

Version  
as at 1 April 2022



# **Accident Compensation (Experience Rating) Amendment Regulations 2020**

(LI 2020/24)

Accident Compensation (Experience Rating) Amendment Regulations 2020: revoked, on 1 April 2022, pursuant to regulation 30(1) of the Accident Compensation (Experience Rating) Regulations 2022 (SL 2022/32).

Patsy Reddy, Governor-General

## **Order in Council**

At Wellington this 24th day of February 2020

Present:

Her Excellency the Governor-General in Council

These regulations are made under sections 169, 329(1)(ca), (f), and (g) and (2), and 333 of the Accident Compensation Act 2001—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for ACC made after complying with the consultation requirements of sections 330 and 331 of that Act.

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### **Note**

The Parliamentary Counsel Office has made editorial and format changes to this version using the powers under subpart 2 of Part 3 of the Legislation Act 2019.

Note 4 at the end of this version provides a list of the amendments included in it.

**These regulations are administered by the Ministry of Business, Innovation, and Employment.**

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## Regulations

### 1 Title

These regulations are the Accident Compensation (Experience Rating) Amendment Regulations 2020.

### 2 Commencement

These regulations come into force on 1 April 2020.

### 3 Principal regulations

These regulations amend the Accident Compensation (Experience Rating) Regulations 2019 (the **principal regulations**).

**4 Regulation 4 amended (Calculations underpinning regulations)**

(1) Replace regulation 4(1) with:

- (1) If a levy payer is a qualifying class 1 levy payer, the Corporation must decide whether to make an adjustment (as described in regulation 3(3)), in accordance with regulations 7A to 11.
- (1A) If a levy payer is a qualifying class 2 levy payer, the Corporation must decide whether to make an adjustment (as described in regulation 3(3)), in accordance with regulations 12 to 17.

(2) Revoke regulation 4(4), (5), (6), and (7).

**5 Regulation 5 amended (Tax years to which regulations apply)**

Revoke regulation 5(a).

**6 Regulation 6 amended (Interpretation)**

(1) In regulation 6(1), revoke the definitions of **experience rating modification**, **industry peer group**, **industry size modification**, **non-industry peer group**, and **whole group**.

(2) In regulation 6(1), insert in its appropriate alphabetical order:

**LRG modifier** means a levy payer's levy risk group modifier, calculated in accordance with regulation 15

(3) In regulation 6(1),—

- (a) definition of **applicable levy year**, revoke paragraph (a):
- (b) definition of **experience period**, revoke paragraph (a):
- (c) definition of **minimum liable earnings**, revoke paragraph (a).

(4) In regulation 6(1), replace the definition of **qualifying claim** with:

**qualifying claim**,—

(a) in relation to a qualifying class 1 levy payer,—

(i) means a claim that—

- (A) is made under section 48 for a work-related personal injury suffered in the experience period (except for a work-related personal injury described in subparagraph (ii)); and
- (B) is accepted by the Corporation; but

(ii) does not include a claim made for a work-related personal injury suffered in the experience period that is—

- (A) a mental injury suffered by a person in the circumstances described in section 21; or
- (B) a personal injury caused by a work-related gradual process, disease, or infection that involves exposure to asbestos; or

- (C) a personal injury caused by a work-related gradual process, disease, or infection that results in hearing loss; and
- (b) in relation to a qualifying class 2 levy payer,—
  - (i) means a claim that—
    - (A) is made under section 48 for a work-related personal injury suffered in the applicable tax year (except for a work-related personal injury described in subparagraph (ii)); and
    - (B) is accepted by the Corporation; but
  - (ii) does not include a claim made for a work-related personal injury suffered in the applicable tax year that is—
    - (A) a mental injury suffered by a person in the circumstances described in section 21; or
    - (B) a personal injury caused by a work-related gradual process, disease, or infection that involves exposure to asbestos; or
    - (C) a personal injury caused by a work-related gradual process, disease, or infection that results in hearing loss

**7 Regulation 7 revoked (Meaning of industry peer group and non-industry peer group)**

Revoke regulation 7.

