

A. EXPERIENCE RATING

Experience rating recognizes the differences among individual employers by comparing the experience of individual employers with the average employer in the same classification. The differences are reflected by an experience rating modification (“modification”) based on individual employer payroll and loss records, which may result in an increase, decrease, or no change in premium.

B. MANDATORY PLAN

1. The New York Experience Rating Plan for Workers’ Compensation and Employers’ Liability Insurance (“Plan”) applies on a mandatory basis for all risks that meet the eligibility requirements in Rule 2 Section (A) of this Plan. A policy cannot be canceled, rewritten or extended for purposes of enabling a risk to qualify for, or avoid application of, this Plan.
2. Any action taken to evade the application of a modification determined in accordance with this Plan is prohibited.
3. Any change in rule or rating value shall become effective at 12:01 a.m. on the date approved for use. Unless otherwise specified, each change applies only from the first Rating Effective Date that occurs on or after the effective date of the change. Refer to Rule 2 Section (B) of this Plan for more information about Rating Effective Date.
4. The Standard Workers’ Compensation and Employers’ Liability Insurance Policy (WC 00 00 00 C) provides the Rating Board with the authority to examine and audit all records that relate to the policy. The application of this Plan’s rules may be affected by the attachment of endorsements found in the New York Workers’ Compensation and Employers’ Liability Insurance Manual.
5. The rules of this Plan are based on policy periods not longer than one year.
 - a. A policy issued for a period not longer than one year and 16 days is treated as a one-year policy.
 - b. A policy issued for a period longer than one year and 16 days is treated as follows:
 - The policy period is divided into consecutive 12-month units.
 - The Policy Period Endorsement (WC 00 04 05) identifies the time period of less than 12 months to be treated as a short-term policy.
 - All Manual rules and procedures apply to each identified time period as if a separate policy had been issued for each.

C. DEFINITIONS

1. Statistical Plan

The New York Workers’ Compensation Statistical Plan (“Statistical Plan”) sets forth detailed data reporting requirements for experience of individual risks. Only 1st, 2nd, and 3rd reports, as well as corrections to such reports, are used in the experience rating calculation. Based on a risk’s experience period, an individual unit report may be used in more than one experience rating.

2. Experience

The experience used to calculate a risk's modification is comprised of the exposure and losses that are reported according to the Statistical Plan. For purposes of this Plan, exposure and losses may also be referred to as data. The experience used to calculate a modification is determined by Rule 2 Section (E) of this Plan.

3. Exposure

For payroll-based classifications, exposure is the audited payroll for each classification in the experience period reported according to the Statistical Plan.

For non-payroll-based classifications, exposure is the following:

- a. Per capita classes: The number of employees as reported in accordance with Part III (6) (b) of the Statistical Plan
- b. Per location class: The number of locations as reported in accordance with Part III (6) (c) of the Statistical Plan
- c. Volunteer Firefighters class: The number of exposure units reported in accordance with Part III (6)(d) of the Statistical Plan multiplied by the rating period manual loss costs for the coverage based on population size during the coverage period.
- d. Volunteer Ambulance Workers class: The number of exposure units reported in accordance with Part III (6)(e) of the Statistical Plan applied to the rating period manual loss costs for such exposure units.

4. Losses

Losses used in this Plan are incurred losses which are defined as loss payments plus reserves for future payments as of the valuation date. Incurred losses for each classification in the experience period are those reported according to the Statistical Plan.

- a. No loss is excluded from the experience of a risk even if the employer was not responsible for the accident that caused such loss.

Exceptions:

- i. Losses reported with Catastrophe Number 12 and date of accident prior to November 1, 2022 are excluded from experience rating calculations. Catastrophe Number 12 claims include all workers' compensation claims directly attributable to the COVID-19 pandemic. Losses reported with Catastrophe Number 12 and date of accident on or after November 1, 2022 are included in experience rating calculations.
- ii. A loss is not included in the experience of a risk if it is not required to be reported to the New York State Workers' Compensation Board as defined in Section 110 of the New York Workers' Compensation Law provided that the employer pays the claim in the first instance or reimburses the carrier for the treatment rendered to the employee.

Note: An employer is not required to file a claim notice with the New York State Workers' Compensation Board if the accident or illness requires ordinary first aid or causes loss of time from work of only one day beyond the working day or shift on which the accident or illness occurred.

- b. Loss amounts may be limited in the experience rating calculation. For application of a loss limitation, refer to Rule 2 Section (C)(9) of this Plan.

5. Entity

An entity is an individual, partnership, corporation, unincorporated association, fiduciary, or other legal entity.

6. Risk

A risk consists of all entities eligible for combination under this Plan, regardless of whether insurance is provided

by one or more policies or insurance carriers. A risk may be:

- a. A single entity, or
- b. Two or more entities that qualify for combination according to Rule 3 Section (D) of this Plan.

7. Subject Premium

Subject premium is reported according to the Statistical Plan.

8. Unity (1.00) Factor

A unity (1.00) factor may apply to a risk for reasons including, but not limited to:

- It does not qualify for experience rating. Refer to Rule 2 Section (A) of this Plan for eligibility requirements.
- It does not meet the minimum data requirements. Refer to Rule 4 Section (C) of this Plan for an explanation.
- It is a new business with no data available for calculation of an experience rating modification.
- It qualifies for experience rating, with the calculation resulting in a 1.00 modification.
- Data could not be provided as a result of an ownership change. Refer to Rule 3 Section (C) of this Plan for an explanation.

D. ADMINISTRATION

1. The Rating Board determines the applicability of all Plan rules.
2. The modification is calculated, issued and, if necessary, revised by the Rating Board.
3. Unless otherwise provided by this Plan, modification issuance and revision is limited to the current and two preceding modifications.
4. The calculated modification factor is applied by the carrier(s) in accordance with this Plan, other applicable rules, statutes, and regulations.
5. The Rating Board publishes experience rating information for each eligible risk on the Rating Board's Manage Data application, which is accessible to the membership via the Rating Board's website, www.nycirb.org. The carrier of record is provided access to the experience rating worksheets for its own insureds on this application. Producers and other users can view modification factors for individual risks by subscribing to the NYMods application. Registration for access to this application can be obtained via the Rating Board's website at www.nycirb.org.
6. Individual employers, carriers, and other authorized representatives of record may request rating worksheets, as well as Employer Experience Reports, by contacting the Rating Board via email to RatingServices@nycirb.org. Letters of Authority must be furnished to the Rating Board for non-authorized representatives of employers either:
 - a. On the employer's stationery, authorizing such individuals as their representative and must be signed by an officer, partner, or principal of the employer; or
 - b. Through an online application available on the Broker / Employer section of the Rating Board's website at www.nycirb.org.

E. APPEAL PROCESS

An employer or its representative may appeal a modification factor by following the appeal procedures as described in Rule I Section (J) of the New York Workers' Compensation and Employers' Liability Insurance Manual.

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