

## **TITLE 260 – DEPARTMENT OF LABOR AND TRAINING**

### **CHAPTER 50 – INJURED WORKER SERVICES**

#### **SUBCHAPTER 05 – WORKERS' COMPENSATION**

##### **PART 1 – Self-Insurance**

### **1.1 AUTHORITY**

These rules and regulations are promulgated pursuant to R.I. Gen Laws § 28-29-26.

### **1.2 PURPOSE**

The purpose of this regulation is to establish standards and fees regarding the self-insurance of workers.

### **1.3 DEFINITIONS**

- A. “Aggregate stop-loss insurance” means a policy designed to limit claim coverage (losses) to a specific amount. This type of coverage is to ensure that catastrophic claims (specific stop-loss) or numerous claims (aggregate stop-loss), do not upset the financial reserves of a self-funded plan.
- B. “Certified employer” means an employer who is certified to Self-Insurer for workers’ compensation
- C. “Department” or “The Department” means the Department of Labor and Training.
- D. “Director” means the Director of the Department of Labor and Training
- E. “Excess policy” means a policy issued to provide limits in excess of an underlying liability policy
- F. “Self-insurance” means: the authority to directly pay compensation to employees or their dependents.
- H. “WC” means workers’ compensation.

### **1.4 APPLICATION FEES**

- A. Initial fee with application. Costs for services necessary to prepare application or for subsequent requests for data are borne by applicant. Fees for Department services may be assessed during course of application. The applicant during the

course of examination must pay for any actuarial study required by the Department.

- B. Pursuant to R.I. Gen. Laws § 28-36-1(B)(1), all employers who apply for approval to self-insurance for all or part of their liability pursuant to R.I. Gen. Laws §§ 28-36-1(A)(2) and (A)(3), shall pay an application fee based on the number of employees located at the employer's place(s) of business in Rhode Island. The fees for new applications shall be set in accordance with the following schedule:

NUMBER OF EMPLOYEES	FEE
1-249	\$300
249-499	\$350
500-749	\$400
750-999	\$450
1000 OR MORE	\$500

- C. The application fee must be paid by a check drawn on a Rhode Island bank or, for out of state businesses, by a certified check or money order. The check or money order must be made payable to the "State of Rhode Island". The application fee may be paid by a third-party administrator, advisor, broker or similar firm on behalf of its' client in accordance with the foregoing conditions.
- D. The fee must accompany the initial application form and is not refundable. An application received without the proper fee will be returned without any review or consideration. No fee is required for a renewal application.

## **1.5 ASSESSMENTS**

- A. Each self-insured is required to pay assessments annually to the RI Workers' Compensation Fund. The assessment is based on a percentage of the premium that would have been paid by the employer if he were insured based on manual rates. Pursuant to R.I. Gen. Laws §§ 28-37-13 through 28-37-29.
- B. Pursuant to R.I. Gen. Laws § 28-36-1(b)(3) an additional assessment is charged to all certified employers for services performed by the Self-Insurance Unit. This assessment is based on the percentage of individual surety in proportion to all surety in the program for the assessment year.

## **1.6 FILING AND/OR EXAM FEES FOR APPLICATIONS**

Subsequent to initial application, the Department may charge for costs of examination of account, files, reserves, any studies that may be required upon review.

## **1.7 EXCESS COVERAGE**

- A. Every applicant for initial approval of workers' compensation self insurance and every applicant for renewal of its certified employer status shall purchase and maintain a specific excess insurance policy with:
  - 1. an upper minimum coverage limit of at least \$10,000,000 or higher per occurrence in excess of the self insured retention level of the policy; and
  - 2. a self insured retention level specifically approved by the director.
- B. New applicants for self insurance and certified employers during their first five years of self insurance may also be required to carry aggregate (stop loss) insurance with a carrier and limits acceptable to the director.
- C. All excess policies issued to certified employers, shall:
  - 1. include in the policy declarations, the name of the self insurer (principal); self insured retention limits; policy coverage limits; policy period; policy number; and name of issuing carrier;
  - 2. state that the policy covers and will reimburse all workers compensation liability benefits and services paid above the retention level of the policy including all administrative, legal, claims handling, expenses related to a covered claim;
  - 3. include an insolvency clause that requires the carrier to reimburse up to the policy limits regardless of the financial condition of the policy holder, and that in the event of an insolvency or default of the policy holder, to reimburse any surety carrier or the director that subsequently becomes responsible to run off the claims of the policy holder by order of the director of the Rhode Island Department of Labor and Training;
  - 4. not contain an exclusion clause for acts of terrorism, domestic or foreign;
  - 5. require at least 30 days advance written notice to the director before excess policy cancellation for any reason or any other amendment issued by the carrier to the excess policy;
  - 6. contain a clause stating that notwithstanding any other provisions of the policy or representations made by the parties, the excess policy will conform to the laws and regulations of Rhode Island;

