172 (Wash.App. 2016).</p>

WV	Yes	W. VA. CODE R. § 85-8-6 (2008)	<p>Under West Virginia’s worker’s compensation law, the burden of proving that an individual is an independent contractor is on the party asserting independent contractor status. The following factors are dispositive of whether a worker is an independent contractor:</p> <ol style="list-style-type: none"> (1) Whether the individual holds himself or herself out to be in business for himself for herself, including whether he or she possesses a license, permit or other certification required to engage in the type of work the worker is performing; whether the individual enters into verbal or written contracts with the persons and/or entities for whom the work is being performed; and whether the individual has the right to regularly solicit business from different persons or entities to perform for compensation the type of work that is being performed. (2) Whether the individual has control over the time when the work is being performed. (3) The individual has control and discretion over the means and manner of the work being performed and in achieving the result of the work. (4) Unless expressly required by law, the individual is not required to work exclusively for the person or entity for whom the work is being performed. (5) If the use of equipment is required to perform the work, the individual provides most significant equipment required to perform the job. <p>The West Virginia courts will look at the following factors to determine if a worker is an employee or independent contractor: the right or lack of right to supervise work, the method of payment, who owns substantial equipment to be used on the job, who determines what hours are worked, and the nature and terms of the employment contract.</p> <p>W. VA. CODE ANN. § 23-2-1a (1999); W. VA. CODE R. § 85-8-6 (2008); Smith v. Donald Coal Co., 115 S.E. 477 (W.Va. 1922); Null v. State Compensation Com’r, 35 S.E.25 359 (W.Va. 1945); Myers v. Workmen’s Compensation Com’r, 148 S.E.2d 664 (W.Va. 1966).</p>
WI	Yes	No provision	<p>Wisconsin’s worker’s compensation law lists nine criteria, all of which must be met to be considered an independent contractor:</p> <ol style="list-style-type: none"> (1) Maintains a separate business with his or her own office, equipment, materials and other facilities. (2) Holds or has applied for a federal employer identification number with the IRS or has filed business or self-employment income tax returns with the IRS based on that work or service in the previous year. (3) Operates under contracts to perform specific services or work for specific amounts of money and under which the independent contractor controls the means of performing the services or work. (4) Incurs the main expenses related to the service or work that he or she performs under contract. (5) Is responsible for the satisfactory completion of work or services that he or she contracts to perform and is liable for a failure to complete the work or service. (6) Receives compensation for work or service performed under a contract on a commission or per job or competitive-bid basis and not on any other basis. (7) May realize a profit or suffer a loss under contracts to perform work or service. (8) Has continuing or recurring business liabilities or obligations. (9) The success or failure of the independent contractor’s business depends on the relationship of business receipts to expenditures. <p>The presumption that a person injured while performing service for another is an employee rather than an independent contractor is rebuttable and ceases to have force or effect when evidence to the contrary is adduced.</p> <p>WIS. STAT. ANN. § 102.07 (2016); J. Romberger Co. v. Industrial Commission, 234 Wis. 226, 229 (Wis. 1940).</p>

WY	No	No provision	<p>Wyoming’s workers’ compensation law defines independent contractor as “an individual who performs services for another individual or entity” and:</p> <ol style="list-style-type: none"> (1) Is free from control or direction over the details of the performance of services by contract and by fact. (2) Represents his services to the public as a self-employed individual or an independent contractor. (3) May substitute another person to perform his services. <p>The Wyoming Supreme Court has defined an independent contractor as “one who, exercising an independent employment, contracts to do a piece of work according to his or her own methods and without being subject to the control of his or her employer except as to the result of the work.” An express contract between the parties is not conclusive on whether a worker is an independent contractor. However, it is an important factor in defining the relationship between the employer and the worker. The Wyoming Supreme Court stated other factors that are important to the determination, including:</p> <ol style="list-style-type: none"> (1) The method of payment. (2) The right to determine the relationship without incurring liability. (3) The furnishing of tools and equipment. (4) The scope of the work. (5) The control of the premises where the work is to be done; and whether the worker devotes all of his or her efforts to the position or if he or she also performs work for others. <p>WYO. STAT. ANN. § 27-14-102 (2017); Diamond B Services Inc. v. Rohde, 120 P.3d 1031 (Wyo. 2005); Stratman v. Admiral Beverage Corp., 760 P.2d 974, 980 (Wyo. 1988); Cline v. State, Dep’t of Family Services, 927 P.2d 261, 263 (Wyo. 1996).</p>
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[Agency Name]

INSURANCE DISASTER RESPONSE PLAN

[Date]

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Introduction

In the event of a disaster that requires an extraordinary response, the [state insurance regulatory entity] has adopted the following disaster response plan.

What this document provides

Following a disaster, this document provides a template for departments of insurance (DOIs) to use when assisting consumers. In advance of a disaster, this document also provides guidance to insurers and other licensees.

This document details how a DOI can work with other agencies to assist consumers, including:

- Federal agencies
- State or local agencies
- The NAIC
- Other state DOIs

This document does not provide information regarding a Continuity of Operations Plan (COOP). Check to see if your department has a COOP that provides detailed information regarding how it is to be implemented.

The purpose of the disaster response plan

The purpose of the disaster response plan is to:

- Provide states with information regarding quick and effective responses to meet the insurance information needs of its citizens.
- Provide information regarding the coordination of resources with other state agencies to mitigate the effects of a disaster.

The disaster response plan will be activated by the commissioner, director or superintendent. It will be implemented by the disaster or incident management team.

Information the disaster response plan provides

This disaster response plan template provides information to assist state insurance departments in responding to disasters. This disaster response plan is scalable to respond to disasters affecting:

- Limited areas within the state.
- Several locations throughout the state.
- The entire state.

NAIC Disaster Assistance Program

The NAIC Disaster Assistance Program is a series of services provided by the NAIC to any member jurisdiction experiencing the aftermath of a disaster where additional support is needed.

The NAIC can provide the following services following a disaster:

- Disaster Relief Call Center
- Disaster Recovery Center (DRC) Insurance Regulator Staff
- Communications Services
- NAIC Coordinated Data Call

Services are provided once a formal request is made by an NAIC member (a jurisdiction's appointed/elected insurance commissioner) to the NAIC officers, asking them to direct NAIC senior management to allocate budgeted funds and resources toward their need for disaster relief assistance. The day-to-day project is then overseen by the NAIC Director of Member Services who coordinates a variety of NAIC department staff overseeing operations and volunteers throughout the length of services needed.

Ways a jurisdiction can prepare to receive NAIC assistance

Jurisdictions can prepare information that will better facilitate NAIC assistance after a catastrophic event. These items may be incorporated as part of your jurisdiction's Business Continuity Plan. Jurisdictions need to consider how they want calls and complaints tracked by NAIC volunteers and provide templates, if appropriate.

The following are some high-level action items to do prior to contacting the NAIC:

- Identify your critical staff and who will be coordinating with the NAIC.
- Assess the level of impact to your staff. This level of impact may determine the support you need from the NAIC.
- Assess the functionality of your systems and facilities—i.e., phone, internet, other communications and office—after the event.
- Assess access to power and your critical infrastructure.
- Assess business impact analysis; i.e., the minimum you need to function.
- If possible, consider the type of assistance you may need: call center overflow, onsite regulatory staff support, website, or remote office. However, the NAIC is also prepared to consider new services to meet your unique needs.
- Document how a trusted third party may access your communications systems: phone and internet.

- Prepare and provide talking points for the NAIC, frequently asked questions (FAQ), jurisdiction guidelines—i.e., emergency adjuster licensing rules—which can be shared with call center staff and onsite DRC volunteers.
- Share jurisdiction-issued bulletins and how we are to handle them.

NAIC services set-up time after approval of assistance

The NAIC is ready to help at any time after a member has requested assistance.

- Call center: within 24–48 hours after contact.
- DRC volunteers may be available within 48–72 hours after contact.
- Communications services are available within 24–48 hours after contact and member approval of information.
- NAIC Coordinated Data Call within 24–48 hours after contact.

Additional information

Where possible, the NAIC may reach out to a member jurisdiction prior to an imminent disaster to offer information about our program or answer any questions they may have about systems that may be affected in the event of a disaster.

NAIC Research and Government Relations departments are able to participate in briefings with the Financial and Banking Information Infrastructure Committee (FBIIC), the Federal Emergency Management Agency (FEMA), and Homeland Security to share information from, and to, NAIC jurisdictions.

The National Insurance Producer Registry (NIPR) and/or the Interstate Insurance Product Regulation Commission (Compact) are able to assist affected jurisdictions who may need emergency adjuster licenses and/or help processing product filings.

Disaster relief call center

The NAIC works with your department's technical team to connect a 1-800 NAIC telephone line and/or computer system—State Based Systems (SBS)—with your jurisdiction's consumer phone line and/or complaint tracking system.

- Call center is staffed with experienced insurance department regulator volunteers capable of answering consumer concerns.
- Call center is flexible enough to handle your entire call volume, allowing your staff to assist people in the field.
- Call center may also be set to roll-over to state insurance regulator volunteers whenever you experience call overflow.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost for the 1-800 phone line; call center equipment, facilities and coordination; and the travel/lodging reservations and expense for state insurance regulator volunteers.
- Your fellow members/commissioners provide their state insurance regulator staff as volunteers.

DRC insurance regulator staff

The NAIC facilitates and coordinates insurance department regulator volunteers to staff your designated DRC location(s).

- Volunteers cover one to two week shift rotations to man the daily operation of the DRC.
- The NAIC will arrange travel and lodging for the assigned state insurance regulator volunteers.
- If needed, the NAIC can help provide loaner laptops or cell phones for state insurance regulator volunteer use at a DRC location.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost of the loaner equipment and travel/lodging expenses for the state insurance regulator volunteers.
- Your fellow members/commissioners proffer their state insurance regulator staff as volunteers.

To deploy this service, an insurance department staff/disaster coordinator contacts Trish Schoettger, NAIC Director of Member Services at tschoettger@naic.org or 816.783.8506. She will coordinate a call with the member/commissioner, NAIC President, and NAIC Chief Executive Officer (CEO) or Chief Operating Officer (COO) to utilize these services.

NAIC-hosted insurance department website

In the case where the affected jurisdiction has lost the use of its facility or their website becomes inoperable, the NAIC can act as an interim host for the jurisdiction's insurance department website. If needed, the NAIC can also serve as a resource to communicate your updated status to other jurisdictions and/or agencies or change information.

Cost:

- There is no cost to your jurisdiction for this service.
- The NAIC covers the cost of hosting the site.

