

## Report on the Hospitality and Resort Industry

Excerpts from the WCIRB Classification and Rating Committee Agenda & Minutes  
October 13, 2020

### **About this Report**

The WCIRB prepares and presents reports to the WCIRB's Classification and Rating Committee to assist in the formulation of proposed changes to the Insurance Commissioner's regulations. Once adopted by the Classification and Rating Committee, the recommendations contained in the report are provided to the WCIRB Governing Committee and may be included in a WCIRB regulatory filing that is submitted to the Insurance Commissioner for approval.

### **About the WCIRB**

The WCIRB is California's trusted, objective provider of actuarially-based information and research, advisory pure premium rates, and educational services integral to a healthy workers' compensation system. Learn more at [www.wcirb.com](http://www.wcirb.com).

**Notice**

This Report was developed by the Workers' Compensation Insurance Rating Bureau of California (WCIRB) to assist in the formulation of proposed changes to the Insurance Commissioner's regulations. The WCIRB has made reasonable efforts to ensure the accuracy of this Report. You must make an independent assessment regarding the use of this Report based upon your particular facts and circumstances.

© 2020 Workers' Compensation Insurance Rating Bureau of California. All rights reserved.

No part of this work may be reproduced or transmitted in any form or by any means, electronic or mechanical, including, without limitation, photocopying and recording, or by any information storage or retrieval system without the prior written permission of the Workers' Compensation Insurance Rating Bureau of California (WCIRB), unless such copying is expressly permitted in this copyright notice or by federal copyright law. No copyright is claimed in the text of statutes and regulations quoted within this work.

Each WCIRB member company, including any registered third party entities, (Company) is authorized to reproduce any part of this work solely for the following purposes in connection with the transaction of workers' compensation insurance: (1) as necessary in connection with Company's required filings with the California Department of Insurance; (2) to incorporate portions of this work, as necessary, into Company manuals distributed at no charge only to Company employees; and (3) to the extent reasonably necessary for the training of Company personnel. Each Company and all agents and brokers licensed to transact workers' compensation insurance in the state of California are authorized to physically reproduce any part of this work for issuance to a prospective or current policyholder upon request at no charge solely for the purpose of transacting workers' compensation insurance and for no other purpose. This reproduction right does not include the right to make any part of this work available on any website or any form of social media.

Workers' Compensation Insurance Rating Bureau of California, WCIRB, WCIRB California, WCIRB Connect, WCIRB Inquiry, WCIRB CompEssentials, X-Mod Direct, eSCAD, Comprehensive Risk Summary and the WCIRB California logo (WCIRB Marks) are registered trademarks or service marks of the WCIRB. WCIRB Marks may not be displayed or used in any manner without the WCIRB's prior written permission. Any permitted copying of this work must maintain any and all trademarks and/or service marks on all copies.

To seek permission to use any of the WCIRB Marks or any copyrighted material, please contact the WCIRB at [customerservice@wcirb.com](mailto:customerservice@wcirb.com).

## Hospitality and Resort Industry

As part of the WCIRB's multi-year study of the classifications applicable to the hospitality industry, staff is proposing a number of amendments to: (1) align certain classifications<sup>1</sup> with other proposed changes to the Multiple Enterprises Rule for inclusion in the September 1, 2021 Regulatory filing and (2) update these classification phraseologies for clarity.<sup>2</sup> The proposed changes do not change either the scope of the classifications or their assignment to individual employers; rather, the changes clarify the operations included in each classification to ensure a consistent approach to their assignment.

At the core of this recommendation is a finding that employers assigned to Classification 9050, *Hotels, Motels or Short-Term Residential Housing*, increasingly provide recreational, personal care and leisure services such as spas, golf courses, casinos and health club services. Such services are not necessarily integral to the provision of lodging. Historically, these additional operations have been assigned in accordance with the Multiple Enterprises Rule when conducted in connection with a hotel. However, since staff is recommending that the Multiple Enterprises Rule be amended to establish *Physical Separation*<sup>3</sup> as the threshold for separately classifying distinct operations, staff is also recommending a concurrent change that would provide specific direction for separately classifying recreational, personal care and leisure operations when operated in connection with a hotel. As part of this review, WCIRB staff found that these hospitality operations generally operate independently from the hotel, so the proposed changes would recognize the distinct nature of these operations while alleviating the need to analyze them in the context of the Multiple Enterprises Rule and the extent to which they are "physically separated" from one another.

