

## **4123-17-73      Group retrospective rating program.**

### **(A) Definitions.**

As used in this rule:

- (1) "Group retrospective rating" or "group retro rating" is a voluntary workers' compensation insurance program offered by the bureau of workers' compensation. Group retro rating is designed to provide financial incentive to employer groups participating in the program that, through improvements in workplace safety and injured worker outcomes, are able to keep their claim costs below a predefined level.
- (2) "Basic premium factor" is a component of the retrospective rating premium formula used to account for insurance charges and costs that are distributed across all employers. The basic premium factor (BPF) is based upon charges for the cost of having retrospective premium limited by the selected maximum premium ratio and the cost of excluding surplus costs from incurred losses.
- (3) "Developed losses" or "total incurred losses (developed)" are a component of the retrospective rating premium formula intended to account for the fact that total incurred losses in claims are likely to increase over time. This trend results from a number of factors, including, but not limited to, reactivation of claims, additional claim awards, and claims that may be incurred but not reported for a substantial period, and result in costs that would otherwise not be captured.
- (4) "Evaluation period" means the three-year period beginning immediately after the end of the retro policy year. Annual evaluations will occur three times during the evaluation period at twelve, twenty-four, and thirty-six months after the end of the retro policy year.
- (5) "Incurred losses" means compensation payments and medical payments paid to date as well as open case reserves. The total incurred losses will not include surplus costs and will be limited on a per claim basis.
- (6) "Loss development factor" means actuarially determined factors that are multiplied by incurred losses of non-PTD/death retro claims to produce developed losses. Loss development factors (LDF) are unique to each retro policy year.
- (7) "Maximum premium ratio" means a factor pre-selected by the retro group that is multiplied by the standard premium to determine the maximum retrospective premium for the group.
- (8) "Member of a retro group" means the individual employers that participate in a group retro plan of a sponsoring organization.
- (9) "Reserve" means the bureau's estimate of the future cost of a claim at a specific point in time.
- (10) "Retro policy year" means the policy year in which an employer is enrolled in group retrospective rating. Claim losses which occur during this year will be tracked for all retro group members and refunds or assessments will be distributed based on those losses in the subsequent evaluation period. The retro policy year start and end date will match that of the rating policy year. For public employer taxing districts, the retro policy year shall be January first through December thirty-first of a year. For private employers, the retro policy year shall be July first through June thirtieth of the following year.
- (11) "Standard premium" means the total premium paid by or on behalf of an employer for a given policy year, excluding the assessments for the disabled workers' relief fund and the administrative cost fund. In determining standard premium, total premium paid will not be reduced by any rebates or dividends issued pursuant to rule 4123-17-10 of the Administrative Code.

(12) "Application deadline" means the application deadline for group retrospective rating as set forth in appendices A and B to rule 4123-17-74 of the Administrative Code.

(B) Sponsor eligibility requirements.

Each sponsoring organization seeking to sponsor a retro group must be certified under the bureau's sponsor certification process as specified in rule 4123-17-61.1 of the Administrative Code.

(C) Retro group eligibility requirements.

Each retro group seeking to participate in the bureau group retro program shall meet the following standards:

- (1) A retro group must be sponsored by a bureau certified sponsoring organization.
- (2) The employers' business in the organization must be substantially similar such that the risks which are grouped are substantially homogeneous. A group shall be considered substantially homogeneous if the main operating manuals of the risks as determined by the premium obligations for the rating year beginning two years prior to the retro policy year are assigned to the same or similar industry groups. Industry groups are determined by appendix A to rule 4123-17-05 of the Administrative Code. Industry groups seven and nine as well as eight and nine are considered similar. The bureau may allow an employer to move to a more homogeneous group when, after December thirty-first for private employer groups and June thirtieth for public employer taxing district groups, but before the application deadline, the employer:
  - (a) Is an employer without a full year of recorded premium;
  - (b) Is reclassified as a result of an audit; or
  - (c) Fully or partially combines with another employer.
- (3) A retro group of employers must have aggregate standard premium in excess of one million dollars, as determined by the administrator based upon the last full policy year for which premium information is available.
  - (a) For employers without a full year of recorded premium, the bureau may use the employer's expected premium.
  - (b) The bureau shall calculate the premium based upon the experience modified premium of the individual employers excluding group rating discounts.
- (4) The retro group must include at least two employers.
- (5) The formation and operation of the retro group program by the organization must substantially improve accident prevention and claims handling for the employers in the retro group. The bureau shall require the retro group to document its safety plan or program for these purposes, and, for retro groups reapplying annually for group retro coverage, the results of prior programs. The safety plan must follow the guidelines and criteria set forth under rule 4123-17-68 of the Administrative Code.

(D) Employer eligibility requirements.