NAIC-coordinated data call

The NAIC assists states with data calls related to the collection of claims data following disasters. Data calls are typically conducted weekly immediately after a disaster and then biweekly or monthly as a higher percentage of claims close.

Preparation

The steps to preparation

A DOI needs to promptly and efficiently respond to a disaster. Effective response to a disaster requires preparation and planning, including:

- Identifying appropriate staff to perform necessary activities.
- Training appropriate staff.
- Identifying available resources.
- Identifying any resource shortfalls and how these might be addressed.

Important planning considerations

Preparedness for disasters requires identifying resources and expertise in advance and planning how these can be used in a disaster. Planning considerations include:

- Putting procedures in place for internal tracking and reimbursement costs expended by the DOI in response to a disaster.
- Designating a team of individuals and assigning responsibilities to ensure that everyone on the team understands their roles and responsibilities during a disaster situation.
- Updating plans and procedures based upon post-mortem evaluation of the DOI's performance in prior disaster response efforts.

Available training

As a part of efforts to prepare for response to disasters, state DOIs and agencies participate with local jurisdictions and private entities in exercises and training.

Staff should be periodically trained on how to assist consumers during a disaster.

Training regarding information on FEMA assistance programs and the National Flood Insurance Program (NFIP) is recommended.

FEMA has free courses available to emergency management teams. These courses can be found by using the following link: <https://training.fema.gov/is/>.

The NFIP has developed a reference guide on flood-related issues for state insurance regulators and other officials. This document can be found using the following link: https://www.fema.gov/media-library-data/1525272377818-3cb0cf795a73c135c8543d2459e12c80/NFIPDeskReferencev18_508_V4.1.pdf.

Insurance contact information that a DOI should regularly collect

It is important for a DOI to maintain current insurance company contacts for insurers licensed to do business in the state, including non-admitted surplus lines insurers. Some states may maintain contact information in SBS, another database, or through a Microsoft Outlook contact list obtained by an annual request.

Partnerships with private volunteer organizations can also be useful in coordinating response after a disaster. [State Insurance Department] should identify consumer or non-profit organizations that would be open to a partnership.

Insurance company contacts:

Following a disaster, a DOI will likely need to contact insurers. The contact information should include:

- Insurers doing business in a state.
- A primary contact and a secondary contact (both would likely be a member of the insurer's disaster response team).
- High-level senior management to respond to questions or issues promptly.

Requirements of insurance company contacts

After a disaster, state insurance regulators will need to be able to contact insurers for information. Contacts should:

- Be able to provide coverage data and loss statistics, by county or region, according to a standardized format developed by the DOI.
- Be knowledgeable regarding their internal information systems and sources and authorized to access such systems so that applicable and timely information can be provided upon the request of the DOI.
- Be able to respond to requests for information from legislators, the governor's office, FEMA officials, or press inquiries.

Other necessary contacts

DOIs will need contacts for local, state and federal officials (these should be maintained and updated).

Contacts will report other disaster information to the DOI, including lists of company claim offices and phone numbers, adjuster information, and company toll-free numbers, etc.

Types of information that should be ready for dissemination in the event of a disaster

Following a disaster, a DOI will be responsible for helping consumers regarding claims. Some of the items a DOI will want to have on hand to provide to consumers include:

- Consumer brochures.
- Consumer alerts.
- Insurer contacts for consumers.
- Other forms of information relating to preparation and response to all types of disasters (this information should be updated prior to a disaster).

The NAIC's Transparency and Readability of Consumer Information (C) Working Group created a document to help guide consumers through a claim following a disaster. This document can be passed out following a disaster: <https://content.naic.org/sites/default/files/inline-files/Claim%20Disaster%20Guide%20-%20Generic%20FINAL%207%2023%202019.pdf>.

Types of data a DOI should collect regarding disasters

A DOI should define the appropriate area in their department responsible for creating and maintaining a database that holds coverage data and loss statistics collected from insurers. If a DOI does not have the resources to maintain a database, the NAIC can provide this service.

Information to be collected (generally collected by ZIP code) includes such items as the:

- Number of claims reported
- Number of claims closed with and without payment
- Paid losses
- Incurred losses

Data collection tools the NAIC can provide

The NAIC can provide the data template adopted by the NAIC Property and Casualty (C) Committee and Executive (EX) Committee and Plenary if the DOI does not have its own data call template. This template can be found on the Catastrophe Insurance (C) Working Group's webpage under the Related Documents tab. The link to the webpage is: https://www.naic.org/cmte_c_catastrophe.htm.

The NAIC coordinated data call

The NAIC assists states with data calls related to the collection of claims data following disasters. Data calls are typically conducted weekly immediately after a disaster and then biweekly or monthly as a higher percentage of claims close. The length of time that data is collected is usually dependent upon the severity of the event. For example, a minor hurricane, like Irma, will not necessitate weekly reporting, even in the beginning. Having the NAIC assist with a data call could require a confidentiality agreement if the state does not already have one that would encompass the data call.

Types of information a DOI, in coordination with Public Affairs, should maintain, update, post on the state's website, and distribute via social media

- https://www.insureuonline.org/disaster_prep_flood.pdf
- https://www.insureuonline.org/disaster_prep_tornado.pdf
- https://www.insureuonline.org/disaster_prep_hurricanes.pdf
- https://www.insureuonline.org/disaster_prep_wildfires.pdf
- https://www.insureuonline.org/disaster_prep_earthquakes.pdf
- https://www.insureuonline.org/home_inventory_checklist.pdf
- https://www.naic.org/documents/consumer_alert_wake_of_the_storm.htm
- https://www.naic.org/documents/consumer_alert_flood_insurance_understanding_risk.htm

Resources required for emergency response

The availability and capability of resources needs to be determined and includes the following:

- People
- Facilities
- Materials and supplies
- Funding
- Information regarding threats or hazards

Periodically review resources dedicated to the Disaster Response Team to make certain that there are enough cell phones, laptops, and other equipment and materials available for staff.

Disaster Recovery Team Personnel within the DOI should be identified to act as first responders if the DOI is required to respond to an emergency.

DOI employees are divided into those who will work outside of the office and those who will work at the DOI in an onsite or offsite call center.

Contact information for members of the team should be maintained.

Employees should receive periodic training and updates on procedures for assisting consumers in the event of a disaster.

The DOI shall maintain Disaster Recovery supplies and information for use by the Team.

Brief description of the Major Incident Management Functions (See org chart template - Appendix 1)

COMMAND

Sets the incident objectives, strategies and priorities. Has overall responsibility for the incident.

OPERATIONS

Conducts operations to reach the incident objectives. Establishes tactics and directs all operational resources.

PLANNING

Supports the incident action planning process by tracking resources, collecting/analyzing information, and maintaining documentation.

LOGISTICS

Arranges for resources and needed services to support achievement of the incident objectives.

FINANCE AND ADMINISTRATION

Monitors costs related to the incident. Provides accounting, procurement, time recording and cost analysis.

Keep in mind, larger states may have more resources available than smaller states. See important note to DOIs.

Disaster Response/Incident Management Team

Response Leadership Team (Your State Emergency Management Agency would call this the Command Support Staff)

The purpose of this team is to:

- Provide direction before, during and after a disaster.
- Ensure periodic review and assessment of the State Disaster Response Plan and hold the incident management team accountable for implementation.
- Test and update the plan on a regular and consistent basis.

Location

This team is located at the [Home office] unless an alternative location is needed.

Duties:

Upon notification of a significant disaster, the commissioner, superintendent or director will notify this team to begin implementation of the Disaster Response Plan.

Identify which other disaster response units should be activated.

Members:

The response leadership team should include the following:

- Incident Commander (IC) (commissioner, director, superintendent, chief deputy or their designee).
- Public Information Officer (PIO) (the person that handles media and communication requests).
- Safety Officer (SO) (this person is the human resources (HR) chief manager).
- Finance /Administration Section Chief.
- Legal Counsel (LC).
- Emergency Operations Center (EOC) Liaison Officer (ELO) (this could be your lead consumer affairs staff member).
- Any other positions, as required, who report directly to the IC (they may have an assistant or assistants, as needed).

Incident Commander (IC) – (may be the Agency Head or their designee)

The IC is responsible for all incident action plans (IAPs) and activities to sustain critical functions and services. These tasks include:

- Developing strategies and tactics before the execution of action plans in the event of a disaster.
- Ordering and releasing resources.
- Conducting incident operations.

The IC is responsible for:

- Managing all incident operations.
- Ensuring overall incident safety.

- Assessing the situation and notifying internal teams and departments.
- Appointing others.
- Carrying out all ICS management functions until they delegate a function.
- Providing information services to internal and external stakeholders.
- Managing all operations at the disaster site.

It is possible for the IC to accomplish all management functions during the aftermath of a small event.

The IC only creates the sections that are needed. If a section is not staffed, the IC will personally manage those functions.

Public Information Officer (PIO)

The PIO is responsible for interfacing with the public, industry, media, and/or other agencies with incident-related information requirements.

The PIO is responsible for:

- Drafting and issuing all public announcements.
- Making all press releases.
- Establishing an event-specific webpage (if needed).
- Sending event-specific updates out via social media and posting them online.
- Giving all interviews with the communications media relative to the incident and the Agency's action plan to address the situation. The PIO establishes communications with PIOs in other State Agencies and the Governor's Media Office to convey situation status, progress toward resolving the incident, and any actions needed in support of or to address the situation.

The PIO works directly with the IC and Agency Head on all sensitive communications and may seek advice and counsel from other members of the Command Support Staff on legal or personnel matters and from the Section Chiefs on background relating to the situation and the actions the Agency are taking.

Safety Officer (SO)

The SO monitors incident operations and advises the IC on all matters relating to operational safety, including the health and safety of agency personnel.

The SO is responsible for:

- Monitoring conditions and developing measures for assuring safety of personnel.
- Advising the IC about incident safety issues.
- Conducting risk analyses.
- Implementing safety measures.
- Monitoring building accessibility.
- Communicating with the IC and staff.

Legal Counsel (LC)

The LC is the member of the Incident Command Support Team who provides legal counsel to the IC.

Examples of support would include:

- Providing advice relative to Agency jurisdiction and contractual obligations.
- Completing other tasks as assigned by the IC.

The LC may also be asked to:

- Review any public statements to be issued by the PIO.
- Provide opinion and guidance on employee relations-based issues.
- Provide opinion and guidance on issues that relate to the Agency mission and the public.

Emergency Liaison Officer (ELO)

The ELO is the point of contact for representatives of other governmental agencies, nongovernmental organizations, and the private sector.

The ELO provides a liaison between the DOI and the state's Department of Emergency Management and Homeland Security (DEMHS), especially when the DEMHS has elected to activate its EOC.