7. require the excess carrier to bear its responsibility for the policy obligations unless claims nonconformance by the certified employer is substantial and severely prejudices the ability of the excess carrier to mitigate its losses;

## **1.8 DEPOSIT OF SECURITY**

- A. Failure by a certified employer to post and maintain the required amount of security and in an acceptable type as determined by the director shall be good cause for terminating or non-renewal of the employer's self insurance certificate.
- B. New applicants for self insurance shall submit along with the Application For Approval of Workers' Compensation Self-Insurance Form RI SI-2, a summary of annual incurred losses experienced by their Rhode Island operations for the previous three full calendar years with the loss experience being current to within 120 days prior to the application filing date prepared by their carrier or insurance broker. Initial security deposit, shall be calculated as the higher of the following:
  1. the minimum security deposit required by the director, currently \$500,000;
  2. two times the average incurred liability of the applicant's Rhode Island operations over the previous three years plus any adjustment for self insured retention level of the proposed specific excess insurance policy the applicant intends to purchase; or
  3. the amount of initial security required by the director in his or her discretion.
- C. Renewing certified employers during their first three years in self insurance shall submit along with the Renewal Application for Approval of Workers' Compensation Self-Insurance Form RI SI- 2a, their loss experience in self insurance from the inception date of the self insurance program. Security deposits, shall be calculated as the higher of the following:
  1. the minimum security deposit required by the director, currently \$500,000; or
  2. two times the average incurred liability of the applicant's Rhode Island operations over the most recent three years (insured and self insured periods) times the quantity (1 + the number of years they have been self insured). In addition the security should be adjusted for the self insured retention level of the proposed specific excess insurance policy the applicant has to purchased;
  3. two times the expected unpaid liabilities of all open claims from the inception date of self insurance plus any adjustment for self insured retention level of the proposed specific excess insurance policy the applicant intends to purchase; or

4. the amount of security required by the director in his or her discretion.
- D. Renewing certified employers after their first three full years in self insurance shall submit along with the Renewal Application for Approval of Workers' Compensation Self-Insurance Form RI SI-2a, their loss experience in self insurance from the inception date of the self insurance program. Security deposits, shall be calculated as the higher of the following:
1. the minimum security deposit required by the director, currently \$500,000; or
  2. two times the expected unpaid liabilities of all open claims from the inception date of self insurance plus any adjustment for self insured retention level of the proposed specific excess insurance policy the applicant intends to purchase; or
  3. the amount of security required by the director in his or her discretion.
- E. For good cause and after providing at least ten days advanced written notice to the certified employer or formerly certified employer, the director may audit or review or cause to be audited and reviewed any claim or claims reported in the renewal application, or the claims detail reported on any claim or claims, as well as, the case reserves posted on any claim or claims by a certified employer, or to evaluate any actuarial report provided on the liabilities of any certified employer or formerly certified employer to determine the adequacy of the security posted with the director to secure the liabilities of the employer. Should the results of the audit or review determine the security is not adequate in the sole determination of the director; the director may adjust the amount of required security posted. Any cost to the director to conduct such an audit or review or to cause such an audit or review to be conducted shall be reimbursed by the certified employer or formerly certified employer.
- F. The director shall require an additional security adjustment from certified employers based on the self insured retention level of the employer's specific excess insurance policy during the initial or renewal period of self insurance as follows:

1. Security Adjustment Based on Self Insured Retention (SIR) Level of Specific Excess Policy

SIR Range	Additional Security Required
Less than \$500,000	None
\$500,000 - \$749,999	2 times (SIR - \$350,000)
\$750,000 - \$1,000,000.00	3 times (SIR - \$350,000)