Each employer seeking to participate in the bureau group retrospective program must meet the following standards:

- (1) The employer must be a private state funded employer or public employer taxing district. A self-insuring

employer or a state agency public employer shall not be eligible for participation in the group retro program.

- (2) Each employer seeking to enroll in a retro group for workers' compensation coverage must have active workers' compensation coverage according to the following standards:
- (a) As of the application deadline, 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.
  - (b) As of the application deadline for group retrospective rating, the employer must be current on the payment schedule of any part-pay agreement into which it has entered for payment of premiums or assessment obligations.
  - (c) Except as provided for in paragraphs (D)(2)(c)(i) and (D)(2)(c)(ii) of this rule, the employer cannot have cumulative lapses in workers' compensation coverage in excess of forty days within the twelve months preceding the application deadline date for group retro rating.
    - (i) For the policy year commencing July 1, 2015, private employers must not have cumulative lapses in workers' compensation coverage in excess of forty days within the preceding nine months.
    - (ii) For policy year commencing January 1, 2016, public employer taxing districts must not have cumulative lapses in workers' compensation coverage in excess of forty days within the preceding nine months.
  - (d) The 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.
- (3) No employer may be a member of more than one retro group or a retro and non-retro group for the purpose of obtaining workers' compensation coverage. An employer who has been included on a group experience rating roster for the upcoming policy year may not elect to participate in group retrospective rating after the deadline for group experience rating set forth in rule 4123-17-74 of the Administrative Code.
- (4) An employer must be homogeneous with the industry group of the retro group as defined in paragraph (C)(2) of this rule.

An individual employer member of a continuing retro group who initially satisfied the homogeneous requirement shall not be disqualified from participation in the continuing retro group for failure to continue to satisfy such requirement.

- (E) A sponsoring organization shall make application for group retro on a form provided by the bureau and shall complete the application in its entirety with all documentation attached as required by the bureau. If the sponsoring organization fails to include all pertinent information, the bureau will reject the application.
- (1) The group retro application (U-151) shall be signed each year by an officer of the sponsoring organization.
  - (2) The sponsoring organization shall identify each individual employer in the retro group on an employer roster for group retro plan (U-152).

- (F) A retro group's application for group retrospective rating is applicable to only one policy year. The retro group must reapply each year for group retro coverage. Continuation of a plan for subsequent years is subject to timely filing of an application on a yearly basis and the meeting of eligibility requirements each year.
- (G) Upon receipt of an application for retro group, the bureau shall do the following:
- (1) Determine the industry classification of the retro group based upon the makeup of retro group employers submitted.
  - (2) Screen prospective retro group members to ensure that their business operations fit appropriately in the retro group's industry classification.
  - (3) In reviewing the retro group's application, if the bureau determines that individual employers in the retro group do not meet the eligibility requirements for group retrospective rating, the bureau will notify the individual employers and the retro group of this fact, and the retro group may continue in its application for group retro coverage without the disqualified employers.
- (H) The group retro sponsor shall submit to the bureau an employer statement (U-153) each year for each employer that wishes to participate in group retrospective rating with the sponsor. Where an employer files a new employer statement form in the sixty days prior to the application deadline, it shall be presumed that the latest filed employer statement form of the employer indicates the employer's intentions for group retro. An employer statement form shall remain effective until the end of the policy year as defined on the employer statement form.
- (I) The bureau may request of individual employers or the retro group sponsor, additional information necessary for the bureau to rule upon the application for group retro participation. Failure or refusal of the retro group sponsor to provide the requested information on the forms or computer formats provided by the bureau shall be sufficient grounds for the bureau to reject the application and refuse the retro group's participation in group retrospective rating program.
- (J) Individual employers who are not included on the final retro group roster or do not have an individual employer application (U-153) for the same retro group or another retro group sponsored by the same sponsoring organization on file by the application deadline, will not be considered for the group retro plan for that policy year; however, the bureau may waive this requirement for good cause shown due to clerical or administrative error, so long as no employer is added to a retro group after the application deadline. The group retro sponsor shall submit all information to the bureau by the application deadline.
- (K) Once a retro group has applied for group retrospective rating, the organization may not voluntarily terminate the application. All changes to the original application must be filed on a bureau form provided for the application for the group retrospective rating plan and must be filed prior to the filing deadline. Any rescissions made must be completed in writing, signed by an officer of the sponsoring organization and filed prior to the filing deadline. The retro group may make no changes to the application after the last day for filing the application. Any changes received by the bureau after the filing deadline will not be honored. The latest application form or rescission received by the bureau prior to the filing deadline will be used in determining the premium obligation.
- (L) After the group retro application deadline but before the end of the policy year for the retro group, the sponsoring organization may notify the bureau that it wishes to remove an employer from participation in the retro group. The sponsoring organization may request that the employer be removed from the retro group after the application deadline only for the employer's gross misrepresentation on its application to the retro group.