A close working relationship between the Agency and the EOC is required for timely communication and action appropriate to directives received. The ELO will represent the Agency at the EOC and establish ongoing communications and scheduled status reviews with the Agency Incident Command.

Roles and Responsibilities

Financial & Administration Section Chief

The Financial and Administration Section Chief is a member of the Incident Command General Staff. This person is also the leader of the Administration Section. In the context of the COOP, the Financial and Administration Section Chief is responsible for the internal processes within the Agency, including financial and human resource functions, which are necessary to enable the critical functions being addressed by the Operations Section.

The Administration Section Chief sustains or recovers processes to maintain the fiscal integrity of the Agency and ensure that essential human resource processes are sustained. The Administration Section Chief works closely with the Operations and Logistics Sections to identify requirements and assess available options.

The Finance/Administration Section Chief is responsible for:

- Analyzing all financial, administrative and cost aspects of an incident.
- Maintaining daily contact with agency administrative headquarters on finance and administration matters.
- Meeting with assisting and cooperating agency representatives.
- Advising the IC on financial and administrative matters.
- Developing the operating plan for the Finance/Administrative Section.
- Coordinating finances at the local level.
- Establishing or transitioning into an existing Finance/Administrative Section.
- Supervising and configuring section with units to support, as necessary.
- Negotiating and monitoring contracts.
- Timekeeping.
- Analyzing cost.
- Compensating for injury or damage to property.
- Documenting reimbursement (e.g., under mutual aid agreements and assistance agreements).

The Finance/Administration Section is set up for any incident that requires incident-specific financial management.

The Time, Compensation/Claims, Cost and Procurement Units may be established within this section.

Finance and Administration Section Team Leads

The Finance and Administration Section Team Leads should be a qualified member of the Incident Command General Staff. This person reports to the Administration Section Chief.

Finance and Administration Section Team Leads are responsible for:

- The coordination of the initial action plan execution and recovery efforts for one of the Administration Section Teams.
- Business continuity interruption preparedness.
- Response coordination.
- Post-interruption corrective action based on lessons learned for the functions that are part of the normal operational responsibilities of the work group.

In the National Incident Management System (NIMS) these Team Leads often head branches or divisions.

Section Chiefs will determine the organization appropriate under respective sections.

Logistics Section Chief

This Logistics Section Chief is a member of the Incident Command General Staff and the leader of the Logistics Section.

The Logistics Section Chief is responsible for:

- Overseeing the resources and processes needed to sustain or recreate the work environment for Operations and Administration Section functions (in the context of the COOP), including facility, technology, equipment and supplies.
- Addressing plant, tool, technology and information security (including the Health Insurance Portability and Accountability Act of 1996 [HIPAA]) requirements for the Incident Command.
- Working closely with the Operations and Administration Sections to identify requirements and assess available options.

The Logistics Section is responsible for all services and support needs, including:

- Ordering, obtaining, maintaining and accounting for essential personnel, equipment and supplies.
- Providing communication planning and resources.
- Setting up food services for responders.
- Setting up and maintaining incident facilities.
- Providing support transportation.
- Providing medical services to incident personnel.

Operations Section Chief

Typically, the Operations Section Chief is the person with the greatest tactical expertise in dealing with the problem at hand. The Operations Section Chief is a member of the Incident Command General Staff and the leader of the Operations Section. This person is responsible for the sustenance or recovery of the functions within the agency that serve the citizens of the state. The Operations Section Chief may have one or more Deputies who are qualified to fill this position.

The Operations Section Chief is responsible for:

- Directly managing all incident tactical activities.
- Implementing the IAP.
- Developing and implementing strategies and tactics to carry out the incident objectives.
- Organizing, assigning and supervising the tactical response resources.
- Having one or more Deputies who are qualified to assume these responsibilities. (This is recommended where multiple shifts are needed, as well as for succession planning).

Operation Section Team Leads

An Operation Section Team Lead is a qualified member of the Incident Command General Staff who reports to the Operation Section Chief. This individual is responsible for the coordination of the initial action plan and recovery effort of the Operation Section Teams.

Operation Section Team Leads are responsible for:

- Pre-incident preparedness.
- IAP coordination.
- Post-incident corrective action based on lessons learned for the functions that are part of the normal operational responsibilities of the work group.

Planning Section Chief

The Planning Section Chief is a member of the Incident Command General Staff and leader of the Planning Section. This individual is responsible for the development of the Business Continuity Plan and COOP document and works closely with the IC, General Staff (other Section Chiefs), and Command Support Staff to ensure that critical functions and their resource requirements are identified and that preparatory actions are taken. The Planning Section Chief ensures that communications information needed to execute the COOP has been captured.

In the continuity plan action period, the Planning Section Chief is responsible for:

- Serving as a coach to Incident Command.
- Ensuring that regular crisis action plan review sessions are held.
- Ensuring that outstanding issues are identified.
- Ensuring that appropriate alternatives are considered.
- Ensuring that action assignments are clearly distributed.

The Planning Section Chief may have one or more Deputies who are qualified to assume these responsibilities. This is recommended where multiple shifts are needed, as well as for succession planning.

The major activities of the Planning Section may include:

- Collecting, evaluating and displaying incident intelligence and information.
- Preparing and documenting IAPs.
- Tracking resources assigned to the incident.
- Maintaining incident documentation.
- Developing plans for demobilization.

Deputy

The Deputy is a fully qualified individual who, in the absence of a superior, can be delegated the authority to manage a functional operation or perform a specific task. In some cases, the Deputy acts as relief for a superior; therefore, the Deputy must be fully qualified in the position.

Deputies can be assigned to the IC, Command Support Staff, and the Section Chief positions.

Statistics Operational Network Task Group

The purpose of this group is to facilitate an analysis of a catastrophe with insurance companies and the [agency name] whenever a catastrophic event occurs.

The Statistics Operational Network Task Group will be located [insert location of home office or other designated location] unless otherwise chosen due to necessity.

The Statistics Operational Network Task Group is charged with the responsibility of creating a “contact list” of insurance community liaisons. This contact list will allow for prompt contact of people within the insurance industry who should be able to provide coverage data and loss statistics, by region, according to any standardized format developed by [agency].

The Team Lead should be knowledgeable of company internal information systems and sources authorized to access such systems so that applicable and timely information can be provided to [agency] or emergency response agencies upon request.

Members of this Task Group should include divisions that perform data collection/analysis, market conduct, and financial regulation.

Consumer Operational Team Lead

The Consumer Operational Team Lead works with the PIO to provide consumers with the information needed to contact their insurance companies and the fundamentals to file a claim and convey necessary information to the Emergency Response Team.

A Consumer Information Task Group will be located [insert location of home office or other designated location] unless otherwise selected by the Disaster Executive Committee due to necessity.

If a disaster is declared, a consumer hotline should be immediately activated, but consideration may be needed to relocate it. The hotline:

- Should be able to ramp up to provide a 24-hour service.¹
- Should operate utilizing four six-hour shifts.

Branch offices might initially be made operational through the use of cell phones until other landlines are established.

Hotline staff should:

- Have a list of 800 numbers of the major property/casualty (P/C) insurers in the state.
- Have the list of Emergency Response Task Group key personnel.
- Have other emergency agency numbers to be used in the event of a disaster.
- Be provided with a communications kit, which will be used to tell consumers about claim procedures.

Members should include:

- Consumer services unit senior management.
- Internal resource senior management.

Communications Operations Task Group

The purpose of this group is to work with the PIO to create a central source for media information relevant to disaster insurance and the disaster plan response activities.

This Group:

- Prepares news releases about the steps to take before, during and after a disaster.
- Produces brochures about preparedness.
- Dispatches speakers to various locations, as needed.
- Maintains contact with all media.

¹ It may not be necessary to operate 24 hours a day, but it is likely that the hotline may need to be open for hours longer than the agency is typically open. The agency will need to be prepared for these circumstances.

The Communications Team will be [insert location of home office or other designated location] unless otherwise chosen by the Disaster Executive Committee due to necessity.

The Communications Operations Task Group is responsible for:

- Developing a consistent message to be communicated to consumers.
- Distributing advisories and brochures to units of government throughout the state so that they may reproduce them for local residents. (The NAIC may be contacted for assistance in bulk reproduction).

The Communications Task Group should:

- Be in constant contact with the [State Emergency Management Agency's Communications Team] to coordinate media announcements.
- Contact news organizations throughout the state with a Media Advisory.
- Notify news agencies that [agency name] is the primary source for obtaining and forwarding information relative to insurance and a disaster.
- Be in constant touch with the Emergency Response Task Group and branch offices to coordinate the information flow.

Much of the information will be obtained from the designated liaison persons of the Emergency Response Task Group.

This system ensures that information being supplied to the media is consistent, accurate, and up-to-the-minute.

The Communications Task Group is:

- Responsible for ensuring that messaging is consistent.
- Responsible for developing an Outreach Team to operate quickly and efficiently in affected areas to answer questions in town meetings and other informational gatherings.
- Responsible for supplement information provided through the media and other sources about how to quickly and effectively prepare insurance claims information.

Members include:

- Senior media or communications staff.
- Legislative personnel.
- Key agency staff with public speaking experience.

Logistics Task Group

The purpose of this Task Group is:

- To consult with other task groups regarding the DOI's logistical and technical capabilities, and requirements, to enable the efficient execution of the DOI's State Disaster Response Plan.
- To coordinate with the Emergency Response Task Group regarding logistical and technical capabilities for Emergency Response Task Group and/or field or temporary offices.
- To coordinate with other areas regarding logistical and technical capabilities for hotline and other consumer communication needs.

The Logistics Task Group will be [insert location of home office or other designated location] unless otherwise chosen by the Disaster Executive Committee due to necessity.

The duties of the Logistics Task Group are:

- To identify resource needs of the other task groups regarding the DOI's logistical and technical capabilities and requirements to enable the insurance department to respond better and faster to disasters and include these in the implementation plan.
- To coordinate technical requirements for an alternate designated facility to ensure its immediate activation in case the DOI's home or central office is damaged/destroyed in a disaster and include these in the implementation plan.

Members include:

- Senior staff from internal resource or budget.
- Senior staff from the information technology (IT) unit.
- Senior staff from any branch office locations.

Branch Office(s)

Branch offices will be responsible for addressing and solving problems where possible and overseeing operations in their responsibility area.

While the composition and basic duties will be the same as those of the Emergency Response Task Group, the branch office(s) will deal with the local problems and handle them from a closer vantage point.

Branch offices will be established at the existing location of the branch offices, unless the Emergency Response Task Group indicates a more appropriate location.

