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COMMISSION
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Ohio Administrative Code

Rule 4123-19-03 Where an employer desires to secure the privilege to pay compensation and benefits directly.

Effective: April 1, 2024

(A) All employers granted the privilege to pay compensation and benefits directly shall demonstrate sufficient financial strength and administrative ability to assure that all obligations under section 4123.35 of the Revised Code will be met promptly. The administrator of workers' compensation shall deny the privilege to pay compensation and benefits directly, where the employer is unable to demonstrate its ability to promptly meet all the obligations under the rules of the industrial commission and the bureau and section 4123.35 of the Revised Code. The administrator of workers' compensation shall consider, but shall not be limited to the factors in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code where they are applicable in determining the employer's ability to meet all obligations under section 4123.35 of the Revised Code.

The administrator of workers compensation shall review all financial records, documents, and data necessary to provide a full financial disclosure of the employer, including but not limited to, the balance sheets and a profit and loss history for the current year and the previous four years. The administrator of workers compensation shall consider whether the employer has demonstrated the financial ability to pay any and all claims obligations. Unless an applicant obtains waiver under paragraph (D) of rule 4123-19-03.1 of the Administrative Code, financial records submitted to the bureau must be audited by a certified public accountant, in accordance with generally accepted accounting principles, and shall include the certified public accountant's audit opinion.

(1) The administrator of workers compensation may waive certain requirements of divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code pursuant to rule 4123-19-03.1 of the Administrative Code.

(2) The administrator of workers compensation shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, including its hospitals.

(B) The employer shall secure from the bureau proper application form(s) for completion. The

completed application shall be filed with the bureau at least ninety days prior to the effective date of the employer's requested status as a self-insuring employer. The administrator of workers compensation may require that the application be accompanied by an application fee as established by bureau resolution to cover the cost of processing the application in accordance with section 4123.35 of the Revised Code. The application shall not be deemed complete until all required information is attached thereto. Prior to presentation to the administrator of workers compensation, applicable items listed in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code shall be made available to the bureau and shall be reviewed by the bureau.

(C) The bureau shall accept only application forms which provide answers to all questions asked and furnish all required information.

(D) Return of the completed forms required by this rule and any additional information required by the bureau to process the employer's application should be submitted at least ninety days prior to the effective date of the employer's requested status as a self-insuring employer.

(1) If the administrator determines to grant the privilege of self-insurance, the bureau shall issue a finding of fact, which has been prepared by the bureau and signed by the administrator of workers compensation, subject to all conditions outlined in paragraph (M) of this rule.

(2) If the administrator of workers compensation determines not to grant the privilege of self-insurance, the bureau shall so notify the employer, whereupon the employer shall be required to continue to pay its full premium into the state insurance fund.

(E) All employers that have secured the privilege to pay compensation and benefits directly, will be required to make contributions as determined by the administrator of workers' compensation to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code, and if an additional security is required by the bureau, the amount form of the additional security may be specified by the bureau. If the additional security is in the form of a surety bond, the bond shall be from a company approved by the bureau and authorized to do business in the state of Ohio by the Ohio department of insurance. The surety bond shall be in the form prescribed by the bureau. If the additional security is in the form of a letter of credit, the letter of credit must be provided by a federally insured financial institution. The penalized amount of such additional security is to be

fixed by the administrator of workers compensation.

(F) The surety bond or additional security furnished by the employer shall be for an amount and period as established by the bureau and may be periodically reviewed and reevaluated by the bureau. The surety bond or additional security shall provide on its face that the surety shall be responsible for the payment of all claims where the cause of action, as determined by the date of injury or date of occupational disease, arose during the liability of the surety bond or additional security. The liability under the surety bond or additional security and the rights and obligations of the surety shall be limited to reimbursement for the amounts paid from the surplus accounts of the state insurance fund by reason of the default of the self-insuring employer in accordance with division (B) of section 4123.82 of the Revised Code; however, in the event of such self-insuring employer's default, the bureau shall first seek reimbursement from the surety bond or additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. Upon default of the self-insuring employer, it shall be the responsibility of the administrator of workers compensation to represent the interests of the state insurance fund and the self-insuring employers' guaranty fund. The administrator of workers compensation, on behalf of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer, or other liable persons, all amounts the bureau has paid or reasonably expects to pay from the self-insuring employers' guaranty fund on account of the defaulting self-insuring employer.

