

that gross sum is considered as wages except as a showing is made to the contrary.

(3) Prisoners injured in prison industries are considered to be earning the maximum average weekly earnings under the provisions of s. 102.11, Stats., except as a showing is made to the contrary.

(4) The 30 hour minimum workweek under s. 102.11 (1) (f), Stats., does not apply to a part-time employe unless the employe is a member of a regularly scheduled class of part-time employes. In all other cases part-time employment is on the basis of normal full-time employment in such job. However, this subsection does not apply to part-time employes defined in s. 102.11 (1) (f), Stats., who restrict availability on the labor market. As to the employes so defined, those wages will be expanded to the normal part-time or full-time wages unless the employer or insurance company complies with s. Ind 80.02 (2) (a).

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82.

Ind 80.60 Exemption from duty to insure (self-insurance). (1) DEFINITIONS. In this section:

(a) "Self-insurance" means exemption from the duty to insure, as provided in s. 102.28 (2) (b), Stats.

(b) "Full-insurance" means the insurance of all liability by one policy, as required in s. 102.31 (1) (a), Stats.

(c) "Divided-insurance" means consent to the issuance of two or more policies, as provided in s. 102.31 (1), Stats.

(d) "Partial-insurance" means self-insurance of a part of the liability and consent to the issuance of one or more policies on the remainder of the liability, as provided in ss. 102.28 (2) (b) and 102.31 (1), Stats.

(e) "Excess insurance" means catastrophic insurance for employers granted self-insurance, and is not full-insurance, self-insurance, partial-insurance or divided-insurance.

(2) **EXCESS INSURANCE.** Excess insurance may be carried without further order of the department.

(3) **REQUIREMENTS FOR THE STATE AND ITS POLITICAL SUBDIVISIONS.**

(a) The state and its political subdivisions may self-insure without further order of the department, if they are not partially-insured or fully-insured, or to the extent they are not partially-insured by written order under s. 102.31 (1), Stats., under one or more policies, and if they agree to report faithfully all compensable injuries and agree to comply with ch. 102, Stats., and the rules of the department. However, any such employer desiring partial-insurance or divided-insurance must submit an application to the department and be given special consent as described in s. Ind 80.61.

(b) 1. Any political subdivision of the state electing to self-insure shall notify the department in writing of such election before undertaking self-insurance. Political subdivisions of the state that were self-insured on July 1, 1984, need not give notice of such election until January 1, 1987.

2. The notice of election to self-insure shall be accompanied by an agreement to faithfully report all compensable injuries and to comply

with ch. 102, Stats., and the rules of the department in accordance with s. 102.28 (2) (b) and (c).

(c) Self-insurance granted under par. (a) is subject to revocation under s. 102.28 (2) (c), Stats. Once the privilege of self-insurance is revoked, further self-insurance may be authorized only under the procedures set forth in sub. (4).

(4) REQUIREMENTS FOR OTHER EMPLOYERS. (a) *Application.* Employers other than those specified in sub. (3), desiring self-insurance shall submit an application on a form available from the department. If the application is approved, the department shall permit self-insurance by written order. Employers granted self-insurance shall submit renewal applications on a departmental form to the department annually. Self-insurance shall expire on the day specified by the department in its order.

(b) The minimum requirements necessary for initial consideration for self-insurance are set forth in this paragraph. References in this paragraph to "board of directors" and "stockholders of the corporation" apply only to corporations but an equivalent requirement as determined by the department shall be applied to sole proprietorships, partnerships and other forms of business ownership.

1. The employer shall have an average employment of at least 100 persons working in Wisconsin at the time the initial application is filed. All or some of these 100 persons may be employed in Wisconsin by its parent corporation, or by subsidiary or affiliated companies of the employer.

2. The employer shall own and maintain lands, buildings and plants in Wisconsin at least equal to a total net book value of \$500,000 or \$500 per employe, whichever amount is greater, including the net book value of the lands, buildings and plants owned in Wisconsin by the employer and its parent and subsidiary companies, less liens, if the employer is a corporation which is a wholly or majority owned subsidiary. The employer shall notify the department of any sale or transfer of this property which reduces the net book value below these minimum amounts.

3. If the employer is a corporation which is a majority or wholly owned subsidiary, it shall submit to the department a guaranty of payments by the ultimate or top parent company on a department form and a certified copy of the resolution adopted by the board of directors of the parent corporation.

4. The employer shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the application and the agreement shall be submitted when the initial application is submitted.

5. The employer shall submit a copy of the latest financial report prepared for the stockholders of the corporation or its parent company and a copy of the latest annual 10-K filed by the corporation or its parent company with the U.S. securities and exchange commission with the submission of the initial and each renewal application. If neither report is prepared, the corporation shall submit an independently certified current financial statement together with such other financial information as the department may require to substantiate the financial data.

