

WSR 25-02-118
EXPEDITED RULES
DEPARTMENT OF
LABOR AND INDUSTRIES
[Filed January 2, 2025, 8:12 a.m.]

Title of Rule and Other Identifying Information: Self-insurance reserve fund. Chapter 296-15 WAC, Workers' compensation self-insurance rules and regulations.

Purpose of the Proposal and Its Anticipated Effects, Including Any Changes in Existing Rules: In 2023, Washington state lawmakers enacted SB 5084, chapter 110, Laws of 2023, which created the self-insurance reserve fund to hold self-insured employers' second injury fund assessments and other prefunded pension obligations. The proposed amendments will update two rules governing the self-insurance program, aligning them with statutory changes required under SB 5084. The proposed formatting changes to WAC 296-15-171 will also make it easier to read.

Proposed amendments to WAC 296-15-171:

- Clarifying that self-insurers who choose to finance pensions with a surety bond will be required to deposit cash into the new self-insurance reserve fund.
- Minor formatting changes to improve readability.

Proposed amendments to WAC 296-15-225:

- Clarifying that self-insured employers' second injury fund assessments will be recorded in the second injury assessment account once the self-insurance pension fund is implemented.

Reasons Supporting Proposal: These amendments meet the criteria for expedited adoption as set forth in the following subsections of RCW 34.05.353:

- Subsection (1)(c): "The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect."
- Subsection (1)(d): "The content of the proposed rules is explicitly and specifically dictated by statute."

Statutory Authority for Adoption: RCW 51.14.077, 51.14.120(7), 51.14.150(4), 51.14.160, 51.44.040(3), 51.44.070, and 51.44.150.

Statute Being Implemented: RCW 51.44.155, 51.16.120, 51.32.242, 51.44.070, 51.44.073, 51.44.080, 51.44.100, and 51.44.140.

Rule is not necessitated by federal law, federal or state court decision.

Name of Proponent: Washington state department of labor and industries, governmental.

Name of Agency Personnel Responsible for Drafting, Implementation, and Enforcement: Ashley Frank, Tumwater, Washington, 360-902-6566.

This notice meets the following criteria to use the expedited adoption process for these rules:

Corrects typographical errors, makes address or name changes, or clarifies language of a rule without changing its effect.

Content is explicitly and specifically dictated by statute.

Explanation of the Reason the Agency Believes the Expedited Rule-Making Process is Appropriate: This notice meets the following criteria to use the expedited adoption process for these rules: The proposed rules make name changes and clarify language without changing its effect (RCW 34.05.343 (1)(c)). The proposed rules include content explicitly dictated by statute (RCW 34.05.353 (1)(d)).

NOTICE

THIS RULE IS BEING PROPOSED UNDER AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS USE OF THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO Ashley Frank, Department of Labor and Industries, P.O. Box 44000, Olympia, WA 98504-4000, phone 360-902-6566, fax 360-902-4204, email Ashley.Frank@Lni.wa.gov, BEGINNING January 3, 2025, 8 a.m., AND RECEIVED BY March 3, 2025, 5 p.m.

January 2, 2025
Joel Sacks
Director

OTS-5999.1

AMENDATORY SECTION (Amending WSR 99-23-107, filed 11/17/99, effective 12/27/99)

WAC 296-15-171 Surety for a self insured pension or fatality claim. (1) **When must a self insurer provide funding for a permanent total disability (pension) or fatality claim?** Within ((~~sixty~~)) 60 days of receipt of the department's order, the self insurer must fund the pension or fatality claim.

(2) **What types of funding may a self insurer use for a pension or fatality claim?** A self insurer may fund a pension or fatality claim with ((~~cash~~)):

(a) Cash funding into the self-insurance reserve fund;

(b) A bond on L&I form F207-065-000((~~r~~)) and a three-month deposit of benefits into the self-insurance reserve fund;

(c) Annuity on L&I form F207-129-000; or

(d) Assignment of account on L&I form F207-058-000.

If the pension benefit level increases, the self insurer must increase the surety level or provide additional surety to cover the deficiencies.

(3) **What is an annuity?** An annuity is a contract with an insurance company where the insurance company agrees to pay to the department a specific amount covering the lifetime of a claimant.

(4) **What is an assignment of account?** A self insurance assignment of account/certificate of deposit is a legal instrument executed by the self insurer and an approved commercial banking institution in Washington. The assignment of account must:

(a) Identify an existing account on deposit with the approved banking institution in the name of the self insurer. The existing assigned account must contain the amount determined necessary by the department to cover the pension benefits on the specific claim beyond all other assignments on that account. A separate assignment of account must be established for each pension.

(b) Bind the self insurer to maintain a balance in the assigned account at least equal to the current present cash value of the pen-

sion benefits on the claim and beyond all other assignments on the account for the life of the claim. Present cash values of the assigned account/certificate of deposit will be revised annually by the department. Quarterly pension payments made from the assigned account must not reduce the account balance below the present cash value of the pension beyond all other assignments on the same account.