(G) The security herein required to be given by the employer shall be given to the state of Ohio, for the benefit of the disabled employees or the dependents of deceased employees of the employer filing the same, and shall be conditioned for the payment by the employer of such compensation to disabled employees or the dependents of deceased employees of such employer, and the furnishing to them of benefits equal to or greater than is provided by the Ohio workers' compensation law and for the full compliance with the rules, regulations, and procedures of the industrial commission and the bureau.

(H) If another or parent corporation or entity owns fifty per cent or more of the stock of an employer, the bureau may, in its discretion, require the employer to furnish a contract of guaranty executed by the ultimate domestic parent corporation or entity. The bureau shall require an

alternative form of security if it does not require a contract of guaranty executed by the ultimate domestic parent corporation or entity.

(I) Employees having one or more years of experience as a workers' compensation administrator for a self-insuring employer in Ohio shall be deemed sufficiently competent and knowledgeable to administer a program of self-insurance. A self-insuring employer that employs a workers' compensation administrator who have less than one year of experience as a workers' compensation administrator in Ohio shall not have its status as a self-insuring employer affected pending notification by the bureau as to whether mandatory attendance of the employer's workers' compensation administrator at a bureau training program is required. If the bureau determines that the employer's workers compensation administrator is not able to administer a self-insuring program, the bureau may direct mandatory attendance of the employer's workers compensation administrator at a bureau training program until such time as the bureau determines that the employer's workers' compensation administrator is sufficiently competent and knowledgeable to run such a workers' compensation program. The cost of the bureau's training of the workers compensation administrator(s) under this rule will be borne by the self-insuring employer or self-insuring employer applicant. By accepting the privilege of self-insurance, an employer acknowledges that the ultimate responsibility for the administration of workers' compensation claims, in accordance with the law and rules of the bureau and the industrial commission, rests with that employer. The self-insuring employer's records and compliance with the bureau and the industrial commission rules shall be subject to periodic audit by the bureau.

A self-insuring employer or applicant shall designate one of its Ohio employees who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules and regulations therein, as Ohio administrator of its self-insuring program. This rule is not intended to prevent the hiring of an attorney or representative to assist the employer in the handling and processing of workers compensation claims. The requirement for an Ohio administrator may be waived at the discretion of the bureau. The name and telephone number of the Ohio administrator, or non-Ohio administrator where the Ohio requisite has been waived, shall be posted by the employer in a prominent place at all the employer's locations. The Ohio administrator's duties shall include, but not be limited to:

(1) Acting as liaison between the employer, the bureau, and the industrial commission, and providing

information to the agency upon request;

(2) Providing assistance to claimants in the filing of claims and applications for benefits;

(3) Providing information to claimants regarding the processing of claims and the compensation and benefits to which claimants may be entitled, including eligibility and filing requirements;

(4) Providing the various forms to be used in seeking compensation or benefits;

(5) Accepting or rejecting claims for benefits; and

(6) Approving the payment of compensation and benefits to, or on behalf of, claimants, pursuant to paragraph (L) of this rule.

(J) Employers that are granted the privilege of paying compensation and benefits directly, in accordance with these rules and regulations, shall:

(1) File with the bureau via the bureaus website a report of paid compensation annually on or before the last day of February each year;

(2) Maintain a record of all injuries and occupational diseases resulting in more than seven days of temporary total disability or death occurring to its employees and report the same to the bureau upon forms to be furnished by the bureau; and

(3) Observe all the rules, regulations, and procedures of the industrial commission and the bureau with reference to determining the amount of compensation and benefits due to the disabled employee or the dependents of deceased employees, and payment of the same.

(K) If a self-insuring employer fails to timely file its annual report of paid compensation, the bureau may estimate the amount of paid compensation and assess the employer based on this estimate pursuant to rule 4123-17-32 of the Administrative Code. If the employer subsequently provides the bureau with actual paid compensation figures, the bureau shall adjust the paid compensation and any assessment accordingly. A self-insuring employer that is no longer a self-insuring employer in Ohio

and has failed to timely file a report of paid compensation shall be subject to this rule.

(L) Minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation and benefits directly.