To the extent a hotel or resort operator provides recreational, personal care or leisure services, these operations are generally readily identifiable separate business units that operate separately from the hotel and from each other. While employees performing these operations typically do not interchange, existing rules for dividing a single employee's payroll between separately classifiable operations would apply.

To further clarify the classification treatment applicable when the employer engages in more than one separately classifiable hospitality operation at the same location, staff is also recommending that the subject classifications be amended to remove the "all employees" or "all operations" directives from the classification phraseologies.<sup>4</sup> Given how common it is for hospitality firms to engage in multiple classifiable operations, applying the "all employees" and "all operations" directives for each classification could create ambiguity. Further, the use of these terms is redundant with the *Single Enterprise* rule.

Lastly, staff notes that it is common for employers engaged in multiple classifiable operations to have employees such as supervisors, maintenance workers, security guards, shipping and receiving clerks and yard employees who provide general support for more than one separately classifiable operation. Consistent with the Multiple Enterprises Rule and the treatment of *Miscellaneous Employees*, staff recommends that Classification 9050 be amended to direct that these employees be assigned to the *Governing Classification* of the group of classifications to which their work pertains.

---

<sup>1</sup> See Exhibit 1 for a list of the subject classifications.

<sup>2</sup> In the first phase of this study, the WCIRB reviewed and clarified the classification procedures applicable to employers that provide short-term residential housing.

<sup>3</sup> *Physical Separation* or *Physically Separated* are defined as operations that are separated by floors, walls or buildings. This has also included operations that are conducted in a common workspace but are clearly separated by time or shifts (see USRP, Part 3, Section II, Rule 21, *Physical Separation* or *Physically Separated*).

<sup>4</sup> If a classification carries a descriptive phrase beginning with *all*, as in the phrases *all employees*, *all other employees*, *all operations*, and *all work to completion*, division of payroll shall not be made for any employee or operations (other than the Standard Exceptions or General Exclusions), without regard to the location of such operations, except for an operation not incidental to and not usually associated with the enterprise described by such classification (see USRP, Part 3, Section II, Rule 1, *All*).

## **Recommendation**

In consideration of the above, WCIRB staff recommends the following for inclusion in the September 1, 2021 Regulatory Filing:

1. Amend Classification 9050, *Hotels, Motels or Short-Term Residential Housing*, to direct that:
  - a. Recreational, leisure or resort operations, including but not limited to golf courses, casinos, gaming clubs, spas, baths, health clubs, gyms, barber shops or hair salons shall be separately classified.
  - b. The payroll of employees who alternate between two or more separately classifiable operations shall be assigned in accordance with Section V, Rule 3, *Division of Single Employee's Payroll*.
  - c. If an employer within the hospitality industry engages in separately classifiable operations, the payroll of employees, such as supervisors, maintenance workers, security guards, shipping and receiving clerks and yard employees who support more than one operation, shall be assigned to the *Governing Classification* of the group of classifications to which their work pertains.
2. Remove the *all employees* and *all operations* terminology in Classifications 9050, *Hotels, Motels, or Short-Term Residential Housing*, 9060, *Clubs – country or golf*, 9069, *Clubs – gaming*, 9586, *Barber Shops, Hair Styling Salons and Personal Appearance Services*, and 9184, *Ski Resort – Alpine*, and add footnotes to clarify:
  - a. Which operations are specifically included within the scope of each classification; and
  - b. The classification treatment for an employer with operations that include multiple recreational, leisure or resort classifications.

In addition to the above recommendations and in light of the manner in which the hospitality industry continues to evolve and expand the scope of services conducted within a single property or location, staff anticipates that the next phase of its review of the hospitality industry will be to assess the extent to which operations conducted within this industry – particularly food service and retail store activities – are sufficiently homogeneous to warrant a more uniform classification approach.