\$1,000,000.00 or more

4 times (SIR - \$350,000)

- G. The director may call in whole or part any security posted by a certified employer to secure the employer's self insured workers' compensation liabilities and services under R.I. Gen. Laws Chapters 28-33 and 28-34 by providing a signed statement by the director on departmental letterhead to certify that the named certified employer has failed in whole or part on its self insured workers' compensation obligations under R.I. Gen. Laws Chapters 28-33 and 28-34
- H. The director shall not reduce the amount of security posted by a formerly certified employer during the first ten years after the date of termination of the employer's workers' compensation self insurance program. After the tenth year, the director may agree to a reduction in the required amount of security to not less than 200% of the remaining unpaid liabilities plus the minimum deposit amount of \$500,000 or to any higher amount the director in his or her sole discretion shall determine appropriate to secure the known and unknown liabilities of the employer. The adjusted deposit amount shall remain in place for an additional ten years at which time the former certified employer may petition the director for a reduction in security. Accompanying such petition shall be a report prepared by an actuary acceptable to the director addressing the potential of any occupational health claims being filed that have long latency periods to develop before being diagnosed, such as from asbestos, silica, chemical, or similar hazardous occupational exposures to the employees of the formerly certified employer during the period of workers' compensation self insurance in Rhode Island. The director shall make a decision on the petition and grant or deny an adjustment in the security required. The director may hold security for a period of up to 50 years from the date of program termination to secure occupational health exposures to the employees of the former certified employer.
- I. Any certified employer or formerly certified employer may petition the director for a reduction in the amount of security required to be posted to secure the employers's workers' compensation self insurance program. The director in his or her sole discretion may grant such a request provided that the new security amount that would be required of the employer fully meets all the requirements of R.I. Gen. Laws § 28-36-1 and these rules and regulations on the amount of security required to be posted.
- J. A certified employer or a formerly certified employer may sell off all or any part of the employer's remaining claim liabilities to an insurance carrier duly licensed to write primary workers' compensation insurance in Rhode Island via a workers' compensation loss portfolio transfer policy. Such loss portfolio transfer policy shall assume all liability of each claim that is being transferred, including any liability that may be subject to reimbursement from an excess carrier. If the policy

proposes to wrap up all remaining compensation liabilities for an employer to release the posted security deposit, then the loss portfolio transfer policy must clearly indicate in its declarations that the policy covers all remaining past, present or future unpaid liabilities, whether known and unknown, including any future occupational health claims for the period of self insurance that may yet be filed against the certified employer incurred during the self insured period in Rhode Island. Any loss portfolio transfer policy shall meet the requirements to be an assumed claims transaction covered by the Rhode Island Property & Casualty Insurers' Guaranty Association under R.I. Gen. Laws Chapter 27-34.

## **1.9 BONDS AND/OR SECURITIES**

### **1.9.1 Bond and Security Standards**

- A. A surety bond posted as security by a certified employer to secure self insured workers' compensation liabilities with the director shall be on a bond form approved by the director. Any extension agreements, increase riders, decrease riders, name change riders, or release of surety shall also be on forms approved by the director.
- B. Any new surety bond provided as security for a certified employer's workers' compensation self insurance liabilities to the director, or any extension rider, increase rider, decrease rider, or name change rider on an existing or new surety bond provided as such security, shall pay up to the full amount of the penal sum for the payment of workers compensation liabilities of the certified employer without deducting any of the surety's costs for legal, administrative, or claims handling expenses related to the certified employer's workers' compensation claims. Such costs or expenses shall be in addition to the compensation benefits and services paid from the penal sum of the bond as set forth in this section.
- C. Each cancelled surety bond remains responsible to pay the unpaid workers' compensation liabilities of the certified employer for claims with dates of injury that occurred during the period of coverage of the surety bond up to the cancellation date. Cancellation eliminates liability accruing after the date of cancellation, but the bond remains in full force and effect to cover liability accrued from and including the date of issuance of the bond up to the date of cancellation.
- D. Any bond may be released of its liability only if it is replaced by another acceptable security in the full amount that may be required by the director at that time and the director executes a signed, written release document for the surety bond which will accompany the original bond that will be returned to the surety company.