(1) The employer must be able to furnish or make arrangements for reasonable medical services during all working hours. A written explanation of what arrangements have been made or will be made to provide medical treatment shall be supplied with the application for self-insurance.

For an employer desiring to be first granted the privilege of self-insured status, the employer shall provide to the bureau for the bureau's approval the employer's plan for the following:

(a) Criteria for the selective contracting of health care providers;

(b) Plan structure and financial stability for the medical management of claims;

(c) Procedures for the resolution of medical disputes between an employee and the employer, an employee and a provider, or the employer and a provider, prior to an appeal under section 4123.511 of the Revised Code;

(d) Upon the request of the bureau, provide a timely and accurate method of reporting to the administrator of workers compensation necessary information regarding medical and health care service and supply costs, quality, and utilization; and,

(e) Provide an employee the right to change health care providers.

(2) The employer shall promptly pay the fees of outside medical specialists to whom the industrial commission or the bureau shall refer claimants for examination or where the industrial commission or the bureau refers the claim file for review and opinion by such specialist except as provided by law in cases where the claim was subsequently disallowed. Such fees shall be paid within the time limits provided for payment of medical bills under paragraph (L)(5) of this rule.

(3) Every employer shall keep a record of all injuries and occupational diseases, including contested

or denied claims, and shall report all claims with more than seven days of total disability or death, including contested or denied claims, to the bureau and to the employee or the claimant's surviving dependents in accordance with rule 4123-3-03 of the Administrative Code. For all claims reported to the bureau, the employer shall electronically update and report the allowed conditions on the bureaus website within fourteen days of the employers acceptance of a condition or following the appeal period of the final administrative order if the condition was contested. Claims resulting in seven days or less of total disability shall be reported to the employee.

(4) The employer shall provide to the claimant and upon request, shall file with the bureau or the industrial commission, medical reports relating thereto and received by it from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease, or any injury or occupational disease for which a claim has been filed. The claimant shall provide to the employer and, upon request, shall file with the bureau or the industrial commission, medical reports relating thereto and received from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease or any injury or occupational disease for which a claim has been filed. The claimant shall honor the employer's request for appropriate written authorization to obtain medical reports to the extent that such reports pertain to the claim.

(5) Within thirty days after receipt of a hospital, medical, nursing, or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or industrial commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the industrial commission. If the matter is heard by the industrial commission, the employer shall pay compensation and benefits due and payable under an order as provided by section 4123.511 of the Revised Code. Payments issued more than fourteen days from receipt of an order allowing compensation will be considered non-compliant with this requirement. If the employer allows a claim for benefits and compensation without a hearing, the employer shall pay such benefits and compensation no later than twenty-one days from acquiring knowledge of the claim or the claimant's filing of the C-84 form, whichever is later.

(6) The employer shall acknowledge a written request for a change of physicians within seven days

of receipt of the request that includes the name of the physician and proposed treatment. The employer may advise the injured worker of an impractical situation concerning the injured worker's choice of physician, such as the provider is retired, is deceased, is no longer licensed, is under license suspension, is incarcerated, has affirmatively refused to treat the claimant or serve as the physician of record, is not a physician as defined in paragraph (P) of rule 4123-6-01 of the Administrative Code, or is otherwise unavailable to treat the claimant. The employer cannot impede the claimant's freedom to choose a treating physician for the allowed conditions in the claim.

(7) The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. The employer cannot deny a treatment request, or contest payment of any bill for the treatment, if the employer did not respond within ten days of receipt of the treatment request. The employer cannot deny a treatment request, or contest payment of any bill for the treatment, if the employer did not respond within ten days of receipt of the treatment request.

(8) The employer shall make its records and facilities available to the employees of the bureau at all reasonable times during regular business hours. A public employer shall make the reports required by section 4123.353 of the Revised Code available for inspection by the administrator of workers' compensation and any other person at all reasonable times during regular business hours.

(9) The employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio. By becoming self-insured, the employer agrees to abide by the rules and regulations of the bureau and the industrial commission and further agrees to pay compensation and benefits subject to the provisions of these rules. The employer shall proceed to make payment of compensation or benefits without any previous order from the bureau or the industrial commission and shall start such payments as required under the Workers' Compensation Act unless the employer contests the claim. The employer may allow for compensation payments to be available through debit card, electronic funds transfer, or direct deposit with the claimants authorization.