## **Exhibit 1 – Subject Classifications**

- 9050, *Hotels, Motels, or Short-Term Residential Housing* – all employees other than employees exclusively engaged in restaurant or tavern operations
- 9060, *Clubs – country or golf* – all employees – including front desk employees and restaurant or tavern employees
- 9069, *Clubs – gaming* – all employees – including front desk employees and restaurant or tavern employees
- 9053(2), *Health Clubs or Gyms* – including restaurant employees, retail store employees and receptionists
- 9054, *Spas or Baths* – including restaurant employees, retail store employees and receptionists
- 9586, *Barber Shops, Hair Styling Salons and Personal Appearance Services* – all employees – including receptionists
- 9184, *Ski Resort – Alpine* – all operations – including the operation of Nordic ski trails at Alpine ski resort locations
- 9016(1), *Amusement or Recreational Facilities – N.O.C.* – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores
- 9180(1), *Amusement or Recreational Facilities – N.O.C.* – operation or maintenance of amusement devices – including ticket collectors connected therewith
- 9016(4), *Boat Marina and Boat Rental Operation*

**Recommendation**

Amend Classification 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores*, for consistency with other proposed changes.

PROPOSED

**AMUSEMENT OR RECREATIONAL FACILITIES – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores 9016(1)**

This classification applies to the operation of amusement or recreational facilities, including but not limited to amusement parks, zoos, water parks, miniature golf courses, batting cages, bumper car facilities, archery ranges, water excursions/tours, laser tag, airsoft or paintball facilities, and Nordic (cross-country) ski facilities.

This classification also applies to the operation of golf driving ranges that are not operated by golf courses or country clubs.

This classification also applies to automobile or horse race track operations by employers that are not public agencies. Pari-mutuel employees shall be separately classified as 8810, *Clerical Office Employees*.

This classification also applies to the operation of athletic or sports venues, including ballparks and stadiums, during non-sporting activities, including but not limited to concerts and exhibitions.

~~Restaurants or retail stores shall be separately classified.~~

Boat marinas or boat rental facilities shall be classified as 9016(4), *Boat Marina and Boat Rental Operation*.

Golf courses or country clubs shall be classified as 9060, *Clubs – country or golf*.

Traveling carnivals or circuses shall be classified as 9185, *Carnivals or Circuses*.

The operation of events, including but not limited to farmers’ markets, flea markets, street fairs, swap meets, art or antique festivals, trade shows (public or private), fun runs, foot races, cycling events, marathons, triathlons and athletic charity events shall be classified as 9095, *Event Market, Festival or Trade Show Operation*.

The operation of race tracks by public agencies shall be classified as 9410/9420, *Municipal, State or Other Public Agency Employees*.

Bowling centers shall be classified as 9092(1), *Bowling Centers*.

Billiard halls shall be classified as 9092(2), *Billiard Halls*.

Skating rinks or skate parks shall be classified as 9092(3), *Skating Centers*.

Also refer to companion Classification 9180(1), *Amusement or Recreational Facilities – N.O.C. – operation or maintenance of amusement devices*.

If an employee who performs duties described by Classification 9016(1) also performs duties described by Classification 9180(1), the payroll of that employee may be divided between Classifications 9016(1) and 9180(1), provided the employer maintains accurate records supported by time cards or time book entries that show such division. See Section V, Rule 3, *Division of Single Employee’s Payroll*.

Restaurants, retail stores or hotels shall be separately classified.

\* \* \* \* \*

**Recommendation**

Amend Classification 9180(1), *Amusement or Recreational Facilities – N.O.C. – operation or maintenance of amusement devices – including ticket collectors connected therewith*, for consistency with other proposed changes.

PROPOSED

**AMUSEMENT OR RECREATIONAL FACILITIES – N.O.C. – operation or maintenance of amusement devices – including ticket collectors connected therewith 9180(1)**

This classification applies to the operation or maintenance of amusement devices at recreational facilities, including but not limited to amusement parks, zoos, water parks, miniature golf courses, batting cages, bumper car facilities, archery ranges, water excursions/tours and laser tag, airsoft or paintball facilities.

This classification also applies to guided tours for water-based activities or water-based athletic or fitness instructional programs at locations other than swimming pools, including but not limited to surfing, scuba, kayaking, paddle boarding or kite surfing on lakes, bays, rivers or oceans.

This classification also applies to guided wilderness expeditions; motorsports operations; or ski instructors, ski patrol personnel or employees engaged in ski trail grooming at ski resort locations that exclusively provide Nordic (cross-country) skiing activities. This classification also applies to the detonation of fireworks for pyrotechnic displays.

Traveling carnivals or circuses shall be classified as 9185, *Carnivals or Circuses*.

Employers that operate boat marinas ~~and~~ boat rental facilities shall be classified as 9016(4), *Boat Marina and Boat Rental Operation*.

Bowling centers shall be classified as 9092(1), *Bowling Centers*.

Billiard halls shall be classified as 9092(2), *Billiard Halls*.

