

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

(A) Definitions.

As used in this rule:

- (1) "Eligibility determination date" means the June first immediately preceding the policy year for which the EM is being calculated for private employers, and the December 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, commencing with the rating year beginning July 1, 2009 for private employers and January 1, 2010 for public employer taxing districts, the bureau shall limit the increase in EM of an employer meeting the eligibility requirements of this rule to one hundred percent of the EM published for that employer in the preceding rating year.

(C) Eligibility requirements.

- (1) As of the eligibility determination date, the employer:
 - (a) Must be current with respect to all payments due the bureau, as defined in paragraph (A)(3) of rule 4123-17-14 of the Administrative Code.
 - (b) Cannot have cumulative lapses in workers' compensation coverage in excess of forty days within the twelve months preceding June first immediately prior to the policy year to which the cap will be applied.
- (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.

(D) Opt-out provision.

The bureau will automatically apply the cap to an employer that meets the eligibility requirements of paragraph (C)(1)(a) and (C)(1)(b) of this rule. If an employer wishes to not have the cap applied, the employer must notify the bureau in writing by the last business day in September of the policy year.

(E) Application of cap to successor policies.

Where a transfer of experience occurs when one employer succeeds another employer in the operation of a business in whole or in part, the resulting EM is not subject to limitation under this rule unless one of the following apply:

- (1) The transfer is a combination as a result of bankruptcy proceedings, when the transaction is a change in policy number without any change in exposure; or
- (2) A base-rated successor wholly or partially succeeds a single policy.

If either of these conditions are met, the predecessor's published EM in the preceding rating year will be deemed the EM published for the successor in the preceding rating year for purposes of determining whether the cap applies under this rule.