

(b) is established or maintained, whether directly or through trustees, by a labor organization or jointly by labor organizations or by an employer or jointly by employers or by one or more labor organizations together with one or more employers, and

(c) provides for "employe benefits" within the meaning of section 211.02(2), Wis. Stats., and

(d) receives, has received, or is entitled to receive payments, other than income from investments, by any employer doing business in this state, or for the benefit of any person employed in this state.

(2) The words "trust fund or other fund" as used in section 211.02(1), Wis. Stats., and subsection (1)(a) of this rule have the following meaning:

(a) If money, property or assets of any type are separately maintained and administered for use under a fund, program or plan of employe benefits, the fund, program or plan operates through means of a "trust fund or other fund". This is true whether benefits are paid directly out of the trust fund or other fund or are provided through insurance purchased by trustees or managers of the fund, program or plan.

(b) A fund, program or plan of employe benefits under which benefits are paid to participants directly out of the general funds of an employer or labor union without the actual segregation of monies or other assets to meet liabilities for benefits does not operate through means of a "trust fund or other fund". This is true although a balance sheet reserve account may be maintained for such estimated liabilities. A common plan of such type is a plan of continuation of wages in the event of sickness or accident.

(c) A fund, program or plan of employe benefits in which all benefits are provided through insurance contracts issued to an employer or labor union under which premiums are paid out of the general funds of such employer or union directly to the insurance carrier without the interposition of trustees or a fund, although employes may contribute through payroll deductions or otherwise, does not operate through means of a "trust fund or other fund".

(d) A fund, program or plan in which benefits are provided through an insurance contract issued to a labor union or employer association, under which premium payments are made by employers or employes to a designated administrator or to the union or association which administers the plan as a segregated fund or as an activity separate from the general funds or general books of account of the union or association, operates through means of a "trust fund or other fund". On the other hand, a life insurance program maintained by a union for its members as a part of the general revenues and disbursements of the union without segregating receipts and disbursements of the program in a separate bank account and without maintaining records separate from the general books of account of the union would not operate through means of a "trust fund or other fund".

(3) Under certain forms of insurance or annuity contracts available to pension plans, insurers guarantee that benefits will be paid to participants only to the extent that a fund or account held by them will be sufficient to provide them. Under such contracts, amounts paid to the insurer for credit to the deposit fund are not allocated to reserves for the participants until withdrawn from the deposit account to purchase benefits. Deposit administration contracts with variations

thereof, such as immediate participation guarantees, are a common form of contract under which such unallocated funds or accounts are held. Also unallocated funds may be held to supplement or convert, at retirement, reserves under other forms of insurance or annuity contracts. This is common under forms of life or group permanent contracts. Funds, programs or plans of employe benefits which provide benefits through such unallocated funds or accounts held by insurers operate through a "trust fund or other fund". Such funds, programs or plans constitute employe welfare funds under the law irrespective of the parties and methods through which premiums are paid under subsection (2) of this rule.

(4) A fund, program, or plan of employe benefits operating under a custodian or trust agreement under which a custodian receives employer contributions and purchases shares in an investment trust or other similar arrangement of pooling moneys for investment purposes constitutes an employe welfare fund if:

(a) The custodian holds such shares for the fund, program, or plan pending receipt of distribution instructions to be received when a participant in the plan qualifies for a benefit distribution, and

(b) The employer contributing to the plan determines when an employe is to be enrolled under the plan and qualifies for a benefit distribution.

(5) Where a trust or fund receives contributions from more than one employer and these contributions are commingled for investment purposes, a separate employe welfare fund exists for each employer segment of the trust if separate computations or allocations are made to each employer segment of the trust for the benefit cost, insurance experience, or gains from forfeited benefits arising from his participants.

(6) Where a trust or fund is established by one employer to hold moneys for 2 or more employe benefit plans for different groups of employes of that employer, one fund exists if all the assets of the trust or fund are available for benefit payments under any of the plans. Where separate accounting is required to be maintained by the trustee, so that only a designated portion of the total trust is available for benefit payments under each plan, an employe welfare fund exists for each plan portion of the trust or fund.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; cr. (4), (5), (6), Register, October, 1968, No. 154, eff. 11-1-68.

**Ins 8.03 "Employe benefits", definition of.** (1) The term "employe benefits" under section 211.02 (2), Wis. Stats., must be broadly construed. The definition covers both benefits and services. Section 211.02(2), Wis. Stats., declares that the type of benefits covered by the law are not limited to those specifically enumerated therein.

(2) Section 211.02(2), Wis. Stats., enumerates 4 classes of benefits as being among the forms of benefits covered by the law. These are:

- (a) Medical, surgical or hospital care or benefits
- (b) Benefits in the event of sickness, accident, disability or death
- (c) Benefits in the event of unemployment
- (d) Retirement benefits

(3) Other types of benefits commonly offered to employes which are covered by the law include:

Register, October, 1968, No. 154

(a) Deferred benefits from profit-sharing, savings or stock bonus plans.

(b) Benefits upon termination of employment

(c) Vacation benefits

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62.

**Ins 8.04 Registration, requirements of.** (1) Every employe welfare fund within the meaning of section 211.02 (1), Wis. Stats., must be registered with the commissioner of insurance within 3 months after the first day on which coverage is provided for any person employed in Wisconsin. For purposes of computing the time in which to register a fund in which the plan is back-dated or provides coverage to participants retroactively, the plan should be construed to provide coverage as of the date of its formal establishment.

(2) Registration shall be made on form No. 71-3. A fund which covers more than 25 persons employed in Wisconsin at the time of registration must file a copy of the following documents, if applicable, as a part of such registration:

(a) Plan, as amended to date

(b) Trust indenture, as amended to date

(c) Any separate contract or other instrument under which the fund is administered

(d) Collective bargaining agreement(s), or provisions thereof relating to the fund, as currently in force

(e) Any booklet or other written material descriptive of the fund which is given or made available to employes