(c) Authorize the department, if the self insurer defaults, to immediately withdraw up to the entire amount assigned to the pension claim from the assigned account/certificate of deposit. The department will take this action without notifying the defaulting self insurer.

(d) If the bank holding the assignment of account/certificate of deposit fails, the self insurer is responsible for the entire amount of the pension or fatality obligation. Within (~~thirty~~) 30 days, the self insurer must:

(i) Establish a new assignment of account/certificate of deposit, bond; or

(ii) Deposit cash into the self-insurance reserve fund.

(e) If the self insurer ends its self insurance status, the assignment of account/certificate of deposit will be placed with the department. The department will determine the required reserve for the pension or fatality claim, and any excess will be returned to the former self insurer.

AMENDATORY SECTION (Amending WSR 10-20-132, filed 10/5/10, effective 11/5/10)

WAC 296-15-225 Self-insurance second injury fund assessment.

(1) The second injury fund assessment is based on anticipated second injury fund costs. The fund is used to relieve employers' costs related to pensions that result from the combined effects of the industrial injury and another prior injury, preferred worker claims, and job modifications. The second injury fund assessment is experience rated based on a self-insurer's actual usage of the second injury fund in the previous three fiscal years. See RCW 51.44.040 for more information about experience rating. The department may estimate claims cost data when actual data from an employer has yet to be provided.

The department determines a self-insurer's second injury fund assessment rate annually for each fiscal year. The assessment is paid by active and inactive self-insurers quarterly at the same time a self-insurer submits its quarterly report.

(2) Self-insurers' relief from and contributions to the second injury fund will be recorded in (~~an account separate from the state fund~~) the second injury assessment account. The self-insurers' second injury fund must maintain a (~~two hundred thousand dollar~~) \$200,000 minimum balance.

(3) The department uses the following process to determine the second injury fund assessment.

Definitions:

"A" = Individual self-insurer's total second injury fund costs (usage) for the previous three fiscal years.

"B" = All self-insurer's total second injury costs (usage) for the previous three fiscal years.

"C" = Individual self-insurer's claim costs for the previous three fiscal years.

"D" = Total self-insured claim costs for the previous three fiscal years.

"E" = Individual self-insurer's experience factor.

"F" = Individual self-insurer's claim costs for the previous fiscal year.

"G" = Total self-insured claim costs for the previous fiscal year.

(a) The department calculates the **preliminary base rate** necessary to ensure collection of adequate funds. The preliminary base rate is the estimated usage of the second injury costs for the coming fiscal year divided by the total estimated claims costs. The preliminary base rate is assessed to self-insurers certified after the fiscal year used for calculation.

(b) The department calculates the **preliminary adjusted rate**, by adjusting the preliminary base rate for over or under collections from prior periods. This rate is assessed to any self-insurer certified during or prior to the fiscal year used for calculation, and to any self-insurer who has voluntarily surrendered its self-insurance certificate.

(c) The department determines an **experience factor** for each self-insurer.

(i) The department calculates the self-insurer's **second injury fund usage share** by dividing the self-insurer's total second injury fund costs (usage) for the previous three fiscal years by the total second injury fund costs (usage) for all self-insurers in the previous three fiscal years.

$$\text{Second injury fund usage share} = A/B$$

(ii) The department calculates the self-insurer's **claims cost usage share** by dividing a self-insurer's claim costs over the previous three fiscal years by the total claim costs for all self-insurers in the previous three fiscal years.

$$\text{Claims cost usage share} = C/D$$

(iii) The department calculates the self-insurer's **experience factor** by adding the second injury fund usage share to the claim cost usage share and dividing by 2, then dividing this total by the claims cost usage share.

$$\begin{aligned} &\text{Self-insurer's experience factor} \\ (E) &= [((A/B) + (C/D))/2] / (C/D) \end{aligned}$$

(d) The department calculates the **weighted average factor** to determine what adjustments to the preliminary base and adjusted rates may be necessary because of prior over or under collection for the fund. The weighted average factor is the sum for all self-insurer's of each self-insurer's **experience factor** multiplied by their self-insured claim cost for the previous fiscal year, divided by the total self-insured claim costs for the previous fiscal year.

$$\text{Weighted average factor} = [(E \times F) \text{ sum all self-insurers}] / G$$

(e) The department determines the **final base rate** and the **final adjusted rate** for the fiscal year by dividing the preliminary base rate and the preliminary adjusted rate ((a) and (b) of this subsection) by the weighted average factor.

(f) The department determines the second injury fund assessment rate for each self-insurer by multiplying the self-insurer's experience factor by either the final base rate or the final adjusted rate.

(g) The total assessment due each quarter is calculated by multiplying the self-insurer's second injury fund assessment rate by the self-insurer's total claims costs during that quarter.

Reviser's note: The brackets and enclosed material in the text of the above section occurred in the copy filed by the agency and appear in the Register pursuant to the requirements of RCW 34.08.040.