- (1) "Gross misrepresentation" is an act by the employer that would cause financial harm to the other members of the retro group and is limited to any of the following:
    - (a) The sponsoring organization discovers that the employer applicant for group retro rating has recently merged with one or more entities without disclosing such merger on the employer's application for membership in the retro group, and such merger adversely affects the employer's risk of future losses.
    - (b) The sponsoring organization discovers that the employer applicant for group retrospective rating has failed to disclose the true nature of the employer's business pursuit on its application for membership in the retro group, and this failure adversely affects the loss potential of the retro group.
  - (2) The sponsoring organization must provide sufficient documentation, as determined by the bureau, to support its request to remove an employer from a retro group.
  - (3) The employer shall be removed from the group only with the bureau's approval.
- (M) An employer will be removed from the group retrospective rating program for the current policy year for failure to comply with paragraph (D)(2)(d) of this rule and the following will apply:
- (1) Claims costs according to this rule for all injuries incurred from the beginning of the policy year in which the employer participated in group retrospective rating through the date of removal from the program shall be included in the group retrospective calculation; and
  - (2) Only premium from the beginning of the policy year through the date of removal will be included in the group retrospective calculation for the participation policy year.
- (N) A retro group formed for the purpose of group retrospective rating may not voluntarily terminate a plan during the policy year. A change in the name of the retro group will not constitute a new retro group. A change of the organization sponsoring a retro group or moving a retro group to a new sponsoring organization shall constitute a new retro group and the members of the new retro group must meet the homogeneity requirement of paragraph (C)(2) of this rule. A retro group shall be considered a continuing retro group if more than fifty per cent of the members of the retro group in the previous rating year are members of the retro group in the current rating year.
- (O) Selection of an authorized representative for the retro group shall meet the following requirements:
- (1) A retro group that has been established and has been accepted by the bureau of workers' compensation for the purpose of group retrospective rating shall have no more than one permanent authorized representative for representation of the retro group and the individual employers of the retro group before the bureau and the industrial commission in any and all risk-related matters pertaining to participation in the workers' compensation fund.
  - (2) The selection of an authorized representative must be made by submission of a completed form U-151, and any change or termination of the authorized representative can be made only by a subsequent submission of form U-151. Only an officer of the sponsoring organization may sign a U-151.
- (P) The bureau shall consider an employer individually when assessing the premium payments for the retro policy year. The retro group will be considered a single entity for purposes of calculating group retrospective premium adjustments.
- (Q) The group retrospective premium calculation will occur at twelve, twenty-four, and thirty-six months following the end of the group retro policy year.

- (1) On the evaluation date, the bureau will evaluate all claims with injury dates that fall within the retro policy year. The incurred losses and reserves that have been established for these claims are "captured" or "frozen." The group's retrospective premium will be calculated based on the developed incurred losses of the group. The group retrospective premium will be compared to the group standard premium (the combined standard premiums of retro group members for the retro policy year) and all subsequent group retro refunds/assessments. The difference will be distributed or billed to employers as a refund or assessment.
  - (a) These assessments will be limited per a maximum premium ratio selected during the group retro application process.
  - (b) Any reserving method that suppresses some portion of an employer's costs for the purpose of calculating an experience modification will not apply in the calculation of incurred losses for group retrospective rating.
  - (c) The bureau may hold a portion of refunds or defer assessments owed in the first and second evaluation periods to minimize the volatility of refunds and assessments. Any net refund or assessment will be fully distributed or billed by the bureau in the third evaluation period.
- (2) Incurred losses used in the retrospective premium will be limited to five hundred thousand dollars per claim.
- (3) Incurred losses will not include surplus or VSSR costs.
- (R) The retrospective premium calculation that will occur at various evaluation points after the retro policy year end will be as follows (please note that standard premium and developed incurred losses are for the total of the entire retro group):
 

Group retrospective premium =

(Basic premium factor x standard premium)

+

developed incurred losses

  - (1) A group will elect a maximum premium ratio for the group each year as part of the group retro application process. This ratio will determine the maximum amount of total premium a retro group may pay after refunds and assessments.
  - (2) Options for the maximum premium ratio will be as set forth in appendix A to this rule.
  - (3) A basic premium factor is applied in the retro premium calculation to account for insurance costs, surplus costs, and a per claim cap. The basic premium factor is determined using the following factors: group size by standard premium and maximum premium ratio.
  - (4) Developed incurred losses are created by totaling incurred losses and reserves for the entire retro group and applying an actuarially determined loss development factor as defined in appendix C to this rule.
  - (5) Refunds and assessments will be distributed directly to group retro employers. The amount refunded or assessed to an individual employer will be based upon the percentage of the total group standard premium paid by the employer at the time of evaluation. The refund or assessment will be multiplied by this percentage and the resulting amount will be distributed or billed to the employer.