The branch office will be responsible for:

- Channeling information within the zone for which the branch office is responsible.
- Forwarding requests for speakers and press contacts to the Communications Task Group.
- Obtaining general insurance information and all written material explaining how to prepare claims from the Consumer Services Task Group.

- Routinely reporting to the Emergency Response Task Group about daily activities.
- Sending all problems that cannot be worked out locally to the Emergency Response Task Group for review.
- Obtaining DOI brochures.

Members include senior staff from branch office location(s).

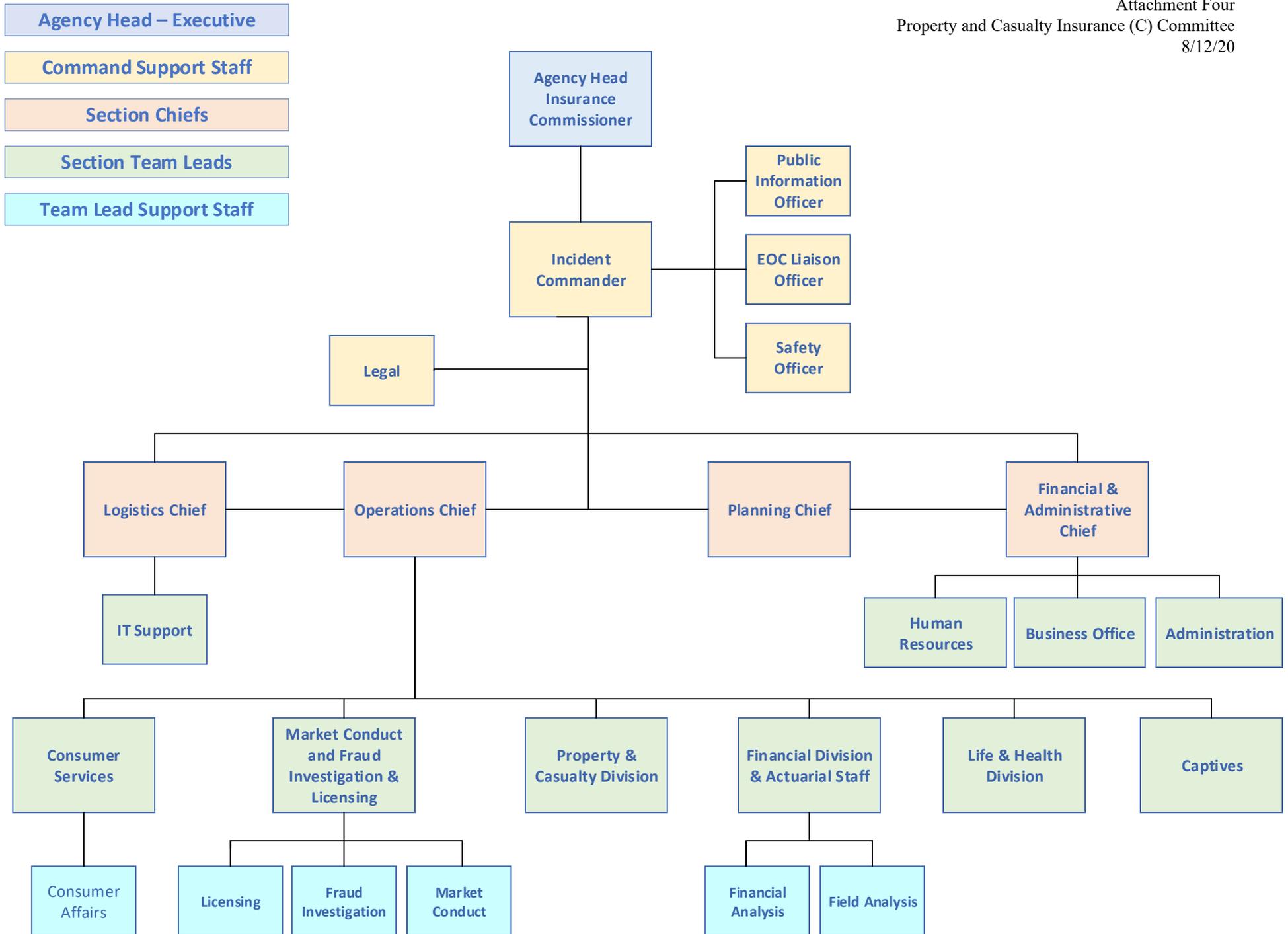
Where serious disputes or problems arise, the branch office will forward these back to the Emergency Response Task Group; otherwise, the branch office will manage its own operation and report only.

It is imperative that senior staff remain at the Branch Office Operations center for command purposes.

These centers fall under the direction of the Emergency Response Task Group.

Appendix 1

Business Continuity Org Chart



Appendix 2

Response Levels and Definitions

RESPONSE LEVELS AND DEFINITIONS

	Disaster Level 1	Disaster Level 2	Disaster Level 3	Disaster Level 4
Typical Damage	Exterior Damage to Private Property	Exterior Damage, Possibly Some Interior Damage, and Possibly Some Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines.	Exterior Damage, Interior Damage, and Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines. Temporary Interruption of Normal Public Services.	Significant to Massive Exterior, Interior and Structural Damage to Private and Commercial Property. Infrastructure Damage to Telephone and Power Lines and Possibly Cell Towers. Communications, Public Services Lost for Extended Time.
Insured Losses	Less than \$100 Million	Between \$100 Million and \$1 Billion	Between \$1 Billion and \$10 Billion	Greater than \$10 Billion
Types of Events	Rural Tornadoes Rural Hailstorms Rural Windstorms Local Flash Floods	Town-leveling tornadoes Suburban Hail and/or windstorms Area-wide ice storms Area-wide flash floods Rural & Residential Forest/Wildfires	Region-wide Region-wide ice storms Urban Tornadoes Major outbreak multiple tornadoes Urban Floods Urban/Suburban Fires Significant Blizzards Moderate earthquakes	Significant Earthquakes A major New Madrid EQ Significant record-breaking floods Major influenza outbreak
Geographical Extent	Localized	Localized to disbursed	Localized to widespread	Disbursed to widespread
Affected Population	Small	Small to Moderate	Small to Large	Moderate to Large
Examples	Hoisington, Kansas F4 Tornado (April 21, 2001) \$43 Billion in Damages	La Plata, Maryland F4 Tornado (April 28, 2002) \$100M in Damage	Nashville Flood (May 1, 2010) \$1.5 Billion in Damages	Great Flood of 1993 (Missouri & Mississippi Rivers) \$15–20 Billion in Damages
		Haysville/Wichita, Kansas F4 Tornado (May 3, 1999) \$150 Million in Damage	Oakland/Berkeley Firestorm (October 19, 1991) \$1.54 Billion in Damages	Northridge Earthquake (January 17, 1994) (Mag. 6.7 Mom. Mag.) \$15 Billion in Damages
		Greensburg, Kansas EF5 Tornado (May 4, 2007) \$153 million in Damage (Approx. 2,000 claims)	Tornado Outbreak in KC, Okla. City (May 2005) F3s & F4s \$3.2 Billion	FEMA Estimate for a Mag. 7.7 Earthquake in Missouri: \$30+ Billion in Damages

DIRECTOR'S CONTACTS
TOP 20 P/C INDUSTRY CONTACT
LIST

Carrier Name	Director's Contact Name	Director's Contact Title	Director's Contact Address	Director's Contact E-mail	Director's Contact Cell Phone #	Director's Contact Fax #

DIRECTOR'S CONTACTS
TOP 20 COMMERCIAL/ALLIED
LINES CONTACT LIST

Carrier Name	Director's Contact Name	Director's Contact Title	Director's Contact Address	Director's Contact E-mail	Director's Contact Cell Phone #	Director's Contact Fax #

Appendix 3

Sample Contact Lists

INSURANCE TRADE ASSOCIATION and KEY INDUSTRY GROUPS CONTACT LIST

STATE INSURANCE TRADE ASSOCIATION (SITA)

Address 1

Address 2

Executive Director:

Phone:

Fax:

E-mail Address:

Internet Address:

STATE INSURANCE AGENT ASSOCIATION

Address 1

Address 2

Executive Director:

Phone:

Fax:

E-mail Address:

Internet Address: _

NATIONAL ASSOCIATION OF MUTUAL INSURANCE COMPANIES (NAMIC)

3601 Vincennes Rd

Indianapolis, IN 46268

Key Executive: Charles Chamness, CFO

Phone: 317-875-5250

Fax: 317-879-8408

E-mail Address: lforrester@namic.org or cchamness@namic.org

Internet Address: www.namic.org

INSURANCE SERVICES OFFICE (ISO)

2828 E. Trinity Mills Road, Suite 315

Carrollton, TX 75006

Assistant Regional Manager:

Phone

Fax:

E-mail Address:

Internet Address: www.iso.com

AMERICAN PROPERTY CASUALTY INSURANCE ASSOCIATION (APCIA)

Address:

City, State, Zip:

Contact:

Phone:

Fax:

E-mail Address:

Internet Address: www.pciaa.net

INSURANCE INFORMATION INSTITUTE (III)

110 William Street

New York, NY 10038

Key Executive:

Phone:

Fax:

E-mail Address

Internet Address: www.iii.org

STATE INSURANCE GUARANTY ASSOCIATIONS

Address1

Address 2

Contact:

Phone:

Fax:

E-mail Address:

Internet Address:

NATIONAL ASSOCIATION OF INSURANCE AND FINANCIAL ADVISORS (NAIFA)

Address 1

Address 2

Contact:

Phone:

Fax:

E-mail Address:

Internet Address:

NATIONAL COUNCIL ON COMPENSATION INSURANCE (NCCI)

Address 1

Address 2

Contact:

Phone:

Mobile:

Fax:

E-mail Address:

Internet Address: _

STATE PROPERTY RESIDUAL MARKET OR FAIR PLAN

Address 1

Address 2

Manager:

Phone:

Fax:

E-mail Address:

Internet Address:

MEDIA CONTACTS (EXAMPLE FROM MISSOURI Department of Insurance)

Newspapers		
Blue Springs Examiner	dbrendel @examiner.net	(816) 229-9161
Boonville Daily News, The	news@boonvillenews.com	(660) 882-5335
Branson Daily News, The	bdn@tri-lakes.ent	(417) 334-3161
Carthage Press, The	carpress@ipa.net	(417) 358-2191
Broadcast		
Associated Press	pstevens@ap.org	
Television Stations		
KCTV	kctv@kctv.com	913-677-5555
KETC	letters@ketc.pbs.org	800-729-9966
Radio Stations		
KAAN	rodneyh@netins.net	660-425-7575
KAHR	kool967@semo.net	866-917-9797
KALM -	mail@kkountry.com	417-264-7211
KAOL	KMZU@carolnet.com	660-542-0404
KBDZ	news@suntimesnews.com	573-547-2980



