

Chapter Ins 8

EMPLOYE WELFARE FUNDS

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**Ins 8.01 Receipt of payments from funds by parties-in-interest.**

(1) Section 641.19 (2), Stats., prohibits certain persons who are or may be in a position to influence the operations of an employe welfare fund from engaging in certain transactions with such fund or which affect such fund directly or indirectly. The parties to whom the prohibition is directed are the trustees of the fund, the participating employers, the labor organizations representing any employes covered by the fund, and the officers, agents and employes of such trustees, employers and labor organizations. One of the prohibitions placed upon such parties is the receipt of any payment, commission, loan, service or any other thing of value from the fund or which is charged against the fund or would otherwise be payable to the fund, either directly or indirectly. This prohibition does not extend to the receipt of benefits from the fund by any such party who is entitled thereto under the plan nor does the statute prohibit a trustee or his officer, agent or employe from receiving from the fund reasonable compensation for necessary services and expenses rendered or incurred in connection with his official duties in respect to the fund.

(2) The prohibition applied to receipts by the specified parties from the fund. The penalties for engaging in a transaction prohibited by s. 641.19 (2), Stats., would be enforceable against the persons named therein rather than against the fund. Accordingly it may be said that s. 641.19 (2), Stats., does not govern investments by a fund but rather governs the specified parties in their dealings with a fund.

(3) The law does not prohibit the trustees of a fund from investing fund monies in any certain way but it does prohibit trustees and other specified persons who may be in a position to influence the transactions of a fund from using their positions to enrich themselves at the expense of a fund either directly or indirectly. At the same time, the law does not alter the duty of trustees clearly established in other laws, both statutory and common, to manage funds exclusively for the purpose of providing the employe benefit promised.

(4) At the time of the enactment of this law, transactions between funds and participating employers, employes and labor organizations were an established practice. The internal revenue code of the United States recognizes that many such transaction may be entered into without impairing the tax status of such funds. Many of the trust agreements

under which such funds are established and maintained specifically authorize the trustees to engage in such transactions on behalf of the funds. We do not interpret the law to prohibit all such transactions. What is prohibited is the receipt by any specified party of a payment, commission, loan, service or any other thing of value from a fund under such circumstances that at least an equivalent value in money's worth is not received by the fund from such person as a part of such transaction.

*Note:* In the following examples the receipt of a valuable consideration by the party as specified would not appear to be prohibited in the stated circumstances. These examples are not intended to be all-inclusive.

1. Receipt from a fund by a participating employer or labor organization of reasonable compensation for the fair value of necessary services rendered to the fund or for the actual cost of necessary expenses incurred for or on behalf of the fund.

2. Receipt from a fund by a participating employer or labor organization of payment for necessary real property or equipment sold or leased to the fund for use in the operations of the fund in an amount not in excess of the fair market value of such property or equipment at the date of sale or the fair rental value at the date of lease. Any facts known to such an employer or labor organization which would influence such market or rental value must necessarily be considered in determining the fair value at such date.

3. Purchase or lease of real estate or equipment from a fund by a participating employer or labor organization if such purchase or lease is made at arms-length on such terms and conditions as would be required at such time by an independent financial institution or other business organization engaged in such transactions which has knowledge of all facts pertinent thereto which are known by such employer or labor organization. If the terms and conditions required by such organizations cannot be established, the terms and conditions should be equivalent to those which would be granted by any independent vendor or lessor having knowledge of all pertinent facts known to such employer or labor organization and considering both the probable income and probable safety of his capital.

4. Receipt by a participating employer or labor organization of a loan from a fund if such loan is made at arms-length according to such terms and conditions, including the rate of interest and duration of the loan and the nature and amount of security pledged therefor, as would be required at such time by an independent financial institution or other business organization engaged in making such loans which has knowledge of all facts pertinent thereto which are known by such employer or labor organization.

5. Receipt by a participating employe of a loan from a fund if such loan would meet the requirements of a loan to a participating employer or labor organization as specified in example 4. above.

6. Purchase of securities or other investments from a fund by a participating employer or labor organization if made for not less than an adequate consideration to the fund. An "adequate consideration" means the price which would be paid at such time by an independent buyer having knowledge of all facts pertinent thereto which are known to such employer or labor organization. Such value may be established by an impartial appraisal of the investment if such value cannot be established by reference to bid and asked prices or by reference to sales prices.

7. Sale of securities or other investments to a fund by a participating employer or labor organization if made for not more than an adequate consideration as defined by example 6. above.

8. Purchase from or sale to a fund by a participating employer of its capital stock if in accord with conditions described in examples 6. and 7. above.