6. The employer shall make adequate arrangements in Wisconsin for claims administration under ch. 102, Stats., and this chapter, and for occupational safety and health, which are acceptable to the department.

7. The employer shall maintain acceptable performance in prompt payment and reporting of claims under ch. 102, Stats.

8. The employer shall maintain acceptable safety and health performance as measured by worker's compensation statistics and other occupational injury and illness information, including but not limited to the employer's OSHA incidence rating.

9. The employer shall furnish satisfactory security such as guaranty bond, deposit of securities, reserves, excess worker's compensation insurance, financial reports and reports on outstanding liabilities before and after self-insurance is granted, terminated or revoked, as the department requires to assure the payment of all past, present, existing and potential worker's compensation liability.

10. An employer granted self-insurance may be excused from the requirements of subds. 2 and 3 by the department if the number of employees or net book value of property in Wisconsin subsequently is reduced below the specified minimums.

(c) *General criteria to be considered by the department.* The following factors may be used by the department to initially grant or renew self-insurance, in addition to the minimum requirements, in evaluating the qualifications of the employer, the amount and type of guaranty and securities, the number and kind of special reports to assure the payment of all worker's compensation claims:

1. The financial strength and liquidity of the employer, its profit and loss history, and changes in other key financial conditions affecting the employer's ability to promptly pay all compensation;

2. The employer's organizational structure, management background, kind of business, length of time in business, and any contemplated or newly implemented reorganization including but not limited to merger, consolidation, buying of new corporation, divesting or spinning off of current operations, and other corporate changes;

3. Tangible property of the employer and its subsidiaries or parent corporation, including but not limited to lands, buildings and plants owned and maintained in Wisconsin;

4. The employer's bond or other business ratings;

5. The number of employer's employees, payroll and hours worked in Wisconsin;

6. The claims administration and safety and health engineering programs maintained by the employer;

7. The compensation loss history, including reported losses, incurred losses, paid losses, unpaid losses, outstanding liability, and compensation premium of the employer;

8. Excess insurance, surety bond, deposit of securities, guaranty by parent company, and other guarantees and security pledged by the employer;

9. The employer's performance indicators under ch. 102, Stats., including, but not limited to, promptness or time taken in making first indemnity payments, promptness or time taken in submitting first reports, and injury and illness incidence and severity rates; and

10. The financial and performance ratios, characteristics and trends for the employer or the consolidated group of employers to which the employer belongs as compared with the financial and performance ratios, characteristics and trends for other employers and for the particular or most similar industry in which the employer or the employer's consolidated group is involved.

(d) *Surety bond, deposit of securities, excess insurance, or other security.* The required minimum bond, minimum amount of cash or securities, minimum excess insurance upper limit, maximum excess insurance retention, or other security satisfactory to the department, shall be determined after the application has been reviewed and analyzed by the department. The employer shall use the required department bond and deposit agreement form.

1. Guaranty bonds shall be written by companies authorized to transact surety business in Wisconsin.

2. Cash or securities shall be deposited with banks qualified to exercise trust powers in Wisconsin. These securities shall be negotiable and converted into cash at any time by the depository at request of the department.

3. If excess insurance is required by the department, it shall be procured from a licensed excess insurance worker's compensation company, and written on the basis of rates and policy form filed with and approved by the state of Wisconsin commissioner of insurance. The policy for the required excess insurance shall be filed with and approved by the Wisconsin compensation rating bureau.

(e) *Enjoining and restraining employer.* Whenever the department has probable cause to believe that an employer currently or previously granted self-insurance for its parent or subsidiary company is liquidating and distributing its assets to its stockholders, or is selling or is about to sell the tangible property it owns and maintains in Wisconsin and the employer or its parent or subsidiary company is moving or is about to move its operations out of Wisconsin, without providing for the payment under the terms of the agreement in the self-insurance application or guaranty form it has executed and submitted to the department, the department may, through the attorney general cause a petition to be filed to enjoin and restrain the employer or its parent or subsidiary company from engaging in such action.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; am. (3), (4) (a), (b) (intro.) and (c) (intro.), cr. (4) (b) 11., Register, September, 1986, No. 369, eff. 10-1-86; emerg. r. (4) (b) 1., renum. (4) (b) 2. to 11., to be 1. to 10., eff. 3-22-88; am. (4) (b) (intro), r. (4) (b) 1., renum. (4) (b) 2. to 11., to be 1. to 10., Register, August, 1988, No. 392, eff. 9-1-88.

Ind 80.61 Divided-insurance and partial-insurance requirements under s. 102.31 (1) and (6), for all employers, including contractors working on a wrap-up project. (1) DEFINITIONS. In this section:

(a) "Divided-insurance" means consent to the issuance of 2 or more policies, as provided in s. 102.31 (1), Stats.

Register August, 1988, No. 392