**8 New regulation 7A inserted (Calculations)**

After the Part 1 heading, insert:

**7A Calculations**

- (1) The Corporation must calculate the number of qualifying claims in the experience period for which it has paid weekly compensation for the employer's current or former employees or the private domestic worker or the self-employed person or the shareholder-employee.
- (2) For the qualifying claims described in subclause (1), the Corporation must calculate the total number of weekly compensation days in the claims activity period.
- (3) The Corporation must calculate the number of qualifying claims in the experience period that involve the death of a current or former employee of the employer or the death of the private domestic worker or the self-employed person or the shareholder-employee.

**9 Regulation 8 amended (Discount)**

Replace regulation 8(1) with:

- (1) This regulation applies if the numbers the Corporation calculates under regulation 7A(1) and (3) for the levy payer are both zero.

**10 Regulation 9 amended (Loading)**

- (1) In regulation 9(1)(a), replace “regulation 4(5)” with “regulation 7A(2)”.
- (2) In regulation 9(1)(b), replace “regulation 4(6)” with “regulation 7A(3)”.

**11 Regulation 10 amended (No adjustment)**

- (1) In regulation 10(1)(a), replace “regulation 4(5)” with “regulation 7A(2)”.
- (2) In regulation 10(1)(b), replace “regulation 4(6)” with “regulation 7A(3)”.

**12 Regulation 12 replaced (Discount, loading, or no adjustment)**

Replace regulation 12 with:

**12 Process to determine discount, loading, or no adjustment**

- (1) The Corporation must follow the steps set out in this regulation—
  - (a) to decide whether it must apply a discount, loading, or no adjustment to the levy payable by a levy payer in the applicable levy year; and
  - (b) to determine, if it is to apply a discount or loading, the level of that discount or loading.
- (2) Step 1: the Corporation must apply Schedules 2 and 3 to determine, for each tax year in the experience period, each levy risk group the levy payer is in.
- (3) Step 2: the Corporation must calculate, for each tax year in the experience period, the levy payer’s LRG modifier for each of those levy risk groups. The Corporation must calculate each LRG modifier in accordance with regulations 15 to 15C.
- (4) Step 3: the Corporation must use the LRG modifier for each of the levy payer’s levy risk groups to determine the tax year modifier for each tax year in the experience period in accordance with regulation 15D.
- (5) Step 4: the Corporation must calculate the levy payer’s experience period modifier by combining the levy payer’s 3 tax year modifiers in accordance with regulation 15E.
- (6) Step 5: the Corporation must round the levy payer’s experience period modifier in accordance with regulation 15F to calculate the discount or loading (if any) to be applied.
- (7) Step 6: the Corporation must apply the levy payer’s discount or loading (if any) to the levy paid or payable, in accordance with regulation 15G.

**13 Regulations 13 and 14 revoked**

Revoke regulations 13 and 14.

**14 Regulation 15 replaced (Experience rating modification)**

Replace regulation 15 with:

**15 Calculating LRG modifier**

- (1) For the purposes of regulation 12(3), the Corporation must calculate the LRG modifier using the following formula:

$$(\text{rehabilitation component} \times 0.75) + (\text{risk management component} \times 0.25)$$

where—

**rehabilitation component** means the rehabilitation component calculated using the formulas in regulation 15A

**risk management component** means the risk management component calculated using the formulas in regulation 15B.

- (2) For each levy payer, the Corporation must calculate the LRG modifier—
- (a) for each tax year in the experience period; and
  - (b) for each levy risk group the levy payer is in, within each tax year in the experience period.

**15A Calculation of rehabilitation component of LRG modifier**

- (1) The Corporation must calculate the rehabilitation component using the following formula:

$$[(\text{payer's rate} - \text{payers' rate}) \div \text{payers' rate}] \times \text{credibility weighting}$$

where—

**payer's rate** means the experience rate of the levy payer for the applicable levy risk group calculated using the formula in subclause (3)

**payers' rate** means the experience rate of all the levy payers in the applicable levy risk group calculated using the formula in subclause (4)

**credibility weighting** means the credibility weighting determined in accordance with regulation 15C.

- (2) However, if the rehabilitation component calculated for each levy risk group in accordance with subclause (1)—
- (a) is greater than 0.75, the Corporation must disregard the result and treat the component as 0.75;
  - (b) is less than -0.50, the Corporation must disregard the result and treat the component as -0.50.
- (3) The Corporation must calculate the payer's rate using the following formula:

$$\text{compensation days} \div \text{earnings}$$

where—

**compensation days**—

- (a) means the total number of weekly compensation days that—
  - (i) fall within the claims activity period; and

