

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.

(b) "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.

(2) REQUIREMENTS. (a) The requirements for partial-insurance and divided-insurance by 2 or more insurance companies are as follows:

1. Submission of an application on department forms available from the department. If the application is approved, the department shall permit partial-insurance or divided-insurance by written order. In the application, the employer shall agree to assume full responsibility to immediately make all payments of compensation and medical expense as the department may require, pending a final determination as to liability between the insurance carriers under divided-insurance or between the employer and the insurance carrier under partial-insurance, if a dispute should arise as to which insurance company or whether the employer or insurance company is responsible for a particular injury or illness sustained during the time the written order is in effect.

2. If the applicant is a political subdivision of the state, it shall submit a certified statement by the attorney for the political subdivision which cites the legal authority for executing the application and agreement when the initial application is submitted.

3. If the applicant is a corporate employer, it shall submit a certified copy of a resolution duly adopted by its board of directors authorizing and directing the execution of the application and agreement when the initial application is submitted.

(b) Employers desiring divided-insurance by one insurance company may file a letter of application in lieu of the department form. The employer shall include the following information in the letter of application for each division or operating unit which is or will be separately insured by a separate policy:

1. The name of the division or operating unit;
2. The usual number of employees;
3. The worker's compensation policy number; and
4. The beginning and ending date of the policy period.

(c) Renewal applications shall be submitted to the department on a department form no later than 3 months prior to the expiration date of the department's order. Partial-insurance and divided-insurance shall expire on the date specified in the order unless continued in force by further order, as the department deems necessary.

(3) DIVIDED-INSURANCE FOR DESIGNATED CARRIER WRAP-UP CONSTRUCTION PROJECTS. (a) *Definitions*. In this subsection:

1. "Bureau" means the Wisconsin compensation rating bureau.
2. "Designated wrap-up carrier" means the designated carrier or insurance company which insures the wrap-up project under ch. 102, Stats.
3. "Job site" means the premises and vicinity upon which the operations covered under the contract with the contractor or subcontractor are to be performed.

4. "Material supplier" means vendors, suppliers, material dealers, and others whose function is solely to supply or transport material, equipment, or parts to or from the construction site.

5. "Owner" means the person, firm, corporation or municipality having lawful possession of the construction project.

6. "Regular carrier" means the insurance company which insures all operations of a contractor or subcontractor under ch. 102, Stats., except for work done on the wrap-up project.

7. "Subcontractor" means a person who contracts with a contractor and also includes any subcontractor of a subcontractor.

8. "Wrap-up project" means a construction project wherein the owner selects a carrier, and this carrier issues a separate worker's compensation policy to each contractor and subcontractor scheduled to work on the project for work which will be done on the project, and where the owner pays for each such policy.

(b) *Minimum wrap-up project requirements.* Wrap-up projects shall comply with the following:

1. The estimated project cost of completion shall be equal to at least \$25 million. The estimated project cost of completion shall be the estimate of the costs of the total construction contracts to be awarded by the owner on the wrap-up project.

2. The estimated standard worker's compensation manual premium shall be equal to \$250,000 or more.

3. The project shall be confined to a single location except that in connection with the building of a road, bridge, pipeline, tunnel, waterway, or two or more concurrent wrap-up projects involving the same owner and the same insurance carrier the entire job or the concurrent projects are considered as a single project location.

4. The project shall have a definite completion date involving work to be performed continuously until completion and may not be extended to include maintenance work following completion.

5. All contractors and subcontractors shall be included under the wrap-up program.

6. All material suppliers shall be included in the safety program on the job site while unloading and handling material and performing other work, but material suppliers shall be excluded from the rest of the wrap-up program.

7. The submission of all bids and the letting of all contracts shall be on an ex-insurance basis.

(c) *Minimum requirements for owner.* The owner shall comply with the following requirements on a wrap-up project:

1. The wrap-up plan and application shall be submitted on department form WCA-19.5 W-U to the department. If the application is approved, the department shall permit divided-insurance on the wrap-up project.

2. The owner shall comply with all conditions and agreements in the application, including, but not limited to:

a. The reimbursement of the department's costs incurred because of the wrap-up project;

b. The selection of a licensed and qualified designated wrap-up carrier having a record of compliance with the requirements of ch. 102, Stats., which is acceptable to the department;

c. Informing each contractor and subcontractor and each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

d. The submission of each contractor's and subcontractor's application form WC A-19.4 W-U to the bureau prior to the time the contractor or subcontractor first starts work on the wrap-up project;

e. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

f. The assumption of responsibility for immediately making direct compensation payments if a dispute arises over coverage; and

g. The payment of an employee's attorney's fees and lost wages resulting from a dispute.

3. If the owner is a corporation, it shall submit a certified copy of the resolution by the board of directors authorizing and directing the execution of the application and agreement.

4. If the owner is a subsidiary of a corporation, it shall submit a guaranty and agreement by the owner's ultimate or top parent company agreeing to promptly satisfy all of the requirements and obligations assumed by the owner on the wrap-up project in case of default by the owner.

(d) *Minimum requirements for designated wrap-up carrier.* 1. The designated wrap-up carrier shall submit an application on forms available from the department. If the application is approved, the department shall permit divided-insurance for each contractor and subcontractor scheduled to work on the wrap-up project.

