

WORKER'S COMPENSATION & SELF-INSURANCE IN WISCONSIN

1. When is an employer required to have a worker's compensation policy in Wisconsin?

Answer: Under s. 102.04(1) (b) of the Act, an employer becomes subject to the Act and must carry a worker's compensation insurance policy if:

- 1) The employer employs three or more full-time or part-time employees. This employer must get insurance on the day they employ the third person.
- 2) The employer has 1 or more full-time or part-time employees and has paid gross combined wages of \$500 or more in any calendar quarter for work done in Wisconsin. This employer must have insurance by the 10th day of the 1st month of the next calendar quarter. There are four calendar quarters in a calendar year; the 1st quarter is January through March; the 2nd quarter is April through June; the 3rd quarter is July through September; and the 4th quarter is October through December.
- 3) The farm (farmer) employs 6 or more employees (at 1 or more locations) on the same day for 20 days (consecutive or non-consecutive) during a calendar year. A calendar year is January through December. This farmer must have insurance within 10 days after the 20th day of employment. Some relatives of the farmer are not counted towards the 6 employees, but will be covered under a policy if one is purchased.

Every employer, as described in s. 102.04(1), Wis. Stats., is required under s. 102.28(2), Wis. Stats., to have a worker's compensation insurance policy, unless the employer is granted an exemption from the duty to insure and allowed to self-insure under s. 102.28(2)(b), Wis. Stats. An employer can only be self-insured if it obtains permission from the State of Wisconsin Department of Workforce Development (Department). The Department requires employers to demonstrate a very sound financial condition in order to be self-insured.

2. What is self-insurance?

Answer: In Wisconsin, worker's compensation is a no-fault system of insurance that pays benefits to employees for accidental injuries or diseases reasonably related to the employee's work. Wisconsin's Worker's Compensation Act provides that all employers covered by the Act either insure their liability with worker's compensation insurance carriers authorized to do business in Wisconsin, or be exempted (self-insured) from insuring liabilities with an insurance carrier by special order of the Department. An employer exempted from insuring with a carrier assumes the responsibility for its own worker's compensation risk and payment.

The vast majority of Wisconsin employers purchase a worker's compensation policy with one of the more than 400 insurance carriers authorized to write worker's compensation in Wisconsin. Comparatively few employers are granted an exemption from the duty to insure and are allowed to self-insure. An employer of a small number of employees and limited resources is not usually permitted to self-insure because a catastrophe might leave the employer unable to pay compensation claims and put the employer out of business.

3. Who may self-Insure? Are there minimum requirements?

Answer: The State and its political subdivisions may self-insure without further order of the Department if they do not carry a policy covering all or part of their risks, and if they agree to report faithfully all compensable injuries and agree to comply with the Act and rules of the Department.

For all other employers, the minimum requirements for an exemption from the duty to insure are:

- An employer desiring an exemption from the duty to insure must file an application on Department form WKC-7211, which may result in a hearing before the Self-insurers Council.
- Corporations, limited liability companies, and limited partnerships shall be registered in the office of the Wisconsin Department of Financial Institutions.
- If the applicant is a corporation, limited liability company, or a partnership and is a wholly or majority owned subsidiary, a guaranty of worker's compensation payments must be submitted on a Department form, executed by the ultimate or top parent company, and be accompanied by a certified copy of a resolution adopted by the board of directors of the top parent company, authorizing and directing the execution of the guaranty.
- Applications by corporations must be accompanied by a certified copy of the resolution adopted by the applicant's board of directors authorizing and directing the execution of the application and agreement forms. Applications by organizations other than corporations shall be signed by one or more persons possessing authority to act for the applicant. Partnerships must submit a consent by all the partners that all individuals executing the application have the authority to act for the applicant partnership.
- All applicants, 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 years. To remain self-insured, unaudited quarterly and audited annual financial statements must be submitted as soon as they become available. Companies which submit Form 10Q to the SEC electronically need not send quarterly reports to this Department, but must send the annual report to shareholders.
- It is recommended that the employer employ persons located in Wisconsin with knowledge of claims administration under Wisconsin's Act, and occupational safety and health. The persons may be employees of the applicant, its parent company, a subsidiary company, or a service company hired by the employer and acceptable to the Department.
- The employer must have an 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 federal Occupational Safety and Hazard Act (OSHA) rating and their experience modification factors for the past few years.
- The employer shall furnish satisfactory security (guaranty bond, reserves, excess worker's compensation insurance), financial reports and reports on outstanding liabilities before and after self-insurance is granted, not renewed, terminated or revoked, as the Department requires to assure the payment of all past, present and potential worker's compensation liability.