**History:** Cr. Register, August, 1960, No. 56, eff. 9-1-60; am. (1) and (2), Register, November, 1976, No. 276, eff. 12-1-76.

**Ins 8.02 "Trust fund or other fund", definition of.** (1) A "trust fund or other fund" constituting an employe welfare fund subject to ch. 641, Stats., exists where a trustee or trustees, a committee, or other party is designated jointly by one or more employers together with one or more labor organizations, solely by any employer or labor organization, or jointly by employers, or jointly by labor organizations to provide employe benefits a) under an agreement describing their responsibilities

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and duties, and b) from monies or other property under their control specifically segregated to provide such employe benefits.

(2) 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.

(3) 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".

(4) 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 are paid to the insurer for credit to a deposit or accumulation account. The balance in this account is held as a deposit subject to future determinations by the policyholder as to its disposition. 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 (3) of this rule.

(5) 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.

(6) 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.

(7) 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 funds 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; am. title, (1) (a), (b), (c) and (d); r. (2) intro. and (a); renum. (2) (b) to be (2), (2) (c) to be (3); r. (2) (d); renum. (3) to be (4) and am.; renum. (4), (5), and (6) to be (5), (6) and (7), Register, December, 1970, No. 180, eff. 1-1-71; am. (1), Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.03 "Employe benefits", definition of.** (1) The term "employe benefits" under s. 641.07 (2), Stats., must be broadly construed. The definition covers both benefits and services. Section 641.07 (2), Stats., declares that the type of benefits covered by the law are not limited to those specifically enumerated therein.

(2) Section 641.07 (2), 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:

- (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; am. (1) and (2), Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.04 Registration, requirements of.** (1) Every employe welfare fund within the meaning of s. 641.07 (1), 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

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(3) An employe welfare fund which does not cover more than 25 persons employed in Wisconsin at the time of registration is not required to submit copies of fund documents when registered; however, if subsequently it provides coverage to more than 25 persons employed in Wisconsin, the fund documents must be submitted with the annual statement for the first year in which more than 25 persons employed in Wisconsin are covered.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1), Register, November, 1978, No. 276, eff. 12-1-78.

**Ins 8.05 Registration, cancellation of.** When a registered employe welfare fund is merged or consolidated with another fund, or is terminated, or ceases to cover any person employed in Wisconsin, the trustee of such fund must file written notice of such action with the commissioner of insurance within 30 days after its occurrence. Such notice shall be verified by the oath of the trustee of the fund, or if there is more than one trustee, then by the oaths of at least two trustees. If more than 25 persons employed in Wisconsin were covered by such fund, the notice shall include a certified true copy of the resolution of the trustees or of the board of directors of the employer or similar authority under which such action was taken.

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

**Ins 8.06 Annual statement and notice of number of fund participants in Wisconsin, when required.** (1) An annual statement on form No. 71-9 must be filed under s. 641.13, Stats., by the trustee of every employe welfare fund subject to ch. 641, Stats., for each fiscal year of the fund during which coverage is provided to more than 25 persons employed in Wisconsin. The annual statement must be filed within 5 months after the close of the fiscal year of the fund.

(2) The trustee of every employe welfare fund subject to ch. 641, Stats., within 5 months after the close of its first fiscal year during which less than 26 persons employed in Wisconsin were covered, must file a written notice with the commissioner of insurance that less than 26 persons employed in Wisconsin participated in the fund during such year. Such notice will remain in effect for all subsequent years until the first year thereafter during which more than 25 persons employed in Wisconsin participate at any time. The filing of a notice under this rule does not relieve the trustee of a fund from the responsibility to file an annual statement for any year during which more than 25 persons employed in Wisconsin participate in the fund. If an annual statement must be filed for any year after a notice has been filed, the procedure of filing a notice will again apply for the first year thereafter during which coverage is provided to less than 26 persons employed in Wisconsin. Such renewed notices shall have the same force and effect as an initial notice.

(3) When an employe welfare plan which covers more than 25 persons employed in Wisconsin is terminated and fund assets are completely distributed or paid over to another fund, an annual statement must be filed under s. 641.13, Stats., within 5 months after the date of final distribution of the fund. Such annual statement must report the affairs of the fund from the date of the last previous annual statement and must reflect the final accounting of the fund for the transfer or distribution of all its assets.