(10) The employer may notify the bureau's medical section and the claimant at least sixty days prior to the completion of the payment of two hundred weeks of compensation for temporary total disability with the request that the claimant be scheduled for examination by the medical section. Payment of temporary total disability compensation after two hundred weeks shall continue uninterrupted until further order of the industrial commission up to the maximum required by law,

unless the claimant has returned to work, or the treating physician has made a written statement that the claimant is capable of returning to his former position of employment or has reached maximum medical improvement or that the disability has become permanent, or, after hearing, an order is issued approving the termination of temporary total disability compensation.

(11) Upon written request by the claimant or claimant's representative, the employer shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time, not to exceed three business days, and place. The claimant, upon written request, shall provide the employer or its representative with an appropriate written authorization to obtain records pertaining to the claim.

(12) Upon written request by the claimant or claimant's representative, the employer shall provide copies of the employer's records pertaining to the claim within three business days. Extensions may be granted to the employer, but not to exceed fourteen days from the date of the request, with agreement of the claimant or claimant's representative. An employer may provide copies in electronic form, or through electronic access to the records, with agreement of the requesting party. Except as provided for in this rule, an employer may not assess a fee or charge the claimant or the claimant's representative for the cost of providing a copy of the employer's records pertaining to the claim. Where the employer has previously provided a copy of the record or records pertaining to the claim to the claimant or the claimant's representative, the employer may charge a fee for the copies. The employer's fee shall be based upon the actual cost of furnishing such copies, not to exceed twenty-five cents per page.

(13) The employer shall inform a claimant, and the bureau, in writing, within thirty days from the filing of the claim with the employer, as to what conditions the employer has recognized as related to the injury or occupational disease and what conditions, if any, the employer has denied. The same timeframe applies to medical only claims.

(14) The employer shall post notices of its self-insuring status indicating the location for the filing of a claim and the job title and department of the employees designated by the employer to be the person or persons responsible for the processing of workers' compensation claims.

(15) A public employer, except for a board of county commissioners described in division (G) of

section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall comply with the section 4123.353 of the Revised Code.

(16) A self-insuring employer is prohibited from entering into a professional employer organization agreement as defined in section 4125.01 of the Revised Code, or an alternate employer organization agreement as defined in section 4133.01 of the Revised Code, as a client employer.

(M) If a state insurance fund employer or a succeeding employer, as described in rule 4123-17-02 of the Administrative Code, applies for the privilege of paying compensation and benefits directly, by transferring from the state insurance fund to self-insurance, the actuary of the bureau shall determine the amount of the liability of such employer to the bureau for its proportionate share of any deficit in the fund. To determine an employer's liability under this rule, the actuary of the bureau shall develop a set of factors to be applied to the pure premium paid by an employer on payroll for a seven-year period, as described in this paragraph. The factors shall be based on the full past experience of the industrial commission and the bureau as reflected in the most recent calendar year end audited combined financial statement of the industrial commission and the bureau, and shall also accommodate any projected change in the financial condition of the fund for the current calendar year, or any additional period for which an audited combined financial statement is unavailable. The factors shall be revised annually effective July first based on the most recent calendar year audited combined financial statement and the projected change in the financial condition of the fund in the current calendar year or any additional period for which an audited combined financial statement is unavailable. The annually revised factors shall be adopted by rule 4123-17-40 of the Administrative Code. Factors effective July first of each year shall apply to all applications for self-insurance filed on or after July first of that year through June thirtieth of the following year. The revised factors shall be applied to the pure premium paid by the employer on payroll for the seven calendar accident years ending December thirty-first of the year preceding the year in which the factors are adopted under rule 4123-17-40 of the Administrative Code. In the event the audited combined financial statement of the industrial commission and the bureau reveals that no deficit exists, or in the event the application of the factors adopted by rule 4123-17-40 of the Administrative Code yields a negative number, the employer will incur no liability under this paragraph, but will not receive any refund for prior premiums paid except for those matters specifically addressed in paragraph (M)(2) of this rule. As used in this rule, "pure premium paid"

means premiums actually paid under a base rating plan or an experience rating plan and minimum premium paid under a retrospective rating plan. It does not include premiums billed for actual claims costs, including reserves at the end of ten years, under a retrospective rating plan. Obligations under a retrospective rating plan remain the responsibility of the employer regardless of the employer's status. The same principles shall apply to cases of a merger by a self-insuring employer and a state insurance fund employer under the self-insuring employer's status. In addition, the following provisions shall apply:

(1) Within thirty days of the receipt from the employer of the necessary forms and of a separate statement of assets and liabilities, the bureau will forward to the employer a letter stating the amount of liability (if any) due the state insurance fund as outlined in this rule and a copy of the computation of such liability (if any).