4. What criteria are used by the Department to determine an employer's exemption?

Answer: In addition to the minimum requirements for the initial application or renewal of self-insurance status, the Department also evaluates other factors which are needed to determine the amount of securities, and the number and kind of reports to be submitted to assure the prompt and full payment of all worker's compensation liabilities. These additional factors include:

- The financial strength and liquidity of the employer 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 of the employer's consolidated group is involved; and changes in other key financial conditions affecting the employer's ability to promptly pay all compensation and medical costs.
- The employer's organizational structure, management background, kind of business, length of time in business (minimum of five years), and any intended or newly implemented reorganization including, but not limited to merger, consolidation, acquisition of new business, divesting or spinning off of assets or other changes.
- The nature and extent of the employer's business operations and assets in the state of Wisconsin. These may include the tangible property of the employer and its subsidiaries or parent corporation.
- The employer's bond or other business ratings.
- The number of the employer's employees, payroll and hours worked in Wisconsin.
- The employer's performance indicators under Chapter 102, Wisconsin Statutes, 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.
- 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.
- The worker's compensation loss history experience modification factor, reported losses, loss reserves, outstanding liability, and worker's compensation premium of the employer.
- Excess insurance, surety bond, guaranty by the parent company, and guaranty of U. S. parent, in the event the ultimate parent is a foreign entity.

5. How is an employer's application to self-insure evaluated?

Answer: The Department's Worker's Compensation Division (Division) is responsible for administering Chapter 102, Wisconsin Statutes, of which provisions for self-insurance are a part. Staff within the Division coordinate and monitor Wisconsin's self-insurance program.

When the Department receives an application for exemption, it is first checked by Division staff for general accuracy, completion and ability of the employer to meet the minimum requirements and criteria for exemption. (The application constitutes a request for hearing before the Self-insurers Council, providing the Division staff determines the employer meets the minimum requirements and criteria for exemption.) If portions of the application are incomplete or found to be in error, it is returned to the employer for correction or clarification before any determination on qualification is made.

Everything accompanying the application becomes the property of the Division and is not returnable, including the application fee, which is non-refundable. If the employer's application is rejected, the material will be disposed of properly by the Division.

If the employer does not meet the basic minimum standards or requirements for exemption, the application is denied, and the employer so notified, at this first step in the application's processing.

When the data submitted appears to show that an employer may qualify for self-insurance, a hearing is scheduled among representatives of the applying employer, administrative staff of the Division, and the Self-insurers Council. Wisconsin Statutes provide for a Self-insurers Council to advise the Department on self-insurance matters. The Council members are appointed on a three-year basis, by the Secretary of the Department, and are representatives of employers which are currently self-insured in Wisconsin.

The hearing is a meeting between representatives of the employer, the Division, and the Self-insurers Council in an informal discussion covering the subjects of the applying employer's method of claims handling, safety and health practices, medical services, rehabilitation of injured or ill employees, and the financial status of the company. The purpose of the hearing is to resolve any questions the applying employer may have on the responsibilities involved in being self-insured, to offer the employer suggestions in operating a successful self-insurance program by persons already experienced as self-insurers, and to enable the Council an opportunity to resolve any questions they may have and form their recommendation to the Division on the approval or denial of the employer's application.

After this hearing, the Self-insurers Council will make its recommendation on the approval or denial of the application to the Division. If the Self-insurers Council recommends denial of an exemption from the duty to insure and the Division concurs with that decision, the applicant will be informed of the decision.

If the Self-insurers Council recommends approval of the application, it may recommend security requirements also. If the Division concurs, a special order (exemption from the duty to insure) is written which states the specific conditions with which the employer must comply (e.g., bonding and excess insurance requirements).