ICC INTERNATIONAL
CODE
COUNCIL®

Building Codes and Insurance: 2 Peas in the Resilience Pod

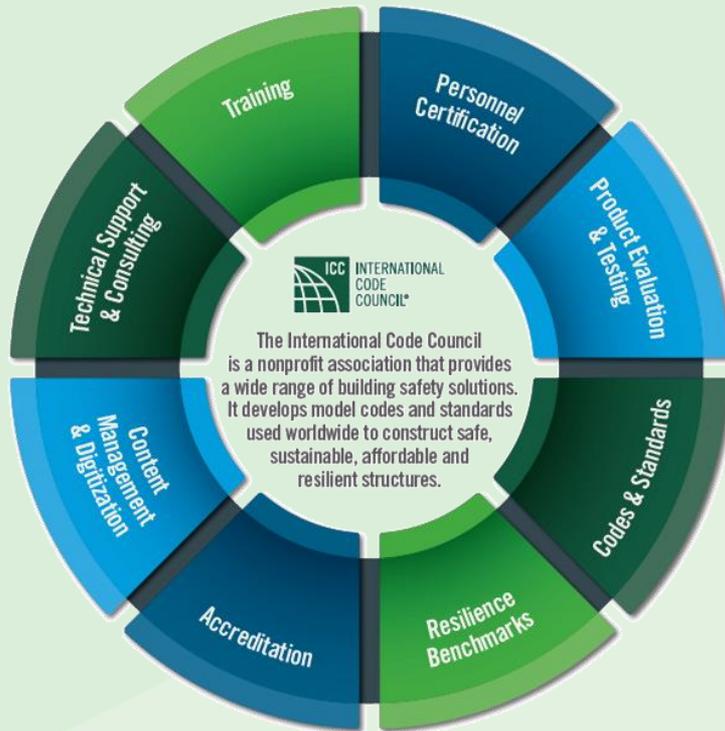
NAIC Property & Casualty Committee
August 12, 2020

Ryan Colker
Vice-President, Innovation
Executive Director, Alliance for National & Community
Resilience



Alliance for
National & Community
Resilience

The Family of Building & Community Solutions



- Codes and Standards
- Personnel Training and Certification
- Product Evaluation
- Accreditation Services
- Codification & Administration Services
- Engineering Support
- Community Resilience Benchmarks
- Third-Party Evaluation Services

The 2018 I-Codes



Benefit Cost Ratios by Hazard and Mitigation Measure



Overall Benefit-Cost Ratio

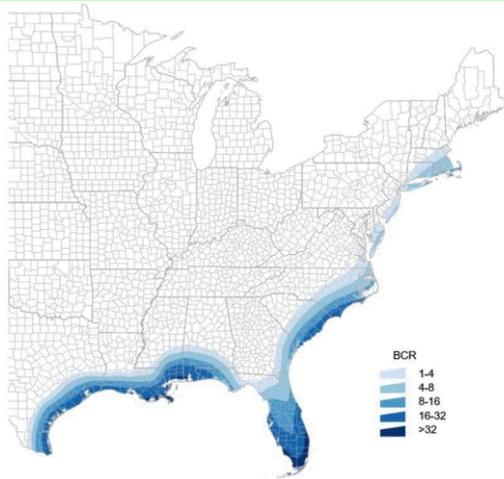
Cost (\$ billion)

Benefit (\$ billion)

	ADOPT CODE	ABOVE CODE	BUILDING RETROFIT	LIFELINE RETROFIT	FEDERAL GRANTS
Overall Benefit-Cost Ratio	11:1	4:1	4:1	4:1	6:1
Cost (\$ billion)	\$1 /year	\$4 /year	\$520	\$0.6	\$27
Benefit (\$ billion)	\$13 /year	\$16 /year	\$2200	\$2.5	\$160
Riverine Flood	6:1	5:1	6:1	8:1	7:1
Hurricane Surge	not applicable	7:1	not applicable	not applicable	not applicable
Wind	10:1	5:1	6:1	7:1	5:1
Earthquake	12:1	4:1	13:1	3:1	3:1
Wildland-Urban Interface Fire	not applicable	4:1	2:1	not applicable	3:1

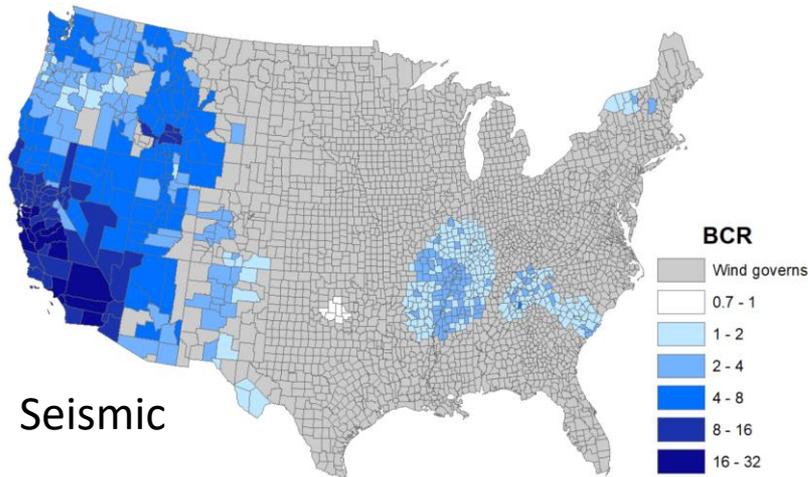
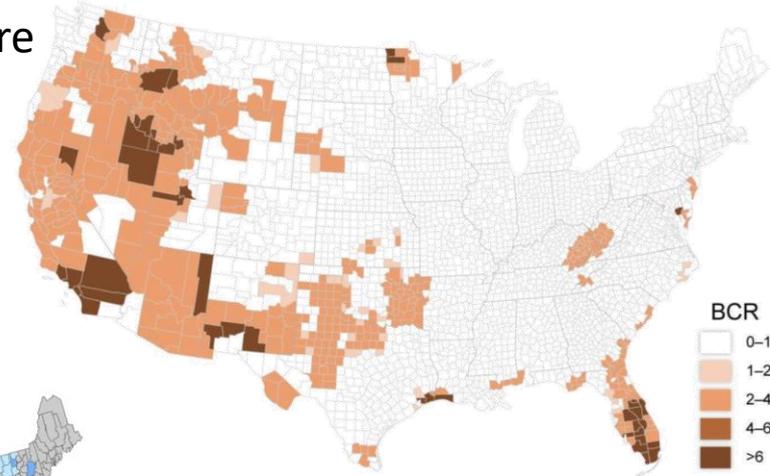
Copyright © 2019 The National Institute of Building Sciences

What Mitigation Makes Sense Where? Application of the 2018 I-Codes



Hurricane Wind

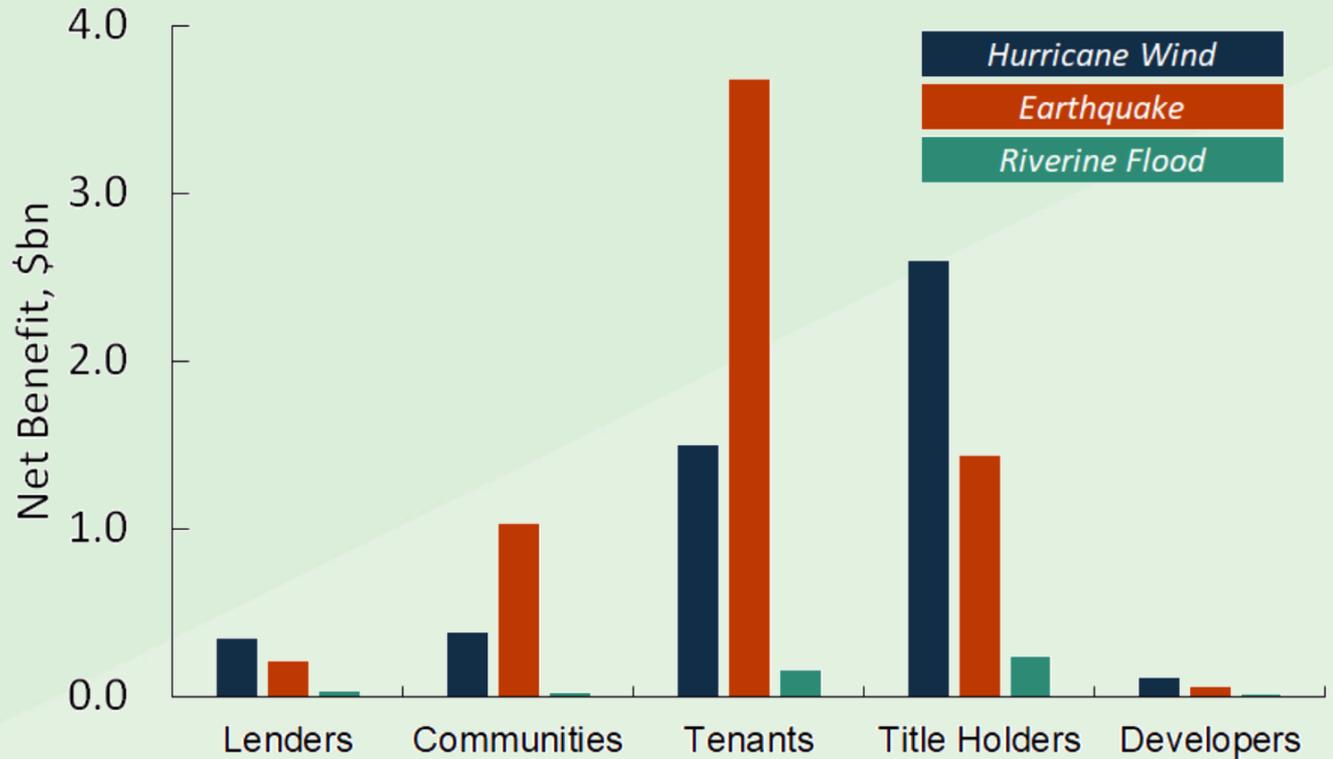
Wildfire



Seismic

Everyone Benefits from Mitigation

Stakeholder net benefits per year of new construction resulting from meeting 2018 IRC and IBC



Show Me More. . .

