

4123-17-72 Deductible rule.

(A) Definitions.

As used in this rule:

- (1) "Coverage period" means the twelve month period beginning July first through June thirtieth for private employers, and January first through December thirty-first for public employers. The deductible selected by the employer will apply only to claims with a date of injury within the coverage period defined in the deductible agreement.
- (2) "Deductible" means the maximum amount an insured participating in the deductible program must reimburse the bureau for each claim that occurs during the policy year.
 - (a) "Small deductible" means a deductible less than or equal to ten thousand dollars.
 - (b) "Large deductible" means a deductible greater than ten thousand dollars.
- (3) "Experience rated premium" means the premium obligations of an employer for the policy year excluding DWRF and administrative cost assessments. This may include any experience rated premium related to policy combinations.
- (4) "Modified rate" means the rate that employers who are experience rated pay as a percentage of their payroll. This rate is calculated by taking the base rate and multiplying it by the employer's experience modification (EM) factor.
- (5) "Base rate" means the rate that employers who are not experience rated pay as a percentage of their payroll.
- (6) "Policy in good standing" means the employer is current on all payments due to the bureau and is in compliance with bureau laws, rules, and regulations at the time of enrollment or reenrollment.
- (7) "Premium" means money paid (due) from an employer for workers' compensation insurance. It does not include money paid as fees, fines, penalties or deposits.
- (8) "Qualified employer" means an employer that has a state insurance fund policy that is in good standing at the time of enrollment or reenrollment. Although the employer may be a qualified employer, the bureau may not accept the employer into the deductible program for other reasons set forth in this rule.

(B) Eligibility requirements.

- (1) An employer shall be eligible to participate in the deductible program only if the employer meets all of the following requirements:
 - (a) As of each continuing eligibility evaluation date, the employer holds active workers' compensation coverage according to the following standards as of the original application deadline or anniversary date of participation:
 - (i) 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.
 - (ii) 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.

(iii) If the employer selects a small deductible, the employer may not have cumulative lapses in workers' compensation coverage in excess of forty days within the preceding twelve months, except as provided in paragraphs (B)(1)(a)(iii)(a) and (B)(1)(a)(iii)(b) of this rule.

(a) 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.

(b) 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.

(iv) If the employer selects large deductible, the employer may not have cumulative lapses in workers' compensation coverage in excess of fifteen days within the preceding five years.

(v) 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.

(b) The employer shall demonstrate the ability to make payments under the deductible program based upon a credit score established by the bureau on an annual basis which will be applicable to all applicants for the program year. The bureau shall obtain the credit reports from an established vendor of such information. An employer that is a subsidiary of another corporate entity may use the parent corporate entity's credit score in meeting this requirement if the parent corporate entity meets financial criteria for the deductible program and executes a contract of guaranty with respect to the subsidiary's participation in the program.

(c) The bureau may require an employer to adopt additional risk mitigation measures as a prerequisite for participation in the program. These measures may include, but are not limited to: adoption of an alternative payment plan, providing securitization in the form of a letter of credit or surety bond, and, for employers electing a large deductible, selection of an aggregate stop-loss limit.

(2) The following employers shall not be eligible to participate in the deductible program:

(a) State agencies.

(b) A self-insuring employer providing compensation and benefits pursuant to section 4123.35 of the Revised Code.

(C) In selecting an employer deductible program under this rule, the employer must select, on an application provided by the bureau, a per claim deductible amount, which shall be applicable for all claims with dates of injury within a one year coverage period. The employer shall choose one deductible level from the following:

(1) Five hundred dollars;

(2) One thousand dollars;

(3) Two thousand five hundred dollars;

- (4) Five thousand dollars;
- (5) Ten thousand dollars;
- (6) Twenty-five thousand dollars;
- (7) Fifty thousand dollars;
- (8) One hundred thousand dollars;
- (9) Two hundred thousand dollars.

(D) In choosing a small deductible, the employer may not choose a deductible amount that exceeds twenty-five per cent of their experience rated premium obligation during the most recent full policy year. For a new employer policy, the deductible amount shall not exceed twenty-five per cent of the employer's expected premium. In choosing a large deductible, the employer may not choose a deductible amount that exceeds forty per cent of their experience rated premium obligation for the most recent full policy year. For self-insured employers re-entering the state fund system, the bureau will use the paid workers' compensation benefits from the last full policy year in place of experience rated premium.

BWC may estimate a full year's premium should only a partial year be available or if no premium is available in the most recent full policy year.

(E) An employer selecting a large deductible will undergo additional credit analysis and must submit financial information to the bureau during the enrollment period preceding each policy year they elect to participate in the program.

- (1) An employer choosing a deductible level of twenty-five thousand dollars or fifty thousand dollars must submit reviewed or audited financials for at least the three most recent fiscal years. The financials must be prepared in accordance with generally accepted accounting principles.
- (2) An employer choosing a deductible level of one hundred thousand dollars or two hundred thousand dollars must submit audited financials for at least the three most recent fiscal years. The financials must be prepared in accordance with generally accepted accounting principles.

(F) An employer may request an annual aggregate stop-loss limit option in combination with large deductible levels. If the employer requests the aggregate stop-loss limit option, the bureau shall limit the employer's deductible billings for injuries which occur during the associated policy year to three times the deductible level chosen. However, the bureau may reject the employer's request to participate in the aggregate stop-loss limit option if the bureau determines that, because of the employer's premium or estimated premium size, the employer would receive a credit under this rule that would exceed the employer's maximum aggregate stop-loss liability.

(G) The employer shall file the application provided by the bureau and any other documentation required for enrollment in the deductible program by the applicable application deadline set forth in appendix A or B to rule 4123-17-74 of the Administrative Code.