2. The designated wrap-up carrier shall comply with all conditions and agreements in the application, including, but not limited to:

a. Informing each contractor's and subcontractor's insurance company either directly or through the bureau, at the bureau's discretion, of each one's responsibilities and the need for attaching a proper endorsement to the regular carrier's policy to exclude coverage for the wrap-up job site;

b. The issuance of each individual contractor's and subcontractor's wrap-up policy prior to the time the contractor and subcontractor begin work on the job site;

c. The notification of department and bureau of any entity status change resulting from ensuing reorganization;

Ind 80

d. Becoming the full risk insurer for any contractor or subcontractor not having purchased a worker's compensation policy during the time the contractor or subcontractor is under contract on the wrap-up project, except as to an employer granted self-insurance; and

e. Becoming the full risk insurer for any contractor or subcontractor not insured or self-insured while working on the wrap-up project.

3. The designated wrap-up carrier shall submit a certified copy of a statement from an officer authorizing and directing the execution of the application and agreement.

(e) *Application for contractors and subcontractors.* The owner shall submit an application for divided insurance on forms available from the department for each contractor and subcontractor scheduled to work on the project.

(f) *Reimbursement for expenses incurred by department.* The department shall be reimbursed for those expenses incurred because of the designated carrier wrap-up program. Where the department specifically consents to divided-insurance or partial-insurance on a wrap-up project, the owner shall reimburse the department, within 30 days after the date of a written request by the department, a sum determined by the department not to exceed 2% of the total audited worker's compensation premium charged, with payment not to exceed 1% of the estimated worker's compensation premium upon initial request. If an additional levy is determined to be necessary, a request shall be made for a sum that results in a total charge not to exceed 2% of the total audited worker's compensation premium charged.

(g) *Inapplicability to other employers.* Subsection (3) does not apply to any group of employers other than those specified in this section on any other type of operations nor to any single contract or policy of insurance for any group or association of employers.

History: Cr. Register, September, 1982, No. 321, eff. 10-1-82; am. (2) (a) 1., (3) (b) 3. and (3) (d) 3., r. and recr. (3) (e), Register, September, 1986, No. 369, eff. 10-1-86.

**Ind 80.65 Notice of cancellation or termination.** Notice of cancellation or termination of a policy under s. 102.31 (1) (a), Stats., shall be given by certified mail or personal service to the Wisconsin compensation rating bureau, as defined in s. 626.02 (2), Stats., rather than to the department. Whenever the Wisconsin compensation rating bureau receives notice of cancellation or termination pursuant to this section, it shall immediately notify the department of cancellation or termination.

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

**Ind 80.67 Name or reorganizational change by insurer.** (1) Any worker's compensation insurer planning a change of name or a corporate restructuring such as consolidations or merger shall notify the department and the Wisconsin compensation rating bureau at least 90 days before the date of the planned change or restructuring.

(2) After the change of name or corporate restructuring is accomplished the insurance carrier shall notify each of its insured employers of the termination or cancellation of the existing policies and shall file such notice with the Wisconsin compensation rating bureau unless the procedure set out in sub. (3) applies.

(3) As an alternative to the procedure set forth in sub. (2), any worker's compensation insurer planning a change of name or a corporate restructuring may make advance arrangements with the department and the Wisconsin compensation rating bureau for the following procedure:

(a) Each existing policy issued by the insurer shall be terminated on its expiration date by notice to the employer and the Wisconsin compensation rating bureau in accordance with s. 102.31 (1), Stats.

(b) If the employer wishes to continue coverage, the reorganized insurer or the insurer with a new name shall file a new policy showing the new name and identity.

(4) Policies issued by an insurer to which sub. (1) applies shall not be endorsed for name change or for the reorganized insurer.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

**Ind 80.68 Payment of benefits under s. 102.59, Stats.** (1) Payment of benefits under s. 102.59, Stats., shall initially be made to the individual entitled to the benefits at such time as payments of primary compensation by the employer cease to be made or would have been made had there been no payment under s. 102.32 (6) unless the preexisting disability and the disability for which primary compensation is being paid combine to result in permanent total disability.

(2) Payments received by an employe or dependent from an account in a financial institution or from an annuity policy where such account or annuity policy are established through settlement of the claim for primary compensation, shall be considered payments by the employer or insurance carrier.

(3) Payments under s. 102.59 shall be on a periodic basis but subject to s. 102.32 (6) and (7), Stats.

Note: This rule is adopted to insure the solvency of the work injury supplemental benefit and to insure the protection of dependents as of the date of death of the employe with the preexisting disability.

History: Cr. Register, September, 1986, No. 369, eff. 10-1-86.

**Ind 80.70 Malice or bad faith.** (1) An employer who unreasonably refuses or unreasonably fails to report an alleged injury to its insurance company providing worker's compensation coverage, shall be deemed to have acted with malice or bad faith.

(2) An insurance company or self-insured employer who, without credible evidence which demonstrates that the claim for the payments is fairly debatable, unreasonably fails to make payment of compensation or reasonable and necessary medical expenses, or after having commenced those payments, unreasonably suspends or terminates them, shall be deemed to have acted with malice or in bad faith.

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