### **1.9.2 Call Order of Security Posted**

- A. If a certified employer has more than one type of security posted with the director to secure different periods of the employer's self insured workers' compensation liabilities, the security in effect on the date of injury is liable for claims related to the injury.
- B. Should there be more than one security posted for the same period of the employer's self insured workers' compensation liabilities, each security posted is jointly and severally liable for the entire liability for claims related to the injury. The director may in his or her discretion require payment from the security posted.

## **1.10 SUBSIDIARY**

There may be division of self-insurance and insurance within a company. This division is subject to review by the Director, by law, on a case-by-case basis initially and during the term of any period of self-insurance. Each company may have a separate minimum initial bond, subject to Director decision, based on review and consolidation approval. Other surety can be accepted as per Director.

## **1.11 PARENT COMPANY**

A guarantor may be required as a condition of self-insurance by the Department. Liabilities such as Workers' Compensation claims will be expressly absorbed and paid by any surviving company or take over company.

## **1.12 REQUIRED REPORTS**

- A. RI State Tax reports – most recent filing.
- B. Form 10K, if applicable.
- C. Historical Claims Report - previous five (5) years to include open, litigation, other legal and claims expense, controverted and reserved claims; narrative on all claims \$10,000 reserve minimum. Other reports per type of business pursuit, at request of administrator as necessary. Upon renewal, only loss information as a self-insured is required.
- D. Interim reports as desired with specific answer time and date may be required at any time during any certification.

## **1.13 TERM**

A self-insured who wishes to continue as such, must file an a renewal application and surety annually, a minimum of 60 days prior to the expiration date of its' current certificate, using same basic format. A filing less than 60 days prior to renewal date is at the peril of the self-insured. Renewal is not automatic. Provision for insurance coverage would be needed if renewal sent in late.



## **1.14 CLAIM ADMINISTRATION**

The Department requires that the internal Claims Adjusters or externally hired Third Party Administrators who handle workers' compensation claims for Self-Insured employers be licensed by the State of Rhode Island, in accordance with [230-RICR-20-50-4](#) (Insurance Claims Adjusters) of the RI Department of Business Regulation. The claim administration, whether internal or external, must be able to comply with the claim filing requirements of the Workers' Compensation Division. The Department may require additional training for employees or adjusters preparing claim forms, wage data, and electronic filings.

## **1.15 DOCUMENTS**

Application Form RI SI-2, copy of current financial report; name and address of person or firms handling claims processing; claims history; payment record for past claims; reserves and reserving process for current claims; any other items as individual application may warrant by order of Director's designee or as required by Director's review.

## **1.16 TIME FOR APPLICATION**

ALLOW 60 DAYS.

## **1.17 CANCELLATION/LAPSATION/EXPIRATION**

- A. Notice of Cancellation will be given to the self-insured office that is listed on the application. Such notice will be transmitted by certified mail/return receipt requested and other additional means such as e-mail, fax, telephone and letterforms. Cancellation may be put in place for failure to make WC payments, or payments of assessments when due by liquidation and/or close of business in Rhode Island, and filing of any forms of bankruptcy and reorganization.
- B. Renewal is not automatic. Failure to provide required items, such as but not limited to excess coverage, general liability policy, surety coverage's and other required items, are grounds for cancellation. Required items that are allowed to lapse or expire by a self-insured are grounds for cancellation of self-insurance privileges.

## **1.18 FINANCING**

- A. Basic Surety Bond: Prefer AA rating, if necessary A. Rating A- (minus) lowest accepted but usually only with other surety forms.
  - 1. Our forms, as by law (WC Act) that we, Department of Labor & Training – Workers' Compensation, require in substance. Form is not filed with any other state agency but is the form devised and designed by the Department for its use. The only direction is from the Department – it is not

a state fund form nor is it a statutory form issued by the Insurance Division of Business Regulation, etc., but is a form that can be managed and tailored to a specific self-insurance situation under RI Workers' Compensation Act sections that apply (R.I. Gen. Laws §§ 28-29-22, and 28-36-1; 28-36-2).