The average length of time to process an employer's self-insurance application from receipt of an accurate and complete application to approval or denial is three months.

6. What about bonds and excess insurance? Are all self-insured employers required to carry either or both?

Answer: Yes, the Department requires that an employer provide security and excess insurance coverage as a condition for self-insurance.

Security: The minimum amount is \$500,000. The amount may be greater based upon the analysis of each employer's financial capability, and upon the likelihood and severity of injury or disease within the employer's occupational classifications.

Excess insurance: Excess insurance policies must be procured from a worker's compensation insurance carrier licensed by the Wisconsin Commissioner of Insurance to write worker's compensation insurance in Wisconsin, and must be written upon the basis of rates and policy form filed with and approved by the Wisconsin Compensation Rating Bureau, P.O. Box 3080, Milwaukee, Wisconsin 53201-3080. The Bureau telephone number is (262) 796-4540. An actual copy of the excess policy must be on file with the Bureau. Excess insurance retention and upper limit of indemnity amounts are based upon the individual analysis of each employer's ability to withstand catastrophe. Any contract between an unauthorized carrier and a self-insurer must be reported to the Department immediately upon inception of the agreement.

7. What is the application fee?

Answer: A non-refundable fee of \$1,100 per parent plus \$100 for each subsidiary to be self-insured, shall accompany the initial application(s). An application must be submitted for each Wisconsin employer in a corporate family. The check or money order should be made payable to the Department of Workforce Development. Please contact the Department for specifics before submitting an application.

8. What fees are involved in being a self-insured employer?

Answer: The Act provides that each year the Department shall assess upon and collect from each worker's compensation insurance company and self-insured employer, the proportion of total costs and expenses incurred by the Department for administering the Act for the current fiscal year plus any deficiencies in collections and anticipated costs from the previous fiscal year. The assessment is determined from cases initially closed by the Division during the preceding calendar year and is based on the ratio of total indemnity paid or payable by each carrier and self-insured employer, other than for increased, double or treble compensation.

Each self-insured employer shall also be assessed a pro rata portion of the Department's cost of administering the self-insured program, calculated in the same manner as the general assessment above, plus \$200.

Additionally, s. 102.28(7) of the Act calls for a special assessment of all self-insurers if a current or former self-insurer can not make its worker's compensation payments. *This is an important consideration for employers contemplating the filing of an application.*

Under s. 102.47, 102.49 and s. 102.59(2) of the Act, insurers (including self-insurers) and employers must also make payments into a "work injury supplemental benefit fund" for the loss or total impairment of a hand, arm, foot, leg, eye or death, resulting from an occupational injury or illness.

9. Can an employer insure a portion of its operations with an insurance carrier and self-insure another, separate portion?

Answer: The Department may grant partial insurance upon being shown that there will be no confusion between the insured and self-insured portions of the employer's liability. Unless the separation of employees and payroll is clear and concise, it has been found that, from the standpoint of the injured worker, partial coverage is generally not desirable. Partial insurance can lead to a delay in the settlement of the claim and a good deal of expense on the employee's part to recover the compensation to which he or she is entitled. This is a burden which the injured employee should not bear. It is also important that proper payroll records be kept to enable the insurance carrier to determine the appropriate premium charges.

The self-insurance application contains a section inquiring if all operations are to be self-insured by special Department order. If an employer intends to insure any of its worker's compensation risk in Wisconsin with a full coverage policy, the operation should be clearly identified, and the employer should provide the exact name of the insurance carrier, the policy number, and the policy ending date.

Under the Act, if a dispute should arise between the full coverage insurance carrier and the self-insured employer on the question of responsibility for payment, the employer shall assume full responsibility to immediately make all payments of compensation and medical expenses to the injured employee, without waiting for the dispute to be settled. An employer's exemption from the duty to insure is void if the employer carries a full coverage policy with an insurance carrier and has not applied to the Department and received permission for partial insurance coverage.

10. How does an employer terminate its exemption from the duty to insure?

Answer: An employer may terminate its exemption from the duty to insure by writing a letter to the Division including:

- 1) the reason for termination,
- 2) the date and time exemption is to be terminated,
- 3) the name of the carrier, policy number and effective date of any full coverage insurer assuming the risk liabilities after self-insurance termination, and
- 4) full identification of the purchaser of any self-insured operations sold, including the date and time the sale is effective.