(ii) relate to the levy payer's qualifying claims in the applicable levy risk group; but

(b) any qualifying claim that exceeds 365 weekly compensation days within the claims activity period must be counted as 365 weekly compensation days

**earnings** means the total of the levy payer's liable earnings in the applicable tax year.

(4) The Corporation must calculate the payers' rate using the following formula:

$$\text{compensation days} \div \text{earnings}$$

where—

**compensation days**—

(a) means the total number of weekly compensation days that—

(i) fall within the claims activity period; and

(ii) relate to the qualifying claims of all levy payers in the applicable levy risk group; but

(b) any qualifying claim that exceeds 365 weekly compensation days within the claims activity period must be counted as 365 weekly compensation days

**earnings** means the total of the liable earnings of the levy payers in the applicable levy risk group in the applicable tax year.

#### **15B Calculation of risk management component of LRG modifier**

(1) The Corporation must calculate the risk management component using the following formula:

$$[(\text{payer's rate} - \text{payers' rate}) \div \text{payers' rate}] \times \text{credibility weighting}$$

where—

**payer's rate** means the experience rate of the levy payer for the applicable levy risk group calculated using the formula in subclause (3)

**payers' rate** means the experience rate of all the levy payers in the applicable levy risk group calculated using the formula in subclause (4)

**credibility weighting** means the credibility weighting determined in accordance with regulation 15C.

(2) However, if the risk management component calculated for each levy risk group in accordance with subclause (1)—

(a) is greater than 0.75, the Corporation must disregard the result and treat the component as 0.75:

(b) is less than -0.50, the Corporation must disregard the result and treat the component as -0.50.

(3) The Corporation must calculate the payer's rate using the following formula:

claims and deaths  $\div$  earnings

where—

**claims and deaths** means the sum of—

- (a) the number of the qualifying claims of the levy payer in the applicable levy risk group for which the Corporation paid an amount greater than \$500 in the claims activity period for qualifying costs of treatment; and
- (b) the number of the qualifying claims of the levy payer in the applicable levy risk group that involve the death of a current or former employee of an employer or the death of a private domestic worker

**earnings** means the total of the levy payer's liable earnings in the applicable levy risk group in the applicable tax year.

- (4) The Corporation must calculate the payers' rate using the following formula:

claims and deaths  $\div$  earnings

where—

**claims and deaths** means the sum of—

- (a) the number of the qualifying claims of all the levy payers in the applicable levy risk group for which the Corporation paid an amount greater than \$500 in the claims activity period for qualifying costs of treatment; and
- (b) the number of the qualifying claims of all the levy payers in the applicable levy risk group that involve the death of a current or former employee of an employer or the death of a private domestic worker

**earnings** means the total of the liable earnings of all the levy payers in the applicable levy risk group in the applicable tax year.

#### 15C Meaning of credibility weighting

The Corporation must determine the credibility weightings referred to in regulations 15A(1) and 15B(1) using the applicable formula in paragraphs (a) to (h) or the credibility weighting in paragraph (i), as follows:

- (a) if the liable earnings (**LE**) of the levy payer in the tax year are \$110,000 or less, the credibility weighting is the result of—

$$0.05 \times \sqrt{(\text{LE} \div \$110,000)}$$

- (b) if the liable earnings (**LE**) of the levy payer in the tax year are over \$110,000 and equal to or under \$277,000, the credibility weighting is the result of—

$$5\% + \{0.05 \times \sqrt{[(\text{LE} - \$110,000) \div \$167,000]}\}$$

- (c) if the liable earnings (**LE**) of the levy payer in the tax year are over \$277,000 and equal to or under \$567,000, the credibility weighting is the result of—



$$10\% + \{0.05 \times \sqrt{[(LE - \$277,000) \div \$290,000]}\}$$

- (d) if the liable earnings (**LE**) of the levy payer in the tax year are over \$567,000 and equal to or under \$1,100,000, the credibility weighting is the result of—

$$15\% + \{0.05 \times \sqrt{[(LE - \$567,000) \div \$533,000]}\}$$

- (e) if the liable earnings (**LE**) of the levy payer in the tax year are over \$1,100,000 and equal to or under \$2,767,000, the credibility weighting is the result of—

