

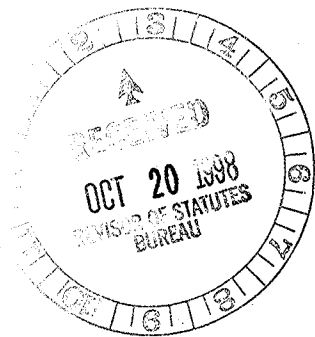
RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
 DEPARTMENT OF)
 WORKFORCE DEVELOPMENT)

TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

I, Linda Stewart, Secretary of the Department of Workforce Development, and custodian of the official records of said department, do hereby certify that the annexed rule(s) relating to self-insurance were duly approved and adopted by this department on *October 20, 1998*.

I further certify that said copy has been compared by me with the original on file in the 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 2 pm in the city of Madison, this 20th day of October A.D. 1998.

Connie O'Connell
 Secretary

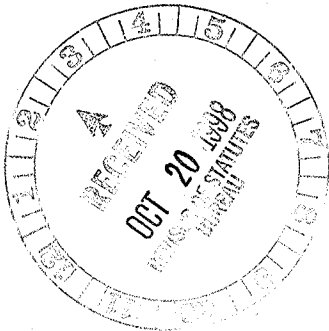
ORDER OF ADOPTION

Pursuant to authority vested in the Department of Workforce Development by section(s)

102.15(1) and 102.28(2)(b), Stats., the Department of Workforce Development creates; amends; repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

DWD 80.60 Exemption from duty to insure (self-insurance)

The attached rules shall take effect on December 1, 1998 pursuant to section 227.22, Stats.



Adopted at Madison, Wisconsin this

date: October 20, 1998

DEPARTMENT OF WORKFORCE DEVELOPMENT

Connie O'Connell
Secretary

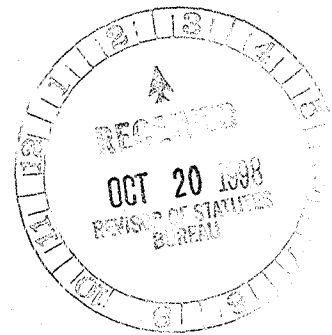


State of Wisconsin
Department of Workforce Development

ADM-6046 HEARING DRAFT OF PROPOSED RULES

HEARING DRAFT of PROPOSED RULES

Rule No.: DWD 80.60
Relating to: Self-Insurance



The Wisconsin Department of Workforce Development proposes an order to amend DWD 80.60

Analysis of the Proposed Rule

Statutory Authority: ss. 102.15(1) and 102.28(2)(b), Stats.

This rule authorizes the Department to expand the duration of self-insurance orders from one year to three years, although the employer's annual reporting requirements for financial and claims information, and the \$200 annual fee, are retained. The rule clarifies that the annual fee does not apply to political subdivisions that self-insure. The rule also clarifies the Department's authority to require other timely monitoring reports, particularly those related to the employer's organizational changes.

In Wisconsin, no self-insured employer has ever defaulted on its obligation to pay worker's compensation benefits due to financial problems. Still, under current law, as a condition of self-insurance, the Department typically requires self-insured employers to provide some form of security. This rule establishes standards for determining the amounts and types of security that the Department may require from self-insured employers. It also provides that the Department may call the security provided by the employer and use it to pay and administer that employer's worker's compensation liabilities if the Department has a reasonable basis to believe that the employer is not or will not be able to timely pay its worker's compensation liabilities from other employer resources.

SECTION 1. DWD 80.60(2) is amended to read:

DWD 80.60(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. and 7.

SECTION 2. DWD 80.60(3)(b) is amended to read:

DWD 80.60(3)(b) 1. Any political subdivision or taxing authority of the state electing to self-insure shall notify the department in writing of such the election before undertaking self-insurance, every 3 years after the initial notice, and 30 days before withdrawing from the self-insurance program.

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 political subdivision or taxing authority, 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), Stats.

SECTION 3. DWD 80.60(4)(a) is amended to read:

DWD 80.60(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~~ non-refundable fee, determined by the department as described in par. (ag), 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.~~ Every 3 years, a self-insured employer shall submit an application to renew self-insurance at least 60 days before the expiration date specified in the department's order. Each quarter, or more often if requested by the department, a self-insured employer shall submit the most current financial statements to the department. Each year, a self-insured employer shall report work-injury claims payments to the department and other information related to worker's compensation liability requested by the department. A self-insured employer shall immediately report to the department in writing any change in organizational structure that differs from the information provided in the annual report submitted to the department, including mergers, acquisitions, company name changes, consolidation, sale, or divestiture of divisions or subsidiaries. After a change in organizational structure, the department may revoke or modify the exemption from the duty to insure by providing reasonable written notice to the self-insured employer. If these changes result in the creation of a new parent or subsidiary, the department may waive or modify the requirement in par. (b)1. to submit five years of audited financial statements. A fee of \$200, per employer, and the assessment surcharge ~~for each renewal application~~ described in par. (am) may be billed by the department at the same time as the annual assessment under s. 102.75 (1), Stats. Self-insurance shall expire on the day specified by the department in its order. Unless the context indicates otherwise, all

information submitted to the department to comply with this section shall be submitted on the latest version of a department approved form.

SECTION 4. DWD 80.60(4)(am) is amended to read:

DWD 80.60(4)(am) In addition to any fee-for-service costs under par. (ax), each year the department shall assess each ~~applicant for renewal of self-insurance~~ self-insured employer except those specified in sub. (3), but including those specified in sub. (3)(c), a \$200 renewal fee and a proportionate share of the department's remaining costs to administer the self-insurance program after deducting the total amount estimated to be collected from ~~all self-insured employers from the \$200 renewal assessments fees~~ and the fees charged under par. (ag) for initial applications. The department shall determine the assessment amount under this paragraph in the same manner as costs and expenses are apportioned in s. 102.75 (1), Stats.