It should be understood that all former self-insurers are responsible for any and all worker's compensation liability incurred during the period when the employer was self-insured. Administrative assessment payments are required of former self-insurers based upon any cases incurred during the entire period of self-insurance until all cases are closed by the Department.

11. Can an exemption from the duty to insure be revoked by the Department?

Answer: The Department holds the right not to renew an exemption from the duty to insure beyond the expiration date stated on the Order.

Also, after giving a self-insured employer ten days' notice in writing, the Department may hold a hearing on revocation of an exemption from the duty to insure. The Department may revoke an exemption from the duty to insure for financial reasons, for failure of the employer to fulfill its obligations according to the agreement and stipulations included in the application, and for failure of the employer to observe Wisconsin law and rules of the Department. If an exemption from the duty to insure is revoked, the employer must immediately fully insure its risk with a worker's compensation insurance carrier. Failure to obtain a worker's compensation policy will result in fines and closure of its Wisconsin operations, until the employer is in compliance with the insurance requirements of the Act.

Whether the exemption from the duty to insure is subject to either non-renewal or revocation, the Department may require from the employer 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.

12. Where can I get more information about self-insurance under the Act?

Answer: Contact the Wisconsin Department of Workforce Development - Worker's Compensation Division, Bureau of Insurance Programs in-person at GEF-1 State Office Building, Room C100, 201 E. Washington Avenue, Madison by mail at P.O. Box 7901, Madison, WI 53707-7901 or by phone at (608) 266-3046. The Division also offers information online at: <http://dwd.wisconsin.gov/wc>

DWD is an equal opportunity employer and service provider. If you have a disability and need assistance with this information, please dial 7-1-1 for Wisconsin Relay Service. Please contact the Worker's Compensation Division at (608) 266-1340 to request information in an alternate format, including translated to another language.

The Division also produces a variety of printed informational materials to help employers and workers better understand and comply with the WC law. Single copies are available for free upon request. Among the most often-requested are these:

- **Facts for Employers About the Wisconsin Worker's Compensation Law** (Publication # WKC-7317-P). This pamphlet is issued by the WC Division.
- **Worker's Compensation Reporting Requirements** (Publication # WKC-7802). This pamphlet is issued by the WC Division.
- **Facts for Injured Workers** (Publication # WKC-18-P). This pamphlet is issued by the WC Division.
- The Commissioner of Insurance (P.O. Box 7873, Madison, WI 53707-7873) also produces the **Consumer's Guide to Worker's Compensation Insurance for Employers** (Publication # PI-065).
- Copies of the **Worker's Compensation Act of Wisconsin** (WKC-1-P) are available for purchase. Call (800) DOC-SALE (362-7253) for details. The Document Sales web page is: <https://docsales.wi.gov/>

13. What are some key statutes regarding self-insurance under the Wisconsin Worker's Compensation Act, Chapter 102?

| | |
|---------------------------------|--|
| Chapter 102 | Worker's Compensation |
| Wisconsin Statute 102.28(2) | Required insurance; exceptions. |
| Wisconsin Statute 102.28(2)(a) | Duty to insure payment for compensation. |
| Wisconsin Statute 102.28(2)(b) | Exemption from duty to insure. |
| Wisconsin Statute 102.28(2)(c) | Revocation of exemption. |
| Wisconsin Statute 102.28(2)(d) | Effect of insuring with unauthorized insurer. |
| Wisconsin Statute 102.28(7) | Insolvent employers; assessments. |
| Wisconsin Statute 102.28 (8) | Self-insured employers liability fund. |
| Wisconsin Statute 102.32 | Continuing liability; guarantee settlement, gross payment. |
| Wisconsin Statute 102.75 | Administrative expenses. |
| DWD 80.02 (Administrative Code) | Reports. |
| DWD 80.40 (Administrative Code) | Assessment for unpaid claims of insolvent self-insurer. |
| DWD 80.60 (Administrative Code) | Exemption from duty to insure (self-insurance). |