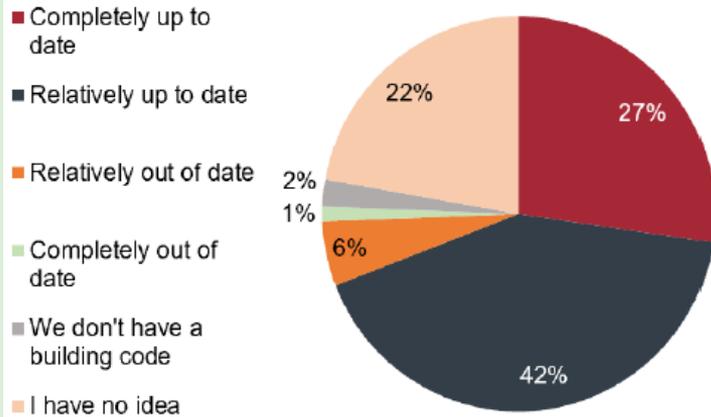
- The implementation of Florida's statewide codes reduced windstorm property damage 72%.¹
- A FEMA analysis from 2014 estimated approximately \$500 million in annualized loss avoided in eight southeastern states due to do the adoption of modern building codes based on the I-Codes.²
- The 2019 Mitigation Assessment Team report following Hurricane Harvey found that National Flood Insurance Program (NFIP) regulations reduced average claim payments by almost half and following modern code requirements reduced the average claim payments by an additional 90%.³
- Researchers found effective and well-enforced building codes in Missouri⁴ reduced hail damage to homes by 10 to 20 percent on average.⁵
- Stronger building codes in Moore, OK had no impact on price or sales when compared to neighbors with lower codes.⁶



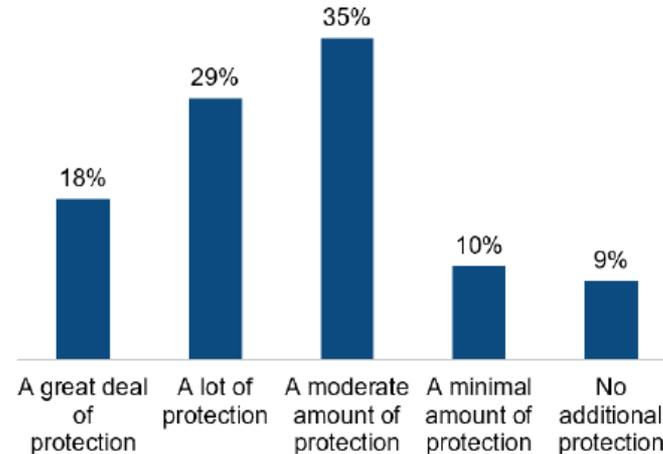
Consumers & Codes

Most assume they have (relatively) up to date building codes that provide modest protection

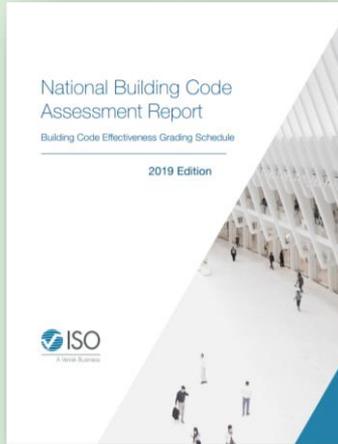
Description of Home Building Code



Protection from Building Codes



Building Codes and Insurance



The BCEGS program, as evidenced by the information in this *National Building Code Assessment Report*, offers detailed information on the level of code enforcement in communities. BCEGS can be a valuable tool in the risk selection process for an underwriter. First, at a high level, the program can help provide insight with respect to the construction quality of a risk. That's particularly valuable in areas prone to natural catastrophes and hazards such as hurricanes, earthquakes, flood, and fire.

Second, BCEGS also provides data on how well a community enforces its building codes. This is the critical second half of the equation insurers need to know before pricing or rating a risk.

<https://www.verisk.com/siteassets/media/downloads/underwriting/location/2019-bcegs-schedule.pdf>

This guide covers the I-Codes, a family of codes developed by the International Code Council. The flood provisions in each code in the series (2012 edition and later) either meet or exceed the NFIP requirements for the purpose of NFIP participation. Therefore, communities that participate in the NFIP can rely on the I-Codes to form the basis of their floodplain management practices related to buildings and structures.

<https://www.fema.gov/media-library/assets/documents/96634>

Updating Building Standards under the NFIP

A report by the Congressional Budget Office cited research indicating that a "relative lack of stringency in the NFIP's requirements may have led to increased losses from hurricanes." The report concluded that "lawmakers could reduce expected [flood] losses by mandating that the NFIP's requirements be updated periodically to reflect shifting vulnerabilities to flood risk and changes in [International Code Council] standards."

Source: *Expected Costs of Damage From Hurricane Winds and Storm-Related Flooding* (Congressional Budget Office 2019)



Reducing Flood Losses Through the International Codes®

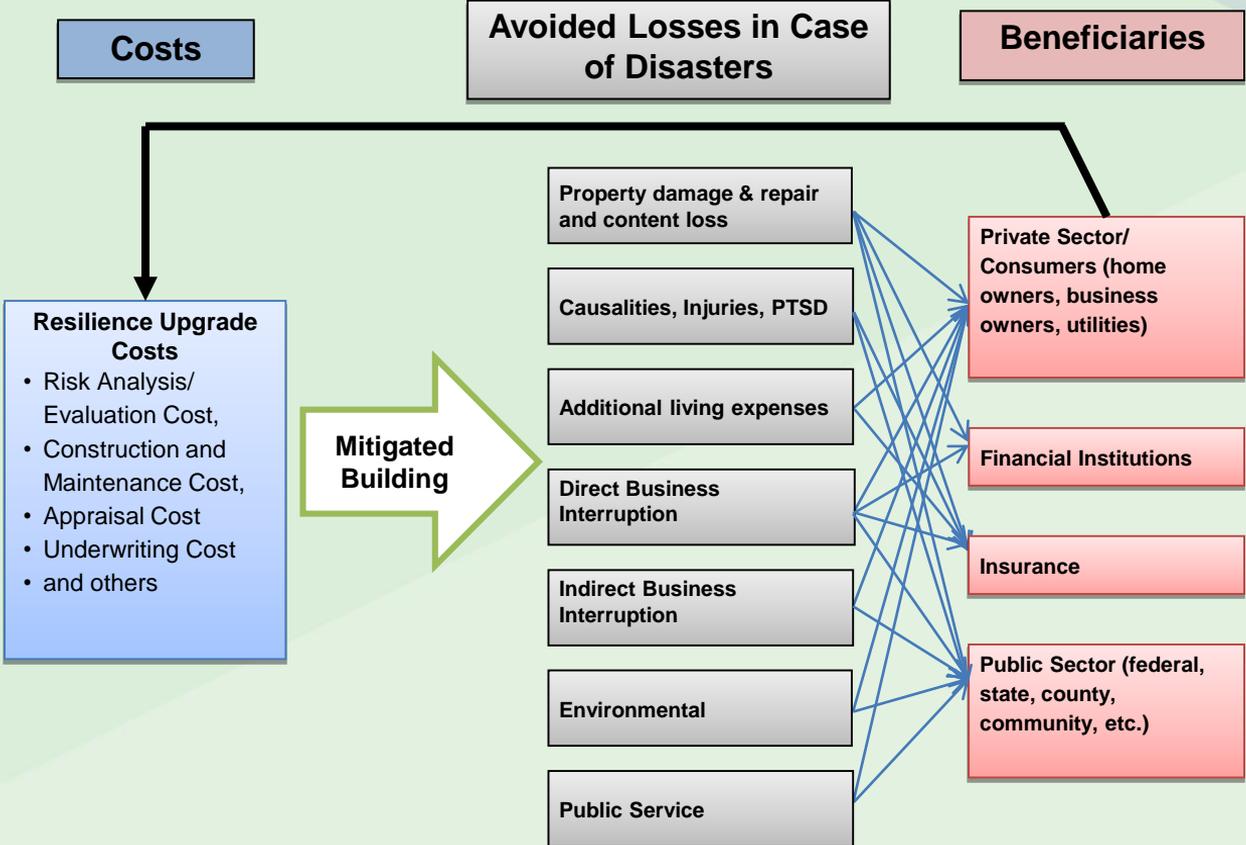
Coordinating Building Codes and Floodplain Management Regulations
5th Edition, October 2019



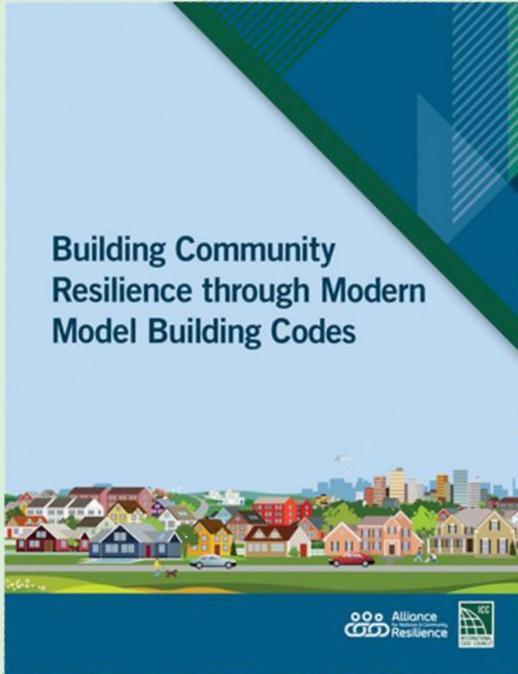
In cooperation with



Incentivization Strategies (NIBS)



Building Codes & Resilience



Resilience in the built environment starts with strong, regularly adopted, and properly administered building codes. However, to attain whole community resilience, communities must look at the resiliency of all interconnected systems and function of the community as well.

More on Codes & Resilience



Resilience Contributions of the International Building Code



INTERNATIONAL CODE COUNCIL



The scope of the IBC is clearly focused on assuring that a community's building stock supports the resilience of the community. Reducing the impacts on people and property in the face of multiple shocks and stresses allows communities to survive and ultimately thrive.

First in a series

https://www.iccsafe.org/wp-content/uploads/19-17804_IBC_Resilience_WhitePaper_FINAL_HIRES.pdf

Energy Codes & Resilience



People Helping People Build a Safer World™

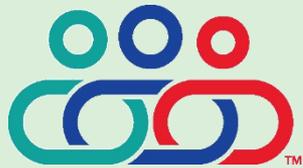
The Important Role of Energy Codes
in Achieving Resilience

“Using energy codes to provide enhanced passive survivability provides significant co-benefits. Community and individual resilience is enhanced while building owners and tenants reap energy efficiency related rewards everyday in the form of lower energy bills and greater cost certainty.”

