

CR 89-95

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
DEPT. OF INDUSTRY,)
LABOR & HUMAN RELATIONS)

RECEIVED

MAR 6 1990
2:30 pm
Revisor of Statutes
Bureau

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Gerald Whitburn, Secretary of the Department of Industry, Labor and Human Relations, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to exemption from duty to insure, divided-insurance and partial-insurance were duly approved and adopted by this department on 3/5/90.
(Subject) (Date)

I further certify that said copy has been compared by me with the original on file in this department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the official seal of the department at 9:00 a.m. in the city of Madison, this 5th day of March A.D. 1990.



Secretary

SECTION 1. Ind 80.60 and Ind 80.61 (1) and (2) are amended to read:

Ind 80.60 EXEMPTION FROM DUTY TO INSURE (SELF-INSURANCE). (1) Definitions.

In this section:

(a) "Applicant" means a business entity applying for self-insurance.

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

(c) "Employer" means a business entity or its parent guaranteeing payments.

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

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

~~(d)~~ (f) "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.

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

(2) EXCESS INSURANCE. Excess insurance may be carried without further order of the department or may be required by order of the department as set forth in sub. (4) (d) 3.

(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 partial-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 a resolution, adopted by the governing body and signed by the elected or

appointed chief executive of the applying municipality, stating its intent and agreement by the governing body to self-insure its worker's compensation liability and 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), but including those specified in sub. (3) (c), desiring self-insurance shall submit an application on a form available from the department. A non refundable fee of \$300, per employer, shall accompany the initial application. 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. A fee of \$100, per employer, shall accompany each renewal application. 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.~~

1. The applicant, when submitting an initial request for self-insurance, shall submit audited financial statements (which includes the opinion of a certified public accountant) for a minimum of the latest five or more years. For renewals, audited financial statements for the current year are sufficient.

~~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.~~ 2. If the employer is a corporation or a partnership 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.

3. If the employer is a corporation, it shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the initial application:

a. Applications by organizations other than corporations shall be signed by one or more persons possessing authority to execute such application.

b. Partnerships must submit a consent by all the partners that all individuals executing the application have the authority to act for the applicant partnership.

~~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.~~

4. Corporations and limited partnerships shall be registered in the office of the secretary of state.

~~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.~~

5. The employer shall submit a copy of its current safety and loss control plan.

~~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:~~

(c) The following criteria may be considered by the department in evaluating the qualifications of an applicant for the initial application or renewal of self-insurance status:

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; to include: profit and loss history; financial and performance ratios; characteristics and trends for the employer or the consolidated group of employers to which the employer belongs; characteristics and trends for other employers of the same or the most similar industry in which the employer or the employer's consolidated group is involved;

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

3. The nature and extent of the employer's business operations and assets in the State of 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;~~

~~9.~~ 6. 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~~

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

7. The existing or proposed claims administration, occupational health, safety, and loss control programs to be maintained by the employer. The department may require certification of the occupational safety and health program by state or independently qualified specialists;

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

8. The worker's compensation loss history, experience modification factor, reported losses, loss reserves and worker's compensation premium of the employer; and

9. Excess insurance, surety bond, cash deposit or pledges of the employer, guaranty by the parent company, or other guarantees or pledges acceptable to the department.

~~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, cash deposit, excess insurance, or other security guarantee or pledge. The required minimum bond, minimum amount of cash or securities deposits, minimum acceptable 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 forms required by the department.

1. ~~Guaranty~~ Surety bonds shall be written by companies authorized to transact surety business in Wisconsin and acceptable to the department.

2. Cash or equivalent securities shall be deposited with banks qualified or trust companies authorized to exercise trust powers in Wisconsin and acceptable to the department. These securities shall be negotiable and converted into cash at anytime by the depository at the 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~~ carrier 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~~ reason 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~~ owners, 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 operation 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 until such time as all obligations of self-insurance meet the satisfaction of the department. Whenever an employer exits self-insurance status the department may require such employer to provide all available information regarding past or outstanding worker's compensation claims or liability and may require securities sufficient to provide payment for those claims or liabilities.

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 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 employer is a political subdivision of the state, it shall submit a certified statement by an officer or 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.~~

3. If the employer is a corporation, it shall submit a certified copy of the resolution adopted by the board of directors authorizing the execution of the initial application. Applications by organizations other than corporations shall be signed by person(s) possessing authority to execute such application. Partnerships must submit a consent by all the partners that the individual(s) executing the application has the authority to act for the applicant partnership.

4. Partial-insurance or divided insurance shall not be permitted when the portion of the entity to be insured is unable to obtain coverage under voluntary markets. Otherwise,

a. The department shall permit divided-insurance to municipalities which have ownership of nursing homes in order that the nursing homes may be separately insured and develop a separate experience rate.

b. Subparagraph a. does not apply after December 31, 1992.

~~(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 employes;~~
- ~~3. The worker's compensation policy number; and~~
- ~~4. The beginning and ending date of the policy period.~~

~~(c) (b) Renewal applications shall be submitted to the department on a department form no later than three (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.~~

(END)

EFFECTIVE DATE

Pursuant to s. 227.22 (2) (intro.), Stats., these rules shall take effect on the first day of the month following publication in the Wisconsin Administrative Register.

Tommy G. Thompson
Governor
Gerald Whitburn
Secretary



Mailing Address:
201 E. Washington Avenue
Post Office Box 7946
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Industry, Labor and Human Relations

March 5, 1990

Gary Poulson
Assistant Revisor of Statutes
Suite 702
30 West Mifflin Street
Madison, Wisconsin 53703

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO. 89 - 95

RULE NO. Ind 80.60 and Ind 80.61 (1) and (2)

RELATING TO: Exemption from duty to insure (Self-Insurance),
divided- insurance, and partial-insurance.

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is also included.

Respectfully submitted,

Handwritten signature of Gerald Whitburn in cursive.

Gerald Whitburn
Secretary

Handwritten initials "R. J. 1505" in cursive.