(4) When an employe welfare plan is terminated but assets are held for distribution at a later date, the fund remains subject to ch. 641,

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Stats., as long as at least one Wisconsin employe participates. Annual statements must be filed by the trustee of any such fund for every year in which more than 25 persons employed in Wisconsin participate at any time. Notice under subsection (2) of this rule must be given for the first fiscal year in which less than 26 persons employed in Wisconsin participate. Notice of termination of the fund must be given in accordance with Wis. Adm. Code section Ins 8.05.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.07 "Persons employed in this state".** The term "persons employed in this state" as used in ch. 641, Stats., includes both active employes in Wisconsin and retired or terminated persons participating in the fund who were employed in Wisconsin at the time of retirement or other separation. The term includes anyone whether or not a resident of Wisconsin, who is employed at a place of business maintained by an employer in the state of Wisconsin; however, an employe who is not regularly employed at a place of business maintained by an employer shall be deemed to be employed in Wisconsin if service is performed solely within Wisconsin, or if his service is performed partly within Wisconsin and partly outside of Wisconsin and

(1) His service outside of Wisconsin is incidental to his service within Wisconsin (for example, is occasional, temporary or transitory in nature) or

(2) His base of operations is in Wisconsin, or

(3) If there is no base of operations, then the place from which his service is directed or controlled is in Wisconsin.

*Note: Example: A salesman who spends 20% of his hours of employment in Wisconsin and who works from a base of operations in Wisconsin would be "employed in this state". A salesman who spends 60% of his hours of employment in Wisconsin but who works from a base of operations outside of Wisconsin would not be "employed in this state". A salesman whose service is performed primarily in Wisconsin (service outside of the state is only occasional) is "employed in this state" even though his base of operations is in another state or he is directed or controlled from another state.*

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (intro.), Register, November, 1978, No. 275, eff. 12-1-78.

**Ins 8.08 Availability of information to fund participants.** The following information shall be available to all fund participants, including covered employes and their beneficiaries, contributing employers and participating labor organizations, in the office of the fund at all reasonable hours: (In the case of a fund which is administered solely by an employer or union, a separate fund office may not be maintained. In such case the following information must be available at the principal office of the employer or union in this state.)

(1) Copy of registration statement under s. 641.08, Stats., including all current fund documents specified by such statement. A fund which covers less than 26 persons employed in Wisconsin must maintain such documents although it is not required to file them with the commissioner of insurance under Wis. Adm. Code section Ins 8.04.

(2) Copies of annual statements under s. 641.13, Stats., for the 3 latest fiscal years.

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(3) Copy of latest report of examination of the fund by the commissioner of insurance.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. (1) and (2), Register, November, 1978, No. 276, eff. 12-1-78.

**Ins. 8.09 Preservation of records.** The trustee of every employe welfare fund subject to ch. 641, Stats., shall maintain the books and records of such fund in sufficient detail to permit a thorough examination of the operations of such fund by the commissioner of insurance for a period of 5 years after the close of the fiscal year of such fund in which the entries in such books or records are made. Such books and records shall include all journals, ledgers, checks, vouchers, invoices, receipts, bank statements, minutes, resolutions, agreements, contracts and other records of original or final entry. The preservation of photographic reproductions of such records shall constitute compliance with the requirements of this rule.

**History:** Cr. Register, July, 1962, No. 79, eff. 8-1-62; am. Register, November, 1978, No. 276, eff. 12-1-78.

**Ins 8.10 Advisory council on employe welfare plans. (1) PURPOSE.** The purpose of this rule is to create an advisory council on employe welfare plans to be appointed by the commissioner of insurance pursuant to ss. 15.04 (3) and 601.20, Stats.

(2) **MEMBERSHIP.** This council shall consist of the commissioner or a member of his staff designated by him and 8 other members having competence in the field of employe welfare funds, 2 to be representatives of management, 2 to be representatives of employes, and 4 to be representatives of the general public.

(3) **TERM.** Members of the council shall be appointed to serve for a term of 2 years except that the initial appointments under this rule shall be 4 members for a one-year term and 4 members for a 2-year term.

(4) **DUTIES.** It shall be the duty of the council to:

(a) Advise the commissioner with respect to the carrying out of his functions under ch. 641, Stats.,

(b) Review the administration of ch. 641, Stats., and

(c) Make such reports and recommendations to the commissioner with respect thereto as it deems necessary in the public interest.

(5) **CHAIRMAN.** The commissioner or his designee shall serve as chairman.

(6) **MEETINGS.** The council shall meet at least twice each year when called by the commissioner and at such other times when requested by the commissioner or 2 or more members.

(7) **EXPENSE REIMBURSEMENT.** Members of the council shall receive no salary or compensation for service on the council but shall be reimbursed for their actual and necessary expenses in attending meetings or while performing other duties as directed by the commissioner.

**History:** Cr. Register, July, 1970, No. 175, eff. 8-1-70; am. (4) (a) and (b), Register, November, 1978, No. 276, eff. 12-1-78.