Employer's Guide to Self-Insuring Workers' Compensation

PA Department of Labor and Industry
Bureau of Workers' Compensation
Self-Insurance Division
1171 S. Cameron St., Room 324
Harrisburg, PA 17104-2501
(717) 783-4476

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Introduction

This brochure provides an overview for self-insuring an employer's liability under the workers' compensation laws of Pennsylvania.

There are two types of self-insurance available to employers in Pennsylvania: **Individual Self-Insurance** and **Group Self-Insurance.**

With proper resources and commitment, self-insurance can have beneficial results for both employers and their injured workers.

Employers may realize financial savings through self-insurance, while injured workers may gain through the receipt of more timely and effective benefits.

Conversely, an employer may have adverse results from self-insurance, even when it does all the right things. For that reason, self-insurance is not for everyone.

Employers serious in their pursuit of this option should thoroughly analyze the potential financial and legal consequences they may incur by being self-insured.

Individual Self-Insurance

To self-insure workers' compensation liability means that an employer is permitted by the Department of Labor and Industry (Department) to maintain responsibility for payment and administration of the workers' compensation benefits due to its injured employees, rather than transferring that responsibility to an insurance carrier.

Under Section 305 of the Workers' Compensation Act and Section 305 of the Pennsylvania Occupational Disease Act, an employer liable for payment of benefits may be granted an exemption from the necessity of insuring payment of its liability with an authorized insurance carrier. That grant of an exemption is commonly known as self-insurance status.

An exemption is based on the employer's demonstration to the Department that it has the financial ability to pay the compensation provided under the Acts. A self-insured employer generally pays its workers' compensation liability, and the expenses associated with the administration and defense of that liability, from its earnings and general assets. There are, however, a number of self-insured employers who pay their liabilities and expenses from reserve accounts or trust funds dedicated to finance their self-insurance programs.

How do I apply for individual Self-Insurance?

An employer interested in being considered for self-insurance status must file an application with the Department's Bureau of Workers' Compensation (Bureau). The application asks basic questions about the employer, relating to such issues as its legal makeup and length of time in business. It also asks for information on the employer's workers' compensation exposure and recent insurance experience in Pennsylvania.

Along with the application, the employer must submit its latest audited financial statements. These statements are analyzed to determine if the employer has the financial ability to be approved for self-insurance. The Bureau considers the current condition and recent operating results of the employer. If weakness in either of these areas is evident, the application may be denied.

A serious workers' compensation claim can be very expensive, possibly costing a million dollars or more. Such claims can also require payout of a significant amount of money over a short period of time, especially for life-sustaining medical services. Because of this, the Bureau also considers an employer's financial capacity to handle its potential workers' compensation exposure in making a decision on its application.

The employer can reduce its exposure to large loss claims by purchasing excess insurance with a licensed workers' compensation insurance carrier.

A subsidiary of a parent company may request self-insurance status through inclusion on an application submitted by the parent. Under that circumstance, the parent must guarantee the payment of the subsidiary's liability. The Bureau then reviews the parent's consolidated financial statements to determine if the financial ability required for self-insurance exists.

Even after the Bureau determines that an employer possesses the financial ability, the employer must meet certain additional requirements before it is issued a permit granting it self-insurance status.

Primary among those requirements is the provision of security covering the future workers' compensation liability. The self-insured employer can post a letter of credit, a surety bond or government securities held under trust agreement to satisfy its workers' compensation security requirement. The Bureau sets the required amount of security based on regulations.

Payments on a workers' compensation claim could be required for a very long time. Unfortunately, an employer's current financial strength is no guarantee that it will be able to pay the long-term liability of self-insurance. The employer's financial makeup could decline over time or it could even file for bankruptcy or go out of business. Should that occur, the Bureau would use the security to continue the payment of benefits to the injured workers.

Other requirements an employer may be required to meet before a self-insurance permit is issued include:

- Evidence that excess insurance has been obtained in a deductible amount and coverage limit acceptable to the Bureau.

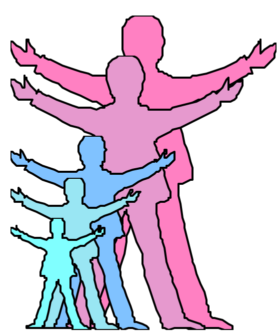
❈ Proof that the employer has competent personnel within its organization and adequate facilities to service and handle workers' compensation claims against it, or that it has retained the services of a registered claims service company for that purpose.

❈ Establishment of a restricted account or trust fund to finance the employer's self-insurance liability.