$$20\% + \{0.1 \times \sqrt{[(LE - \$1,100,000) \div \$1,667,000]}\}$$

- (f) if the liable earnings (**LE**) of the levy payer in the tax year are over \$2,767,000 and equal to or under \$5,567,000, the credibility weighting is the result of—

$$30\% + \{0.1 \times \sqrt{[(LE - \$2,767,000) \div \$2,800,000]}\}$$

- (g) if the liable earnings (**LE**) of the levy payer in the tax year are over \$5,567,000 and equal to or under \$11,100,000, the credibility weighting is the result of—

$$40\% + \{0.1 \times \sqrt{[(LE - \$5,567,000) \div \$5,533,000]}\}$$

- (h) if the liable earnings (**LE**) of the levy payer in the tax year are over \$11,100,000 and equal to or under \$75,000,000, the credibility weighting is the result of—

$$50\% + \{0.5 \times \sqrt{[(LE - \$11,100,000) \div \$63,900,000]}\}$$

- (i) if the liable earnings of the levy payer in the tax year are over \$75,000,000, the credibility weighting is 100%.

#### 15D Determination of tax year modifier

- (1) For the purposes of regulation 12(4), the Corporation must use the LRG modifier for each levy risk group the levy payer is in to determine the levy payer's tax year modifier for each tax year in the experience period.
- (2) If the levy payer is in only 1 levy risk group in a tax year in the experience period, the Corporation must treat the levy payer's LRG modifier for the tax year as being the levy payer's tax year modifier.
- (3) If the levy payer is in 2 or more levy risk groups in a tax year in the experience period, the Corporation must determine the levy payer's tax year modifier by,—
  - (a) first, for each levy risk group the levy payer is in, using the following formula:

$$\text{LRG modifier} \times (\text{levy} \div \text{total levy})$$

where—

**LRG modifier** means the LRG modifier for the relevant levy risk group calculated in accordance with regulation 15

**levy** means the levy paid or payable by the levy payer in the applicable tax year for the relevant levy risk group

**total levy** means the total levy paid or payable under section 167(4) by the levy payer in the applicable tax year, across all applicable levy risk groups; and

- (b) secondly, adding up all the results of the calculations in paragraph (a).

#### **15E Calculation of experience period modifier**

For the purposes of regulation 12(5), the Corporation must calculate the levy payer's experience period modifier using the following formula:

$$(\text{year 1 tax year modifier} \times 40 \div 210) + (\text{year 2 tax year modifier} \times 70 \div 210) + (\text{year 3 tax year modifier} \times 100 \div 210)$$

where—

**year 1 tax year modifier**, in relation to the levy year starting on 1 April 2020 and ending on the close of 31 March 2021, means the tax year modifier calculated in accordance with regulation 15D for the tax year starting on 1 April 2016 and ending on the close of 31 March 2017

**year 2 tax year modifier**, in relation to the levy year starting on 1 April 2020 and ending on the close of 31 March 2021, means the tax year modifier calculated in accordance with regulation 15D for the tax year starting on 1 April 2017 and ending on the close of 31 March 2018

**year 3 tax year modifier**, in relation to the levy year starting on 1 April 2020 and ending on the close of 31 March 2021, means the tax year modifier calculated in accordance with regulation 15D for the tax year starting on 1 April 2018 and ending on the close of 31 March 2019.

#### **15F Rounding experience period modifier to calculate loading or discount (if any)**

- (1) This regulation applies unless regulation 15G(1) applies.
- (2) For the purposes of regulation 12(6), the Corporation must round the levy payer's experience period modifier as follows:
- (a) if the experience period modifier is a negative number, the Corporation must apply a discount to the section 167(4)(a) levy payable by the levy payer in the applicable levy year in accordance with the following table:

<b>Result of calculation under regulation 15E</b>	<b>Discount to be applied</b>
Equal to or under -0.45	-0.50
Over -0.45 and equal to or under -0.35	-0.40
Over -0.35 and equal to or under -0.25	-0.30
Over -0.25 and equal to or under -0.15	-0.20
Over -0.15 and equal to or under -0.05	-0.10

- (b) if the experience period modifier is a positive number, the Corporation must apply a loading to the section 167(4)(a) levy payable by the levy payer in the applicable levy year in accordance with the following table:

Result of calculation under regulation 15E	Loading to be applied
Over 0.05 and equal to or under 0.15	+0.10
Over 0.15 and equal to or under 0.25	+0.20
Over 0.25 and equal to or under 0.35	+0.30
Over 0.35 and equal to or under 0.45	+0.40
Over 0.45 and equal to or under 0.55	+0.50
Over 0.55 and equal to or under 0.65	+0.60
Over 0.65	+0.75

#### **15G Application of discount or loading (if any)**

- (1) The Corporation must not apply a discount or a loading to the section 167(4)(a) levy payable by the levy payer in the applicable levy year if the levy payer's experience period modifier calculated under regulation 15E is over  $-0.05$  and equal to or under  $0.05$ .
- (2) In all other cases, for the purposes of regulation 12(7) the Corporation must apply the discount or loading to the levy paid or payable by the levy payer in the applicable levy year using the following formula:

$$\text{levy} \times \text{discount/loading}$$

where—

**levy** means the total levy paid or payable under section 167(4)(a) by the levy payer in the applicable levy year

**discount/loading** means the discount to be applied or the loading to be applied, calculated in accordance with regulation 15F.

#### **15 Regulation 16 revoked (Experience rating modification: when result of calculation must be disregarded)**

Revoke regulation 16.

#### **16 Regulation 24 amended (Revocation and saving)**

After regulation 24(2), insert:

- (2A) These regulations apply to the levy year starting on 1 April 2019 and ending on 31 March 2020, as if they had not been amended by the Accident Compensation (Experience Rating) Amendment Regulations 2020.

#### **17 Schedule 4 revoked**

Revoke Schedule 4.

Michael Webster,  
Clerk of the Executive Council.

## Explanatory note

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations, which come into force on 1 April 2020, amend the Accident Compensation (Experience Rating) Regulations 2019 (the **principal regulations**).

The principal regulations prescribe the experience rating system for adjusting the amount of Work Account levies payable by a person in an industry, based on the person's claims history. These regulations make the following changes to the processes for calculating the level of any adjustment of the person's levy:

- the industry size modifier, which provided a discount or loading based on the performance of the levy payer's peers, is removed:
- the off-balance adjustment from the experience rating modification formula, which was designed to make discounts and loadings balance out, is removed:
- weightings are added to the experience rating calculations for each of the 3 previous years in the experience period to improve the responsiveness to the levy payer's most recent history:
- the levels of liable earnings, at which each credibility weighting applies to each levy payer, are lowered:
- discounts and loadings are rounded, to manage levy volatility associated with small changes from year to year.

The amendments mean that calculations will be made separately for each tax year before being added together. The amendments will apply to the levy year starting on 1 April 2020 and ending on 31 March 2021.

## Regulatory impact assessment

The Ministry of Business, Innovation, and Employment produced a regulatory impact assessment on 29 November 2018 to help inform the decisions taken by the Government relating to the contents of this instrument.

A copy of this regulatory impact assessment can be found at—

- <https://www.mbie.govt.nz/dmsdocument/3262-regulatory-impact-statement-experience-rating-pdf>
- <http://www.treasury.govt.nz/publications/informationreleases/ria>

Issued under the authority of the Legislation Act 2019.

Date of notification in *Gazette*: 27 February 2020.

These regulations are administered by the Ministry of Business, Innovation, and Employment.

## Notes

### **1     *General***

This is a consolidation of the Accident Compensation (Experience Rating) Amendment Regulations 2020 that incorporates the amendments made to the legislation so that it shows the law as at its stated date.

### **2     *Legal status***

A consolidation is taken to correctly state, as at its stated date, the law enacted or made by the legislation consolidated and by the amendments. This presumption applies unless the contrary is shown.

Section 78 of the Legislation Act 2019 provides that this consolidation, published as an electronic version, is an official version. A printed version of legislation that is produced directly from this official electronic version is also an official version.

### **3     *Editorial and format changes***

The Parliamentary Counsel Office makes editorial and format changes to consolidations using the powers under subpart 2 of Part 3 of the Legislation Act 2019. See also PCO editorial conventions for consolidations.

### **4     *Amendments incorporated in this consolidation***

Accident Compensation (Experience Rating) Regulations 2022 (SL 2022/32): regulation 30(1)