Skating rinks or skate parks shall be classified as 9092(3), *Skating Centers*.

The operation of Alpine (downhill) ski resorts, including the operation of Nordic (cross-country) ski trails at Alpine ski resort locations, shall be classified as 9184, *Ski Resorts – Alpine*.

Also refer to companion Classification 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores*.

If an employee who performs duties described by Classification 9180(1) also performs duties described by Classification 9016(1), the payroll of that employee may be divided between Classifications 9016(1) and 9180(1), provided the employer maintains accurate records supported by time cards or time book entries that show such division. See Section V, Rule 3, *Division of Single Employee’s Payroll*.

Restaurants ~~or~~, retail stores or hotels shall be separately classified.

\* \* \* \* \*

**Recommendation**

Amend Classification 9586, *Barber Shops, Hair Styling Salons and Personal Appearance Services*, to clarify the application.

PROPOSED

**BARBER SHOPS, HAIR STYLING SALONS AND PERSONAL APPEARANCE SERVICES—all employees – including receptionists 9586**

This classification applies to employers that provide hair cutting, styling, massage ~~and/or~~ other personal appearance services, including but not limited to manicures, pedicures, facial treatments, tattoos, piercing, tanning and hair removal.

This classification also applies to fee-based salon services provided by barber ~~and/or~~ cosmetology schools.

The operation of spa or bath facilities that include saunas, steam baths, hydrotherapy baths, cryotherapy, natural springs, mud baths or soaking tubs, including massage or personal appearance services provided in connection therewith, shall be classified as 9054, *Spas or Baths*.

The operation of health clubs or gyms, including massage or personal appearance services provided in connection therewith, shall be classified as 9053(2), *Health Clubs or Gyms*.

\* \* \* \* \*

**Recommendation**

Amend Classification 9016(4), *Boat Marina and Boat Rental Operation*, for consistency with other proposed changes.

PROPOSED

**BOAT MARINA AND BOAT RENTAL OPERATION 9016(4)**

This classification applies to boat marina ~~and/or~~ boat rental operators, including but not limited to the maintenance of marina facilities, maintenance ~~and/or~~ repair of rental boats, fuel sales, and the rental of boat slips ~~and/or~~ dry storage space.

Fee-based instruction ~~and/or~~ guided expeditions shall be separately classified as 9180(1), *Amusement or Recreational Facilities – N.O.C. – operation or maintenance of amusement devices*.

~~The operation of restaurants and retail stores shall be separately classified.~~

Boat dealers shall be classified as 8057, *Boat Dealers*.

Boat repair facilities shall be classified as 6834, *Boat Building or Repairing*.

Yacht clubs shall be classified as 9061, *Clubs – N.O.C.*

Restaurants, retail stores or hotels shall be separately classified.

\* \* \* \* \*

**Recommendation**

Amend Classification 9060, *Clubs – country or golf*, to clarify the application.

PROPOSED

**CLUBS – country or golf—~~all employees~~ – including front desk employees and restaurant or tavern employees** **9060**

This classification applies to the operation of private golf or country clubs or public golf courses. This classification includes golf instruction; tournament operations; ~~pal~~ ~~course~~, club facility ~~an~~ ~~do~~r golf cart maintenance; and the operation of pro shops, driving ranges, ~~and~~ ~~or~~ restaurant, tavern ~~and~~ ~~or~~ event facilities at the club location. This classification also includes additional fitness ~~and~~ ~~or~~ recreational facilities that may be operated in connection with the golf course.

Hotel operations shall be separately classified as 9050, *Hotels, Motels or Short-Term Residential Housing*.

Driving ranges that are not operated by golf courses or country clubs shall be classified as 9016(1), *Amusement or Recreational Facilities – N.O.C. – all employees other than those engaged in the operation or maintenance of amusement devices, restaurants or retail stores*.

Tennis or racquetball clubs shall be classified as 9053(5), *Clubs – racquet sports*.

Public or private swimming pools shall be classified as 9053(3), *Swimming Pools or Swimming Clubs*.

Clubs that are not more specifically described by any other classification shall be classified as 9061, *Clubs – N.O.C.*

\* \* \* \* \*

**Recommendation**

Amend Classification 9069, *Clubs – gaming*, to clarify its application and provide direction as to how related operations should be classified.