Second in a series

https://www.iccsafe.org/wp-content/uploads/19-18078_GR_ANCR_IECC_Resilience_White_Paper_BRO_Final_midres-ppp.pdf

A Holistic Approach to Resilience



Alliance for
National & Community
Resilience™

www.resilientalliance.org



A Buildings Benchmark for Community Resilience



1. Adoption of Building Codes
2. Administration and Enforcement of Building Codes
3. Licensure & Continuing Education or Testing of Contractors
4. Mitigation of Highly Vulnerable Buildings
5. Mitigation and Design of Critical Facilities
6. Resilient Design
7. Disaster Response/Continuity of Operations Plans (COOPs)
8. Standards for Emergency Shelters
9. **Financial Resources for Post-Disaster Recovery**



Alliance for
National & Community
Resilience

Housing Benchmark

1. Housing Affordability & Availability
2. Housing Affordability: Policies
3. Disaster Preparedness: Communication & Outreach
4. Disaster Preparedness: Emergency & Temporary Shelter
5. Transitional & Post-Disaster Housing
6. Total Cost of Home Ownership/Rental
7. **Insurance Coverage**
8. Disaster Response/Continuity of Operations Plans (COOPs)
9. Equitable Long-Term Recovery from Disasters



- Best Practice Guide on Insurance and Codes
 - Engaging with code officials
 - Code updates as consumer protection measures and reduced impact on life & property
 - Case studies on how Commissioners use codes
- Research on Codes and Insurance
 - Center for Insurance Policy & Research

Questions?



Alliance for
National & Community
Resilience

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Business Interruption Policies and Claims

Summer National Meeting
Property and Casualty Insurance (C)Committee
August 12th, 2020

Amy Bach, Co-Founder & Exec. Director

Bottom line re: BI coverage

- Does policy cover losses due to business interruption?
- Do forced closure, loss of use, infiltration of insured premises or imminent risk of grave harm constitute “direct physical loss of or damage to” insured property? Loss OF or Loss TO
- Do losses due to mandatory closure qualify for typical 30 days of coverage under “Civil Authority” where the physical loss requirement must be met?

Need to balance:

- Indemnity in case of loss = purpose of insurance
- Protecting insurer solvency/profitability
- Policyholders' reasonable expectations/need for coverage
- Insurer candor to regulators and policyholders re: the impact of language changes that reduce coverage
- Effective notice of reduction of coverage when not accompanied by premium reductions that alert customers
- Insurer superior knowledge of risk/the power of exclusions

Coverage battle lines drawn early

- “Most insurance policies were not designed to provide coverage against communicable diseases such as COVID-19.”
 - *Insurance Trade Group Letter to U.S. Congress, March 2020*
- “[R]oughly 80% of commercial policies are silent or vulnerable on communicable disease coverage.”
 - *Chris Cheatham, CEO of Risk Genius.*
- “There may be exclusions, but there may very well be different interpretations.”
 - Stephan Holzberger, chief rating officer, AM Best

LIVE

THE WHITE HOUSE
WASHINGTON

I would like to see the insurance companies pay

C-SPAN

CORONAVIRUS RESPONSE

- Trillion \$ loss projections, solvency fears = Speculative/Unknown
- # of actual claims filed = NAIC data calls, Volume of litigation
- Regulators reminding insurers of the duty to investigate
- Regulatory estoppel arguments are being advanced
- # of claims denied = “Most”/Unknown
- 2 Court rulings to date both focused on physical damage
- Legislation (Federal/State) = PRIA, etc., HR 7412, Presumptions

Known numbers vs. projections:

Reported insured losses and reserve setting related to the COVID-19 coronavirus pandemic have now reached \$20.5 billion *Source:*

www.artemis.bm/news/covid-19-insured-loss-reports-reach-20-5bn/

July 27, 2020

Small businesses bearing the brunt

- Many (most?) small businesses, especially restaurants, bars, concert venues that are mandatorily closed by public safety orders, don't have B.I. coverage or have B.I. coverage w/virus exclusion requiring loss of or physical damage to property.
- Some Higher Ed Institutions have coverage for losses related to communicable diseases
- Some large businesses have BI coverage w/out virus exclusion

Q 1 and 2 results for one insurer:

Legal expenses defending BI claims cost the company about \$19 million, it reported.

The company posted a \$41 million underwriting loss, compared with a \$48 million profit, which Johnston attributed to \$231 million of catastrophe- and \$65 million of pandemic-related losses and expenses (Best's News, July 27, 2020)

Second-quarter net income more than doubled to \$909 million in the second quarter after the company recognized an \$825 million increase in the fair value of equity securities held.

Source: Best's Insurance News & Analysis - July 28, 2020

Questions:

- What were regulators told by insurers at the time they added the 2006 ISO virus exclusion?
- If insurers paid out on SARS claims – shouldn't there have been a rate decrease when the virus exclusion was adopted?
- Claims that pandemic losses were “never covered” are contradicted by the fact that SARS claims were paid

In 2003...

- Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore and Thailand all lost business due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak
- Mandarin Oriental International Ltd. Received **\$16 million** from its insurers to pay for business interruption losses suffered by the group's hotels in Asia as a result of the severe acute respiratory syndrome outbreak.¹

1. <https://www.businessinsurance.com/article/20031102/story/100013638/hotel-chain-to-get-payout-for-sars-related-losses#>

Hotel chain to get payout for SARS-related losses

Gavin Souter

November 02, 2003



SHARE

HONG KONG-Mandarin Oriental International Ltd. will receive \$16 million from its insurers to pay for business interruption losses suffered by the group's hotels in Asia as a result of the severe acute respiratory syndrome outbreak.

Mandarin Oriental hotels in Hong Kong, Malaysia, Singapore and Thailand all lost business due to cancellations and reduced local food and beverage sales stemming from the SARS outbreak, a Mandarin Oriental spokeswoman in London said.



More than \$1 billion per week.

That's how much workplace injuries cost U.S. businesses. Discover the top causes.

[See the top 10 >>](#)

The Hong Kong-based hotel group has received a \$2.5 million interim payment from its insurers, led by AIG Europe Ltd., a London-based unit of American International Group Inc. The company will receive an additional \$13.5 million from its insurers.

The spokeswoman would not disclose the amount of the claim Mandarin Oriental submitted but said that the hotel group was "very satisfied" with the settlement.

Although infectious diseases were covered in the company's business interruption policy last year, "it was not possible to maintain the same scope of cover when the insurance policies were renewed on July 1.

What were business policyholders told when their policies renewed with the ISO virus exclusion added?

- Were there rate decreases associated with the exclusion.
- Most policies don't mention "pandemic" and closures due to public safety orders are matters of first impression
- Novel Coronavirus = a new coronavirus that has not been previously identified. The virus causing coronavirus disease 2019 (COVID-19), is not the same as the coronaviruses that commonly circulate among humans and cause mild illness, like the common cold. www.cdc.gov Jul 15, 2020

State: California First Filing Company: Civic Property and Casualty Company, ...
 TOI/Sub-TOI: 05.0 CMP Liability and Non-Liability/05.0002 Businessowners
 Product Name: Businessowners
 Project Name/Number: Exclusion of Loss Due to Virus or Bacteria/J-CA-2007-BP-F

Response Letter

Response Letter Status Submitted to State
 Response Letter Date 03/16/2007
 Submitted Date 03/16/2007

Dear Richard Patterson,

Introduction:

Response 1

Comments:

Hi Richard,

CA-FA has been revised to accurately reflect that this is not a restriction of coverage, but it is actually just a clarification of coverage. As such, there is no anticipated annualized premium level impact.

Sorry for any inconvenience this may have caused you. If you have any further questions please give me a call at (805) 306-6517.

Thank you,

Bernice Diaz

Changed Items:

Supporting Document Schedule Item Changes	
Satisfied - Item:	CA-FA
Comments:	Attached is the CA-FA requested.
Attachment(s):	CAFA.pdf CA-FA.rev.pdf
<i>Previous Version</i>	
Satisfied - Item:	CA-FA
Comments:	Attached is the CA-FA requested.
Attachment(s):	CAFA.pdf

Company F Rate Filing

Resources

[Disaster Recovery Help](#)

[Claim Guidance Library](#)

[Buying Tips](#)

[State by State](#)

[Amicus Library](#)

[Deals and Discounts](#)

What people say about UP

"I highly recommend bringing United Policyholders into your community. My only regret is that we didn't

COVID Loss Recovery Initiative



When events cause people and businesses to suffer serious and costly losses and insurance benefits become critically important to recovery, United Policyholders provides guidance, advocacy support and information to facilitate fair claim payouts. Our goal is to help every person and entity that has invested in buying insurance get the full value of that investment and recover all benefits owed after adversity has struck.

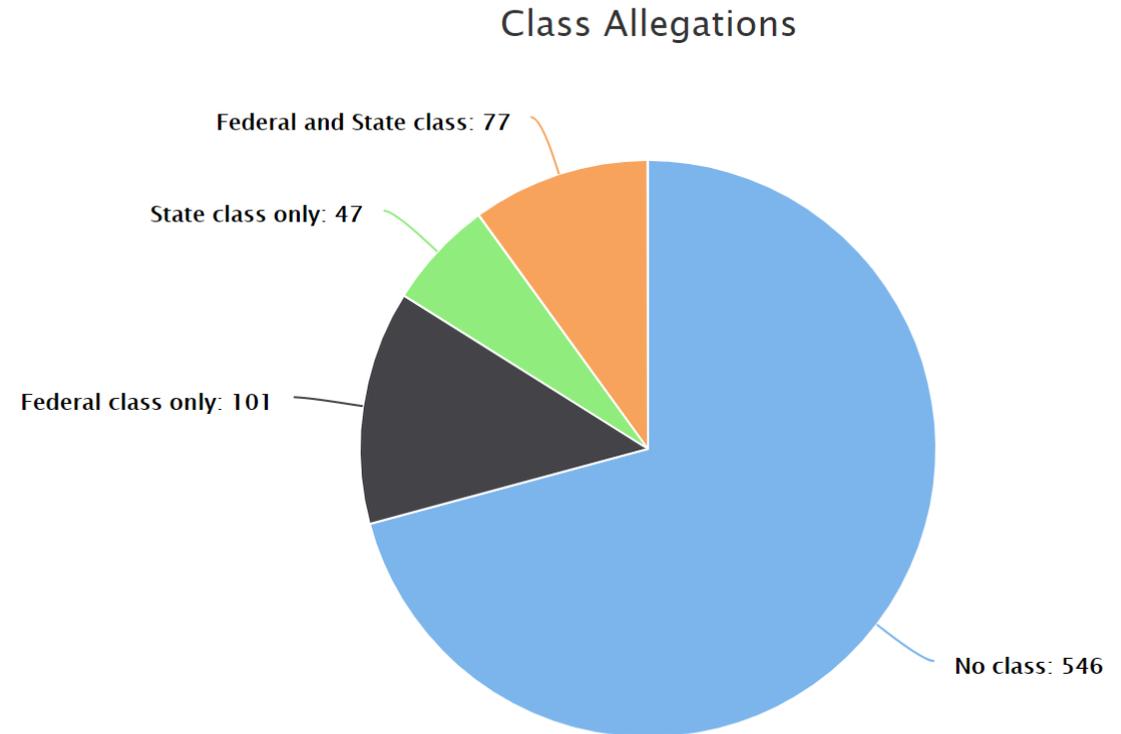
Official shutdown and shelter-in-place orders due to the COVID-19 pandemic have caused crippling financial losses for businesses throughout the nation. Insurance benefits will make or break many businesses' ability to resume operations and recover. United Policyholders established this library