(2) Within thirty days of the date of mailing of the letter by the bureau as outlined in paragraph (M)(1) of this rule, the employer shall reply by a letter, acknowledging that the employer agrees with the amount of liability specified in the letter and that there are no protests or claims hearings pending which could affect the amount of the liability. If any such matters are pending and would affect the liability, they must be detailed and set forth in the letter from the employer. This letter must also acknowledge that any protest letters, applications for disability relief as provided in section 4123.343 of the Revised Code, or other requests affecting the employer's state fund insurance experience filed subsequent to the date of this letter shall be considered invalid for both rebate of premium on state insurance fund experience and the calculation of liability cited in this rule. This letter must also specify the suggested effective date of the transfer to self-insurance which the employer requests, subject to paragraph (B) of this rule which requires that the effective date must be at least ninety days after the date the application forms are received by the bureau. Failure to comply with the requirements set forth herein shall terminate further consideration of the application.

(3) Subsequent to the approval of the employer's self-insured status and the effective date thereof by the administrator of workers' compensation, the bureau shall issue a settlement sheet statement containing the adjustment required above and billing for an advance deposit as required by other rules of the bureau. The employer shall pay the amounts required by this paragraph, pay the contribution to the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code, submit a performance surety bond or additional security, if required by the bureau, and

estimated final payroll report as a state insurance fund employer, all within thirty days of the date of the mailing of the self-insured certificate.

(4) The final adjustments of all premiums due the state insurance fund for the final payroll reports and final bureau audit, if any, as well as the pending protests letters, applications for disability relief as provided in section 4123.343 of the Revised Code, or other requests affecting the risk's state insurance fund experience as specified in paragraph (M)(2) of this rule, shall all be settled and paid within six months from the date of transfer from the state insurance fund to self-insured status. Employer's records must be made available promptly for final audit which must also be completed within six months from the date of the transfer from the state insurance fund to self-insurance.

(N) If there is any change involving additions, mergers, deletions of entities, or ownership changes of a self-insuring employer, which would materially affect the administration of the employer's self-insuring employer program or the number of employees included in such program, the employer shall notify the bureau's self-insured department within thirty days after the change occurs. Based upon the information provided or additional information requested by the bureau, the bureau will determine the effect of the change on the employer's self-insuring employer status, the adequacy of the employer's contribution to the self-insuring employers' guaranty fund, and the need for additional security.

(O) If a public employer granted the privilege of self-insurance elects to provide coverage for volunteers and probationers performing services for the political subdivision, the employer shall include such volunteers and probationers as employees to be covered under the self-insurance policy. A public employer's coverage of a work-relief employee under Chapter 4127. of the Revised Code shall be included in the public employers self-insurance policy.

(P) If a self-insuring employer or applicant elects to secure excess loss coverage which undertakes to indemnify a self-insuring employer against all or part of such employer's loss as provided for in division (B) of section 4123.82 of the Revised Code, that self-insuring employer or applicant shall:

(1) Name the bureau as a beneficiary to the excess loss coverage contract in the event the bureau takes over administration and payment of the claims of the self-insuring employer or applicant;

(2) Provide a complete copy of the excess loss coverage contract, including the declaration page, to the bureau's self-insured department; and

(3) In the event of default by the self-insuring employer or applicant, the excess loss coverage must indemnify the bureau for all compensation, benefits, and disabled workers' relief fund costs incurred on claims covered by the excess loss coverage contract.

(Q) If a self-insuring employer or applicant elects to secure excess loss coverage which undertakes to indemnify a self-insuring employer against all or part of such employer's loss as provided for in division (B) of section 4123.82 of the Revised Code, this election cannot be used to satisfy any security requirements of self-insurance as provided in sections 4123.35 and 4123.351 of the Revised Code.