SECTION 5. DWD 80.60(4)(b)1. and 4. are amended to read:

DWD 80.60(4)(b)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.~~ Except as authorized by the department, employers self-insured under this subsection shall submit to the department audited or unaudited financial statements each quarter and audited financial statements each year.

4. Corporations ~~and~~ limited partnerships and limited liability companies shall be registered in the office of the ~~secretary of state~~ department of financial institutions.

SECTION 6. DWD 80.60(4)(d)(intro) is amended to read:

DWD 80.60(4)(d)(intro) *Surety bond, deposit of securities, cash deposit, letter of credit, excess insurance, or other security guarantee or pledge.* The required minimum bond, minimum amount of cash, letter of credit 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 and the employer's surety or other agent providing security shall use the ~~bond and deposit agreement~~ latest version of any forms required by the department. All surety bonds and excess policies shall be written on standard forms approved by the Wisconsin compensation rating bureau or the commissioner of insurance, or both. Any change in the language used in the approved standard form is not accepted unless the department approves it in writing. The following conditions shall also apply to self-insured employers:

SECTION 7. DWD 80.60(4)(d)4. to 7. are created to read:

DWD 80.60(4)(d)4. Each self-insured employer shall provide security of at least \$500,000. The department may increase the minimum required security amount after considering the criteria in par. (c).

5. If the self-insured employer provides a surety bond, the surety company shall pay worker's compensation liabilities of the employer up to the aggregate amount of the bond without deducting any of its costs for investigating, paying, defending against, or providing other services related to the worker's compensation claims. If a self-insured employer has more than one surety bond, the surety company whose bond is in effect on the date of injury is liable for claims related to that injury.

6. If the self-insured employer provides security in any form other than a surety bond, the department shall add 30 percent to the minimum amount in subd. 4.

7. Each employer self-insured under this subsection shall obtain a specific per occurrence excess insurance policy with retention and maximum limits approved by the department and in a form approved by the Wisconsin compensation rating bureau under ch. 626, Stats. In determining the limits the department shall consider, among other things, the criteria in par. (c).

SECTION 8. DWD 80.60(4)(dm) and (dx) are created to read:

DWD 80.60(4)(dm). The department may call and use any security provided by an employer under par. (d) to pay that employer's worker's compensation liabilities and to administer that employer's

worker's compensation claims if the department has a reasonable basis to believe that the employer is not able or will not be able to timely pay the worker's compensation liabilities incurred during the period for which that employer was authorized to be self-insured. The department may contract with a third-party administrator or other agent to administer payments. The employer is responsible for any unpaid liabilities. Within 2 working days of receiving written notice from the department, the employer whose security was called shall provide the department with the names and addresses of all present and former employees of the employer during the most recent three years in which the employer was self-insured. Within 30 days of receiving written notice from the department, the employer whose security was called shall provide the department with copies of any worker's compensation, medical or employment files requested by the department or summary information related to those files in a format requested by the department.

NOTE: In addition to a demonstrated failure to make timely worker's compensation payments, "a reasonable basis to believe that an employer...will not be able to timely pay worker's compensation liabilities" is intended to include such things as proceedings before bankruptcy court which may have an adverse financial impact on the employer or credible reports that an employer is preparing to seek some form of shelter in bankruptcy or receivership.

(dx) A surety or bonding company shall provide the department with a written plan acceptable to the department for the review and payment of any worker's compensation liability of the self-insured employer within 15 days after the department notifies the surety or bonding company that it is calling the bond. When the department approves the plan the surety or bonding company may contract with a third-party administrator or other agent to pay worker's compensation benefits and other liabilities.

SECTION 9. The rule shall take effect on the first day of the month following publication in the Wisconsin administrative register as provided in s. 227.22(2)(intro), Stats.

SUMMARY OF FINAL REGULATORY FLEXIBILITY ANALYSIS

Department of Workforce Development

CLEARING HOUSE RULE NO.:98-088

RULE NO.: DWD 80.60

RELATING TO: Self-Insurance

Final Regulatory Flexibility Analysis Summary

Self-insured employers are, by definition, large employers with significant numbers of employees. Small businesses are not required to file anything. Self-insurance is voluntary.

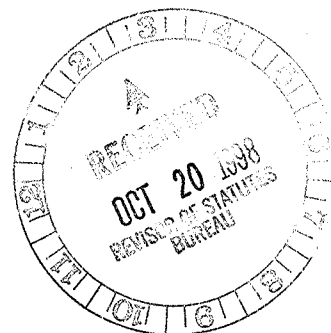
Summary of Comments of Legislative Standing Committees

Assembly Committee Labor and Employment

Senate Committee Human Resources, Labor, Tourism, Veterans and Military Affairs

No comments received.

Summary of Comments:



Tommy G. Thompson
Governor

Linda Stewart
Secretary



State of Wisconsin

OFFICE OF THE SECRETARY

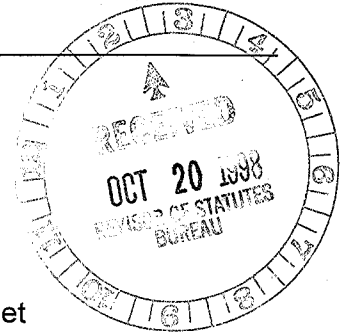
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Department of Workforce Development

October 20, 1998

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

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.: CR 98-088
RULE NO.: DWD 80.60
RELATING TO: Employer self-insurance under the workers
compensation program

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 included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

Linda Stewart
Secretary