Filed lawsuits, for more info see www.uphelp.org/COVID

- Covid Coverage Litigation Tracker

<https://cclt.law.upenn.edu/> (7/31/20)

- Weekly filing peaked on the week of 5/4/20
- Most frequent coverage sought
 1. Business Income
 2. Extra Expense
 3. Civil Authority
- Most Frequent Ins. Co. (Cases)
 1. Hartford Financial Services Group (125)
 2. Cincinnati Financial Corporation (68)
 3. Travelers Companies, Inc. (44)



Parallels w/the Pollution Exclusion (Regulatory Estoppel Argument)

The New Jersey Supreme Court in *Morton Int'l. Inc. v. General Acc. Ins. Co. of Am.*, 629 A.2d 831, 852-53 (N.J. 1993) determined that the insurance industry, through its agents, predecessors to ISO, represented to state insurance regulators in 1970 that the “sudden and accidental” polluters exclusion merely clarified pre-existing insurance coverage.

The Supreme Court found that the insurance industry had failed to disclose its intent to restrict coverage for gradual pollution damage. The court determined that, “[h]aving profited from that nondisclosure by maintaining pre-existing rates for substantially-reduced coverage, the industry justly should be required to bear the burden of its omission by providing coverage at a level consistent with its representations to regulatory authorities.” (emphasis added).

The Morton Court:

- Found the “sudden and accidental” pollution exclusion to be unambiguous, and that it would have applied
- Barred the insurance industry from relying upon the exclusion, because they misrepresented the effect of the exclusion to regulators (to avoid a rate reduction)
- Considered representations by ISO predecessors to any regulator in any state: because ISO binds its members and the language is the same in each state, so a misrepresentation to the New York regulator should bar ISO members seeking to enforce language in Alabama
- ISO language is standard form, sold on a take-it-or-leave it basis, so the only negotiations that are relevant are between ISO and regulators

Federal Legislation – H.R. 7412

- **To establish a temporary voluntary program for support of insurers providing business interruption insurance coverage during the COVID-19 pandemic, and for other purposes**
- Goals - Establish a program that ensures:
 - “Carriers that sold policies that cover business interruption losses for COVID-19 do not receive any Federal windfall”; and
 - “Carriers that sold policies that expressly exclude coverage for a virus or pandemic for COVID-19 can avoid costly litigation with policyholders, and policyholders may receive policy benefits to compensate for government shutdown and business interruption”
- Relief Program
 - Voluntary insurer participation
 - Eligible policies:
 - BI coverage that expressly include coverage for losses during any period of time that any civil authority shutdown as a result of COVID-19 pandemic is in effect; and
 - Expressly exclude coverage for a “**virus**”
 - Reimbursement for payment of claims

Questions? Comments?

Speaker information:

Amy Bach, Esq.

United Policyholders

amy.bach@uphelp.org

(415) 393-9990 Ext. 101



Proposal from the Center for Economic Justice

To the NAIC Property Casualty (C) Committee

**Revision to Financial Statements to Allow Timely Calculation of Average Premium for
Private Passenger Auto and Homeowners Insurance**

August 12, 2020

The measurement and reporting of average premium for private passenger auto and homeowners insurance is of great interest to consumers, policymakers and regulators. Towards this end, the NAIC publishes two reports – one for private passenger auto and one for homeowners insurance – that report these values.

The usefulness of these average premium metrics is crushed because the data are old and not timely. The auto average premiums are presented in the *Auto Insurance Database* report. The current database, published in January 2020, provides average auto insurance premium data through 2017 – over two years after the end of the reporting period and nearly three years after the first quarter of 2017. The homeowners average premium is reported in the “*Dwelling Fire, Homeowners Owner-Occupied, and Homeowners Tenant and Condominium/Cooperative Unit Owner’s Insurance Report*,” which suffers from the same lack of timeliness. The 2017 data were published at the end of November 2019.

The lack of timeliness of the average premium values means that these data have very limited or no use for either financial or market analysis. The lack of timeliness also means that the data are no use in informing public policy debates about personal lines insurance costs. In addition, the severe time lag between actual experience and reporting fails to inform the public or policymakers of recent trends or outcomes and can, consequently, mislead the public and policymakers.

CEJ proposes modification of the state page of the annual and quarterly financial statements to add two data columns or fields – written exposures and earned exposures – for personal auto and homeowners lines of business. This simple change will enable regulators to monitor changes in average auto premium in a far-timelier manner than the current approach through the Auto Insurance Database or homeowners report.

By adding written and earned exposures to the state pages, regulators can get average premium per vehicle within 3 months after the end of the experience period. And by adding these two columns to the quarterly financial statement, regulators can get changes each quarter in average annual premium at least on a national basis. Attached is a detailed proposal for the committee to present to the Blanks Task Force. It should be noted that this additional reporting will not impose a significant burden on insurers since insurers monitor written and earned exposures and have such data readily available.

The benefits of timelier average premium data are considerable. Timely average premium data would permit financial analysts to utilize changes in average premium as part of financial analysis. Similarly, the more-timely average premium data would become a valuable tool for market regulation analysts, including, but not limited to, an added data point for use the Market Conduct Annual Statement. Last, but not least, this proposal would allow the NAIC to calculate and publish average annual premium data for residential property and personal auto insurance by state in a time frame to both make the data meaningful for describing market conditions and to inform individual state regulators and policymakers of actual changes in personal lines average premiums – as opposed to expected changes gleaned from rate filings.

**Draft Proposal to NAIC Blanks Working Group to
 Add Exposure Data Elements to State Pages of NAIC Financial Statements**

Describe Proposal

Add two columns to the property casualty annual statement state page – “Direct Exposures Written” and “Direct Exposures Earned” – to be reported, initially, only for lines 2.5 (Private Flood) 4 (Homeowners), 19.1 (PPA No Fault), 19.2 (PPA Liability) and 21.1 (PPA Physical Damage) Direct Exposures Earned would be placed between current columns 1 (Direct Premiums Written) and 2 (Direct Premiums Earned). Direct Exposures Earned would be placed between current columns 2 (Direct Premiums Earned) and 3 (Dividends Paid).

Below is an illustrative mock-up. .

Line of Business	Gross Premiums, Including Policy and Membership Fees, Less Return Premiums and Premiums on Policies not Taken			
	1 Direct Premiums Written	2 Direct Exposures Written	3 Direct Premiums Earned	4 Direct Exposures Earned
1. Fire		XXXXXXXXXX		XXXXXXXXXX
2.1 Allied Lines		XXXXXXXXXX		XXXXXXXXXX
...		XXXXXXXXXX		XXXXXXXXXX
2.5 Private Flood				
...		XXXXXXXXXX		XXXXXXXXXX
4. Homeowners Multi-Peril				
...		XXXXXXXXXX		XXXXXXXXXX
19.1 PPA No Fault				
19.2 PPA Liability				
19.3 Comm Auto No Fault		XXXXXXXXXX		XXXXXXXXXX
19.4 Comm Auto Liability		XXXXXXXXXX		XXXXXXXXXX
21.1 PPA Physical Damage				
...		XXXXXXXXXX		XXXXXXXXXX

Instructions

A Written Exposure for lines 2.5 and 4 is defined as a single residential property for which coverage was written at any time during the calendar reporting period and remained in force through the end of the calendar reporting year. If the coverage was written and cancelled within the calendar reporting year, the written exposure is the fraction of the year the coverage was in force.

A Written exposure for lines 19.1, 19.2 and 21.1 is defined as single motor vehicle for which coverage was written at any time during the calendar reporting year and remained in force through the end of the calendar reporting year. If the coverage was written and cancelled within the calendar reporting year, the written exposure is the fraction of the year the coverage was in force.

An Earned Exposure for lines 2.5 and 4 is defined as the fraction of the calendar reporting year for which a single residential property had coverage in force.

An Earned Exposure for lines 19.1, 19.2 and 21.2 is defined as the fraction of the calendar reporting year for which a single motor vehicle had coverage in force.

Examples. Assume a homeowners policy is written on July 1 during the reporting year and remains in force through the end of the reporting year. This activity would be reported as one (1.0) written exposure and 0.5 earned exposure.

Assume a private passenger policy with No-Fault, Liability and Physical Damage coverages was written on April 1 and cancelled by the insured on July 1. This activity would be reported as 0.25 written and 0.25 earned exposures.

Purpose and Benefits

The average written and average earned premium per exposure is an important metric for a variety of regulatory and public policy purposes. The NAIC annually produces reports of average personal auto and homeowners premiums, but the data in these reports are old and stale for timely assessment of absolute average premium and changes in average premium over time. Both reports are typically produced 24 months after the end of the experience period – average auto or homeowners premiums for 2017 are published at the beginning of 2020. While there are valid reasons for the length of time needed to produce these reports – primarily because these reports contain information beyond average premium – the average premium numbers lose significant relevance because of their age.

This Blanks proposal would allow the calculation of average written and average earned premium for residential property and personal auto coverages in a far more timely fashion – with three to four months following the reporting year instead of 24 months. The benefits of timelier average premium data are considerable. Timely average premium data would permit financial analysts to utilize changes in average premium as part of financial analysis. Similarly, the more-timely average premium data would become a valuable tool for market regulation analysts, including, but not limited to, an added data point for use the Market Conduct Annual Statement.

Last, but not least, this proposal would allow the NAIC to calculate and publish average annual premium data for residential property and personal auto insurance by state in a time frame to both make the data meaningful for describing market conditions and to inform individual state regulators and policymakers of actual changes in personal lines average premiums – as opposed to expected changes gleaned from rate filings.

W:\National Meetings\2020\Summer\Cmte\C\National Meeting Materials\Att 5_cej_comments_naic_ccomm_200814_blanks_add_exposure_data