The bureau shall not permit an employer to enroll in a deductible program outside of the application deadline, except that the bureau will consider an employer establishing a policy in Ohio for the first time for participation where the employer submits its deductible program application to the bureau within thirty days of obtaining coverage.

- (H) Renewal in the deductible program at the same level for each subsequent year shall be automatic, subject to review by the bureau of the employer's continued eligibility under paragraph (B) of this rule, unless the employer notifies the bureau in writing that the employer does not wish to participate in the program or that the employer wants to change the deductible amount for the next coverage period. The employer shall provide such notice to the bureau within the time and in the manner provided in paragraph (G) of this rule.
- (I) Except as provided in paragraph (M) of this rule, an employer shall not be permitted to withdraw from the deductible program during the policy year, and no changes shall be made with respect to any deductible amount selected by the employer within the policy year.
- (J) The bureau shall pay the claims costs under a deductible program and the employer shall reimburse to the bureau the costs under the deductible program as follows:
- (1) The bureau shall pay all claims costs in accordance with the laws and rules governing payment of workers' compensation benefits. For small deductible levels, the amount to be included in the employer's experience for a policy year shall be any claims costs for injuries incurred in that policy year less any deductible billed to the employer under this rule. For large deductible levels, the bureau shall include the entire claims cost for injuries incurred in a policy year in the employer's experience for that policy year.
 - (2) The bureau shall bill the employer on a monthly basis for any claims costs paid by the bureau for amounts subject to the deductible as elected by the employer for the policy year. In addition to amounts paid by the bureau for which the bureau is seeking reimbursement from the employer, such monthly billings shall also reflect the payments to date for any claims to which a deductible is applicable.
 - (3) The employer shall pay all deductible amounts billed by the bureau within twenty-eight days of the invoice date. The employer will be subject to any interest or penalty provisions to which other monies owed the bureau are subject, including certification to the attorney general's office for collection.
 - (4) The employer shall continue to be liable beyond any deductible program period for billings covered under a deductible program for injuries that arose during any period for which a deductible is applicable, regardless of when payment was made by the bureau.
- (K) The bureau will apply the premium reduction calculation under the deductible program directly to the base rate established for the policy year for base-rated employers, or after the modified premium rate is established for experience-rated employers, but prior to any other premium adjustments, as well as DWRF and administrative expenses. The bureau will calculate the premium reduction in accordance with the appendices of this rule, which takes into account both the deductible amount chosen by the employer and the applicable hazard group under the most current version of NCCI's hazard groupings as established by the primary manual classification of the employer as determined at the end of the enrollment period for that year.
- (1) In determining the primary manual classification and appropriate hazard group, the bureau shall utilize payroll and the associated experience premium for the rating year beginning two years prior to the period in which the employer is seeking to enroll in the deductible program.
 - (2) For new employers, the bureau shall base the appropriate primary manual classification and hazard group upon estimated payroll.
- (L) Where there is a combination or experience transfer of an employer within a deductible program policy period, following the application of any other rules applicable to a combination or experience transfer, the employer may be eligible to remain in a deductible program as follows:

(1) Successor: entity not having coverage.

Predecessor: enrolled in deductible program currently or in prior policy years.

Where there is a combination or experience transfer, where the predecessor was a participant in the deductible program and the successor is assigned a new policy with the bureau, the successor shall make application for the deductible program within thirty days of obtaining a bureau policy, as set forth in paragraph (G)(3) of this rule. Notwithstanding this election, the successor shall be responsible for any and all existing or future liabilities stemming from the predecessor's participation in the deductible program prior to the date that the bureau was notified of the transfer as provided under paragraph (C) of rule 4123-17-02 of the Administrative Code.

(2) Successor: enrolled in the deductible program.

Predecessor: not enrolled in the deductible program.

Where there is a combination or experience transfer involving two or more entities, each having Ohio coverage at the time of the combination or experience transfer, and the successor policy is enrolled in the deductible program for the program year, the successor shall automatically remain in the deductible program for the program year and is subject to renewal in accordance with paragraph (H) of this rule.

(3) Successor: not enrolled in deductible program.

Predecessor: enrolled In deductible program.

Where there is a combination or experience transfer involving two or more entities, each having Ohio coverage at the time of the combination or experience transfer, and the successor policy is not enrolled in the deductible program, the predecessor shall not be automatically entitled to continue in the deductible program. The successor may make a formal application should it desire to participate in the deductible program for the next policy year. Whether or not the successor chooses or is otherwise eligible to participate in a deductible program, under paragraph (C) of rule 4123-17-02 of the Administrative Code, the successor remains liable for any existing and future liabilities resulting from a predecessor's participation in the deductible program.

(M) The bureau may remove an employer participating in the deductible program from the program with thirty days written notice to the employer for any of the following reasons:

- (1) The employer participates in any plan or program that is not compatible with the deductible program under rule 4123-17-74 of the Administrative Code.
- (2) The bureau certifies a balance due from the employer to the attorney general.
- (3) The employer makes direct payments to any medical provider for services rendered or supplies or to any injured worker for compensation associated with a workers' compensation claim.
- (4) The employer engages in misrepresentation or fraud in conjunction with the deductible program application process.

(N) An employer removed from the deductible program for failure to comply with paragraph (B) of this rule will be required to pay:

- (1) Claims costs up to the deductible selected under paragraph (C) of this rule for all injuries incurred from the beginning of policy year in which the employer participated in the deductible program through the

date of removal from the program.

- (2) Full experience-rated premium, without the deductible credit, from the date of removal from the deductible program through the remainder of the policy year.

Effective: 7/1/16

Prior Effective Dates: 3/9/09, 7/1/09, 3/11/10, 7/1/10, 11/15/10, 6/10/11, 11/1/11, 7/1/12, 1/1/13, 9/4/14