

**4123-17-03.2 Experience modification cap.**

(A) Definitions.

As used in this rule:

- (1) "Eligibility determination date" means the March first immediately preceding the policy year for which the EM is being calculated for private employers, and the September first immediately preceding the policy year for which the EM is being calculated for public employer taxing districts.
- (2) "Experience modification" or "EM" means the experience modification as determined under rule 4123-17-03 of the Administrative Code.
- (3) "Safety requirement completion date" means the last business day of March for private employers and the last business day of September for public employer taxing districts.

(B) Except as provided for in paragraph (D) of this rule, the bureau shall limit the increase in EM of an employer meeting the eligibility requirements of this rule to one hundred per cent of the initial EM calculated for that employer in the preceding rating year.

(C) Eligibility requirements.

(1) As of the eligibility determination date:

- (a) The employer must be current with respect to all payments due the bureau, as defined in paragraph (A)(1)(b) of rule 4123-17-14 of the Administrative Code; and
- (b) The employer must not have cumulative lapses in workers' compensation coverage in excess of forty days within the preceding twelve months.

(2) An employer must annually complete a safety program prescribed by the division of safety and hygiene no later than safety requirement completion date during each policy year in which the cap applies. If the employer fails to comply with these requirements, the bureau will remove the cap for the policy year in which the requirements were not met and use employer's uncapped EM for that policy year.

(3) An employer must report actual payroll for the preceding policy year and pay any premium due upon reconciliation of estimated premium and actual premium for that policy year no later than the date set forth in rule 4123-17-14 of the Administrative Code.

An employer will be deemed to have met this requirement if the bureau receives the payroll report and the employer pays premium associated with such report before the expiration of any grace period established by the administrator pursuant to paragraph (B) of rule 4123-17-16 of the Administrative Code.

(D) An employer removed from the EM cap program for failure to meet the criteria set forth in paragraph (C)(3) of this rule will be rerated for the full policy year at the employer's base rate or experience-modified rate as determined by the employer's expected losses for the policy year.

(E) Opt-out provision.

The bureau will automatically apply the cap to an employer that meets the eligibility requirements of paragraphs (C)(1)(a) and (C)(1)(b) of this rule. An employer may voluntarily withdraw from the EM cap program by providing written notice to the bureau.

(F) Application of cap to successor policies.

- (1) Where a transfer of experience occurs pursuant to rule 4123-17-02 of the Administrative Code, the resulting EM is not subject to limitation under this rule unless one of the following apply:
  - (a) The transfer is a combination as a result of bankruptcy proceedings, when the transaction is a change in risk number without any change in exposure; or
  - (b) A base-rated successor wholly or partially succeeds a single policy.
- (2) If the criteria in paragraph (F)(1)(a) or (F)(1)(b) of this rule are met, the predecessor's published EM in the preceding rating year will be the EM published for the successor in the same rating year for purposes of determining whether the cap applies under this rule.

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Prior Effective Dates: 7/1/13, 7/1/14, 9/4/14, 7/1/16