

WORKERS COMPENSATION SELF-INSURANCE INFORMATION

K-WC 144 (Rev. 5-19)

DOCUMENTS:

- K-WC 20 – Bank Fact Sheet
- K-WC 105 – Application Oath to Become a Self-Insurer
- K-WC 120 – Application for Self-Insurance
- K-WC 121 – Assessment Information
- K-WC 129 – Excess Coverage Certificate of Insurance
- K-WC 130 – Letter of Credit
- K-WC 130a – Trust Operational Agreement
- K-WC 131 – Surety Bond
- K-WC 131a – Amendatory Rider to Surety Bond
- K-WC 132 – Indemnity & Guaranty Agreement and Resolution
- K-WC 133 – Non-admitted Insurer (Statement of Insured)
- K-WC 144 – Workers Compensation Self-Insurance Information
- K-WC 158 – Workers Compensation - Liability Buildup
- K-WC 309 – Why Audited Financial Statements are Required by the Division of Workers Compensation
- K-WC 1441 – Information for Self-Insured Employers on the Kansas Workers Compensation Act

TERM

An acceptable company is approved for one year. The permit is reviewed each year upon receipt of the completed application form K-WC 120 and current financial data.

TIME REQUIREMENT

Allow 60 calendar days for application approval.

SUBSIDIARIES

A subsidiary may be self-insured if parent company is not; however, an Indemnity and Guaranty Agreement must be submitted by the parent company to guarantee payment. A Resolution of the Board of Directors authorizing the agreement must be attached to the agreement. Five year audited financial data of the ultimate parent company must be furnished for new applicants.

ADMINISTRATIVE COSTS PREMIUMS/TAXES

None

ASSESSMENTS

Each year during January, the Division sends form K-WC 92 to each self-insurer asking the amount of losses paid under law for the preceding calendar year. Based on that information, form K-WC 94 is sent during May as notification of the assessment to be levied against the losses paid. The assessment shall be paid prior to July 1 of each year.

Inquiries regarding the Kansas Workers' Compensation Fund should be addressed to:

Workers' Compensation Fund
Kansas Insurance Department
420 SW 9th St.
Topeka, KS 66612-1678
Phone (785) 296-7062

POST ASSESSMENT FUND INSOLVENT EMPLOYER

See included K.S.A. 44-532a.

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QUALIFYING FEES

May be required if an actuarial analysis is necessary to determine outstanding indemnity, medical loss adjustment expenses and safety loading. This will be done by a private consulting firm approved by the Division of Workers Compensation.

EXCESS COVERAGE

Excess insurance coverage is required. Excess company must be admitted to write business in Kansas and excess policy must be approved by the Kansas Insurance Department. If an admitted carrier will not provide coverage, the risk can be placed with a non-admitted insurer if the company appears on the Kansas Insurance Department Non-admitted Insurers Listing. Form K-WC 133, Non-admitted Insurer (Statement of Insured) must be signed and filed.

**SURETY BONDS/
LETTERS OF CREDIT**

Bonds or Letters of Credit for posting Security are required for all self-insureds except cities, counties, school districts, area vocational technical schools and community junior colleges. Bonding company must be authorized to write in Kansas. Cities and counties should refer to K.S.A. 44-505b and 44-505f for instructions. A school district, area vocational technical school or community junior college should refer to K.S.A. 44-505e.

Banks issuing Letters of Credit must be approved by the division prior to issuance. Bank must submit a completed Bank Fact Sheet and the latest Audited Financial Report for review and acceptance.

MISCELLANEOUS

If there are neither legal heirs nor dependents either totally or partially dependent upon the employee, \$18,500 is paid to the Commissioner of Insurance, Kansas Insurance Department [K.S.A. 44-510b(d) and K.S.A. 44-570(a)].

The expense of any hearing required by a self-insurer to determine the amount of security in regard to or termination of a permit is assessed upon the self-insurer.

Currently, it appears that a self-insured applicant should have a minimum manual workers compensation premium of \$250,000 - \$300,000 prior to the experience modification being applied for self-insurance to be feasible; can be on an interstate or intrastate basis.

In addition, the self-insured applicant should have a minimum of 100 employees; can be on an interstate or intrastate basis.