(6) Within four months of the evaluation date, if entitled, the bureau will send premium refunds.

(7) If additional premium is owed, it will be included in the employer's next invoice and must be paid by the due date stated on the invoice. The bureau will charge penalties on any additional premium not paid when it is due. If the group retro member is entitled to a refund for one retro policy year and owes any additional monies to the bureau, the bureau will deduct the monies due the bureau from the refund. The bureau will refund the difference to the group retro member. In the event that this adjustment still leaves a premium balance due, the bureau will send a bill for the balance.

(S) Terminations, transfers, and change of ownership will be handled in regards to group retrospective as follows:

(1) Predecessor: enrolled in group retro program.

Successor: new entity.

Where there is a combination or experience transfer during the current policy year or the sixty days preceding the application deadline for the upcoming policy year, wherein the predecessor was a participant in or applicant for the group retro program, and the successor is assigned a new policy with the bureau, the successor may be considered a member of the group retro program if agreed to by both the succeeding employer and the group retro sponsor. Written agreement signed by both the succeeding employer and the group retro sponsor must be received by the bureau within thirty days of the date of succession. If the succeeding employer and the group sponsor agree to successor joining the retro group, the successor's group retro evaluation shall be based on the group's reported payroll and claims incurred. Notwithstanding this election, the successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(2) Predecessor: not enrolled in group retro program.

Successor: enrolled in group retro program.

Where one legal entity that has established coverage and is enrolled in the group retro program, wholly succeeds one or more legal entities having established coverage and the predecessor entities are not enrolled in the group retro program at the date of succession, the payroll reported and claims incurred by the predecessor from the date of succession to the end of the policy year, shall be included in successor's retrospective rating plan. If the predecessor had at any time participated in a group retro program, the successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(3) Predecessor: enrolled in group retro program.

Successor: not enrolled in group retro program.

Where one legal entity that has established coverage and is not currently enrolled in a group retro plan wholly succeeds one or more entities that are enrolled in a group retro plan, predecessor's plan(s) shall terminate as of the ending date of the evaluation period. Payroll reported and claims incurred on or after the date of succession will be the responsibility of the successor under its current rating plan. The successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(4) Predecessor: enrolled in group retro program.

Successor: enrolled in different group retro program.

Where one legal entity that has established coverage and is enrolled in a group retro plan wholly succeeds one or more entities that are enrolled in a group retro plan, predecessor's plan(s) shall terminate as of the ending date of the evaluation period. Payroll reported and claims incurred on or after the date of succession will be the responsibility of the successor under its group retro plan. The successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(5) Predecessor: enrolled in group retro program.

Successor: enrolled in same group retro program.

Where one legal entity that has established coverage and is enrolled in a group retro plan wholly succeeds one or more entities that are enrolled in the same group retro plan, the successor shall be responsible for any and all existing or future liabilities stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code. If the predecessor had at any time participated in a different group retro program, the successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(6) Successor: cancels coverage and was enrolled in group retro program.

Predecessor: no predecessor.

If the successor cancels coverage and there is no predecessor, the premium and losses of the canceling employer will remain with the retro group for future retrospective premium calculations. The resulting refund or assessment will be collected from the remaining members of the retro group.

Group retro sponsors and authorized representatives have the right to represent the interest of the canceled employer on behalf of the group with regard to claims which occurred during the year or years the employer was active in a retro group sponsored by the organization.

(7) Successor and/or predecessor: open group retro policy years in the evaluation period.

If the successor and predecessor are not currently enrolled in the group retro program, but either or both have open group retro policy years in the evaluation period, the successor shall be responsible for any and all existing or future rights and obligations stemming from the predecessor's participation in the group retro program prior to the date that the bureau was notified of the transfer as prescribed under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(8) Partial transfer.

If an entity partially succeeds another entity and the predecessor entity has any group retro policy years in the evaluation period, the predecessor entity will retain any rights to assessments or refunds. If the successor is enrolled in the group retro program, payroll reported and claims incurred on or after the date of the partial transfer will be the responsibility of the successor under its group retro plan.



(9) Successor: files a petition for bankruptcy.

Predecessor: no predecessor.

If a current or previously group retro program employer with open retro policy years files a petition for bankruptcy under chapter seven or chapter eleven of the federal bankruptcy law, that employer shall notify the bureau legal division by certified mail within five working days from the date of the bankruptcy filing. The bureau will petition the bankruptcy court to take appropriate action to protect the state insurance fund and other related funds.

Effective: 1/1/17

Prior Effective Dates: 5/21/09, 7/1/09, 9/12/09, 3/22/10, 11/18/10, 11/1/11, 7/1/12, 7/1/14, 9/4/14, 7/1/15