2. The bond can be for more than one year in duration although certificates of self-insurance by law are a maximum of one year. Bonds can be continuous. Bond would be canceled effective date to coincide with bond date – certificate date or before if applicable. Our bonds are not to be considered as stacking. Bonds may be retired with Department approval.
  3. Bond is continuous form, meaning that for certain period of time it is for claims arising out of that period of time so designated. It continues in force but only for claims arising out of stated initial penal period if employer cannot meet WC obligations caused by these claims incurred in that covered period or found to be caused in that covered period.
  4. A continuation certificate to an existing bond can extend the bond money into a second year or period of time therefore diluting original bond money.
  5. A canceled bond still is viable for claims within scope of bond.
  6. A retired bond does not have any penal liability and ceases to be a surety.
- B. A certificate of deposit, FDIC backed, is acceptable in approved banking institution. A letter of credit is acceptable, on approved bank. Cash in banks (FDIC) combinations acceptable. Municipal bond funds and other escrows or trusts, T-Bills, restricted accounts or endowments acceptable. Other financial instruments can be acceptable as used for last resort payments after asset depletion and employer not able to pay claims or a given period pursuant to Director approval.
- C. Cash accounts, imprest accounts, payroll accounts and other types of payment accounts may be required.
- D. Excess coverage shall be required with stop loss provisions, retention and aggregate provisions as per each applicant and renewal amount to be determined in each case.
- E. Captive insurance company policy allowable. A carrier does not have to be licensed in RI to furnish bond or other coverage if the Department accepts such coverage. The Department prefers companies licensed in RI. Captive may not write business other than that of parent company.
- F. Complete financial disclosure of the company, its' officers, owners interests, companion companies, parent subsidiaries and similar connected entities are

needed. Tax records needed. Loan arrangements and obligations, pending lawsuits, EPA violations, are examples of financial consideration.

- G. It is preferred that claims be paid on RI banks and/or RI institutions by check. We do allow other arrangements but if outside, RI institution is used, employer must agree to cash such instruments for employee to prevent a delay in delivery of benefits (especially weekly check).
- H. The Department prefers companies not use a payroll account for such WC payments. The Department may limit or prohibit intermingling of such funds.
- I. Director and Officer coverage will be required.
- J. General liability policy will be required. On any certificate required, the amount of deductible must be available and cannot be changed without Department approval.
- K. No change on any source of coverage may be made nor any adjustment of any coverage may be made without consult and express approval of the Director or Designee of Director of the Department.

#### **1.19 ADDENDUM TO SELF-INSURANCE NOTES (RI SI-4)**

- A. Costs of preparing data, application, etc., on any preliminary or informal or formal presentations for certification for self-insurance are all borne by the applicant. If the Department makes a specific request for data, feasibility study, etc., all costs are directly the responsibility of the applicant. The Department will discuss the format of any data on the further clarification of any questions.
- B. Applications with accompanying documents and certification as WC Self-Insured are subject to the R.I. Gen. Laws § 38-2-1 *et seq.*, Access to Public Records. Any request for records will be analyzed pursuant to that law.
- C. Upon renewal, re-certification process, etc., the same rules apply. In addition, any transcripts, dictation costs, etc., during any hearing of any type by the Department at its' offices or any other location as required by the Department or any lawful authority must be borne directly by the application for re-certification. Such original documentation will be the property of the Department and the Department will provide the self-insurer at no charge certified true copies.
- D. In the event of a cessation of certification during the course of a certification period, all costs of transcripts or data collection and/or other expenses at any hearings at the office of the Director of the Department or any other location as required and/or designated by any lawful authority (as prescribed in RI WC Law) will be directly paid for upon receipt of billing by the applicant self-insured. Certified true copies will be provided to the self-insured by the Department at no charge. The original data will be the property of the Department of Labor & Training. E.g: Costs of depositions, surveys, financial reviews, on-site inspections

by Administrator or Department personnel or other service personnel commissioned or contracted for by the Department of Labor & Training Workers' Compensation Unit will be borne by the applicant or self-insured employer.

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**SUBCHAPTER 05 - WORKERS' COMPENSATION**

**PART 1 - RI SELF-INSURANCE RULES AND REGULATIONS**

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**Department of State**

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