An initial self-insurance permit is generally valid for one year. It could, however, be valid for a slightly shorter or longer period, depending on the availability of the employer's next audited financial statement. Should the employer wish to continue self-insurance, a renewal application must be submitted two months prior to the termination of the current permit.

Group Self-Insurance

Group self-insurance is available when five or more employers pool their resources for the purpose of satisfying the workers' compensation liability of each member of the group.



Group self-insurance gives members the opportunity to realize the advantages of self-insurance, which includes a stabilization of costs and improved loss control.

Five or more “homogeneous” employers with aggregate net worth of no less than $1.0 million and a required amount of combined annual premium may be allowed by the Bureau to form a group self-insurance fund. The Workers’ Compensation Act defines homogeneous employers to be employers assigned to the same classification series or employers engaged in the same or similar types of business.

As of 2002, the combined annual premium required to form a fund is $600,000. This amount may be adjusted annually by the Bureau.

Each fund member must execute a trust agreement making it jointly and independently liable for the payment of each and every other member’s workers’ compensation obligations.

A prospective group self-insurance fund must submit an application to the Bureau for authorization to operate under the Act. The application must include the trust agreement, information on the aggregate workers’ compensation losses of the prospective members and excess insurance proposals.

Each prospective member of a fund must also file an application with the Bureau. If the Bureau determines that the applicant-fund complies with the Act, demonstrates with reasonable certainty that it will meet all obligations incurred under the Act by its members, and meets the conditions outlined in this pamphlet, the Bureau may approve the application.

As of 2002, approximately 825 employers in

Pennsylvania are participating in 18 approved group self-insurance funds, paying about $44 million in contributions into the group funds.

Self-insured groups include school districts, municipalities, nursing homes, hospitals and health programs, transportation employers, trucking companies and foundry operations.

Additional Requirements

In addition to continuing to meet the requirements outlined above, a self-insured employer or a group self-insurance fund must demonstrate that it has established and maintains an adequate safety program to maintain its self-insurance status.

Among other things, an adequate program includes the employment of qualified safety personnel or contracting for the services of such personnel. The self-insurer or group self-insurer is required to report on the details of its safety program on a form provided by the Bureau.

For details on the requirements of a self-insured employer's safety program, please contact:

Bureau of Workers' Compensation
Health and Safety Section
1171 South Cameron Street, Room 324
Harrisburg, PA 17104-2501
(717) 772-1917

Assessments

Self-insured employers and group self-insurance funds are required to pay assessments for financing special funds created under the Workers' Compensation Act, including the Administration Fund, the Subsequent Injury Fund and the Supersedeas Fund.

These assessments are based on the pro rata share of a self-insured employer's or group self-insured's payout for benefits in a given year against the total payout for benefits by all insurance carriers, self-insured employers, and group self-insurance funds. In addition, self-insured employers and group self-insurance funds are required to pay assessments for the maintenance of the Self-Insurance Guaranty Fund. This Fund finances the continuation of benefits to the injured employees of bankrupt self-insured employers or group self-insurers if the security posted by the employer or group runs out.

New self-insured employers and group self-insurers pay an initial assessment into the Guaranty Fund of one-half of one percent of their annual standard premium for workers' compensation insurance prior to becoming self-insured. All current self-insured employers and group self-insurers may be assessed to maintain the Fund depending on the amount of payout from it, up to a maximum annual assessment of one percent of their annual amounts of compensation paid.

Advantages & Disadvantages of Self-Insuring

A well managed self-insurance program can give an employer better control over the administration and defense of its workers' compensation liability. The self-insured employer decides who handles, investigates and defends claims against it.

It also decides whether to accept, deny or challenge a claim based on its immediate knowledge of the situation. Such control frequently results in lower workers' compensation losses and financial savings. The self-insured employer also generally realizes more immediate benefits from better claims management and successful safety programs than occurs under an insured arrangement.

Conversely, a proper self-insurance program involves a substantial commitment of resources and effort. Even with that commitment, however, the self-insurer may not see any financial savings due to the sometime random nature of workers' compensation losses.

In the final analysis, employers must decide for themselves if self-insurance is right for them. If you have any questions regarding self-insurance, please contact:

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How can I obtain a copy of the Workers' Compensation Act?

The Workers' Compensation Act is available on the web at:

www.state.pa.us
PA Keyword: "workers comp"

And/or a copy may be purchased from the PA State Bookstore at:

State Bookstore of PA
Plaza Level
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120
(717) 787-5109