PROPOSED

**CLUBS – gaming—~~all employees~~ – including front desk employees and restaurant or tavern employees** **9069**

This classification applies to the operation of casinos ~~and~~ ~~or~~ gaming houses, including but not limited to card rooms and bingo parlors.

This classification also applies to the provision of gaming tables, equipment, dealers ~~and~~ ~~or~~ operators for private events.

Hotel operations shall be separately classified as 9050, *Hotels, Motels or Short-Term Residential Housing*.

\* \* \* \* \*

**Recommendation**

Amend Classification 9050, *Hotels, Motels or Short-Term Residential Housing*, to provide direction as to how related operations should be classified.

PROPOSED

**HOTELS, MOTELS OR SHORT-TERM RESIDENTIAL HOUSING—~~all employees other than employees exclusively engaged in restaurant or tavern operations~~ 9050**

**When lodging is provided by the employer, the total remuneration shall include the market value of such lodging to the employee.**

This classification applies to the operation of hotels, motels or short-term residential housing. This classification includes all employees other than employees exclusively engaged in restaurant or tavern operations. Front desk, cashiering, concierge or retail store operations, and facility tours, including but not limited to tours for marketing or inspection purposes, are included in this classification.

Short term residential housing, including but not limited to vacation rentals and timeshare properties, is defined as housing units that are rented for not more than 30 consecutive days. The operation of residential housing where more than 75% of units are rented for longer than 30 consecutive days shall be assigned to the applicable *Property Management/Operation* Industry Group classification.

The payroll of employees engaged exclusively in connection with restaurant or tavern operations shall be separately classified as 9079(1), *Restaurants or Taverns*. This includes employees who work in food or beverage departments, prepare or serve hot food in connection with complimentary breakfasts, or provide room service, including delivering food or restocking in-room refrigerators, provided such employees perform no hotel duties. Employees who perform hotel, motel or short-term residential housing operations and restaurant or tavern operations shall be assigned to Classification 9050.

Golf course operations shall be separately classified as 9060, ~~Clubs—country or golf~~ Recreation, leisure or resort operations, including but not limited to country clubs, golf courses, casinos, gaming clubs, spas, baths, health clubs, gyms, barber shops or hair salons shall be separately classified.

The payroll of employees who alternate between two or more separately classifiable operations shall be assigned in accordance with Section V, Rule 3, *Division of Single Employee's Payroll*.

The payroll of employees who do not engage in operations that are integral to each classifiable operation but perform operations in general support of more than one classifiable operation shall be assigned to the *Governing Classification* of the group of classifications to which their work pertains. Employees who perform general support operations include but are not limited to supervisors, maintenance workers, security guards, shipping and receiving clerks and yard employees.

Nonmedical residential care facilities, including but not limited to psychiatric, pre-parole or probation halfway houses that provide services in a group setting to persons who are capable of meeting their life support needs independently, but who temporarily need assistance, guidance and counseling shall be classified as 8804(2), *Social Rehabilitation Facilities for Adults*.

\* \* \* \* \*

**Recommendation**

Amend Classification 9184, *Ski Resorts – Alpine*, for consistency with other proposed changes.

PROPOSED

**SKI RESORTS – Alpine—~~all operations~~ – including the operation of Nordic ski trails at Alpine ski resort locations 9184**

This classification applies to all operations of Alpine (downhill) ski resorts, including but not limited to trail maintenance, snow grooming, snowmaking, ticket sales, general building maintenance, parking lot attendants, security staff, ski school operations and the operation of gondolas, rope tows, chair ~~and/or~~ T-bar lifts. This classification also applies to the operation ~~an-~~  
~~d/or~~ maintenance of Nordic (cross-country) ski trails at Alpine ski resort locations.

Ski resorts that exclusively provide Nordic (cross-country) skiing shall be classified as 9016(1)/9180(1), *Amusement or Recreational Facilities – N.O.C.*

Ski equipment rental shops engaged in the rental or sale of skis, boots, poles, gloves, goggles ~~and/or~~ related accessories shall be separately classified as 8017(1), *Stores – retail*.

Restaurants, retail stores ~~and/or~~ hotels shall be separately classified.

\* \* \* \* \*

**WCIRB**California®  
Objective.Trusted.Integral.

1221 Broadway, Suite 900  
Oakland, CA 94612  
Voice 415.777.0777  
Fax 415.778.7007  
[www.wcirb.com](http://www.wcirb.com)  
[wcirb@wcirb.com](mailto:wcirb@wcirb.com)