An employer shall have been in business (doing business under the present corporate identity) for not less than five years and shall demonstrate sufficient financial strength and liquidity of the business to assure that all obligations will be promptly met. An employer in business less than five years may be considered if its liability is guaranteed by a parent corporation. New applicants must submit five years of the most recent audited financial reports.

For more detailed information about self-insurance, refer to K.S.A. 44-532 and Regulation 51-14-4 which are included.

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POST ASSESSMENT FUND FOR INSOLVENT INSURERS

K.S.A. 44-532a. Liability of workers compensation fund for uninsured insolvent employers; cause of action against such employers. (a) If an employer has no insurance to secure the payment of compensation as provided in subsection (b) (1) of K.S.A. 44-532 and amendments thereto, and such employer is financially unable to pay compensation to an injured worker as required by the workers compensation act, or such employer cannot be located and required to pay such compensation, the injured worker may apply to the director for an award of the compensation benefits, including medical compensation, to which such injured worker is entitled, to be paid from the workers compensation fund. If the director is satisfied as to the existence of the conditions prescribed by this section, the director may make an award, or modify an existing award, and prescribe the payments to be made from the workers compensation fund as provided in K.S.A. 44-569 and amendments thereto. The award shall be certified to the commissioner of insurance, and upon receipt thereof, the commissioner of insurance shall cause payment to be made to the employee in accordance therewith.

(b) The commissioner of insurance, acting as administrator of the workers compensation fund, shall have a cause of action against the employer for recovery of any amounts paid from the workers compensation fund pursuant to this section. Such action shall be filed in the district court of the county in which the accident occurred or where the contract of employment was entered into.

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SELF-INSURED STATUTE

K.S.A. 44-532. (a) Where the payment of compensation of the employee or the employee's dependents is insured by a policy or policies, at the expense of the employer, or the employer is a member of a qualified group-funded workers compensation pool, the insurer or the qualified group-funded workers compensation pool shall be subrogated to the rights and duties under the workers compensation act of the employer so far as appropriate, including the immunities provided by K.S.A. 44-501, and amendments thereto.

(b) Every employer shall secure the payment of compensation to the employer's employees by insuring in one of the following ways:

- (1) By insuring and keeping insured the payment of such compensation with an insurance carrier authorized to transact the business of workers compensation insurance in the state of Kansas;
- (2) by showing to the director that the employer carries such employer's own risk and is what is known as a self-insurer and by furnishing proof to the director of the employer's financial ability to pay such compensation for the employer's self;
- (3) by maintaining a membership in a qualified group-funded workers compensation pool.

The cost of carrying such insurance or risk shall be paid by the employer and not the employee.

(c) The knowing and intentional failure of an employer to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section is a class A misdemeanor.

(d) In addition, whenever the director has reason to believe that any employer has engaged or is engaging in the knowing and intentional failure to secure the payment of workers compensation to the employer's employees as required in subsection (b) of this section, the director shall issue and serve upon such employer a statement of the charges with respect thereto and shall conduct a hearing in accordance with the Kansas administrative procedure act, wherein the employer may be liable to the state for a civil penalty in an amount equal to twice the annual premium the employer would have paid had such employer been insured or \$25,000, whichever amount is greater.

(e) The director shall not assess such a fine against a self-employed subcontractor for failure of the subcontractor to secure compensation for the subcontractor personally, however, the director shall enforce the provisions of this section for failure of the subcontractor to secure compensation for any other employee of the subcontractor as otherwise provided by law.

(f) Any civil penalty imposed or final action taken under this section shall be subject to review in accordance with the act for judicial review of agency actions in the district court of Shawnee county.

(g) All moneys received under this section for costs assessed or monetary penalties imposed shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the workers compensation fund.

(h) (1) Every insurance carrier writing workers compensation insurance for any employment covered under the workers compensation act shall file, with the director or the director's designee, written notice of the issuance, nonrenewal or cancellation of a policy or contract of insurance, or any endorsement, providing workers compensation coverage, within 10 days after such issuance, nonrenewal or

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cancellation. Every such insurance carrier shall file, with the director, written notice of all such policies, contracts and endorsements in force on the effective date of this act.

- (2) Every employer covered by the workers compensation act who is a qualified self-insurer shall give written notice to the director or the director's designee, if such employer changes from a self-insurer status to insuring through an insurance carrier or by maintaining a membership in a qualified group-funded workers compensation pool, such notice to be given within 10 days after the effective date of such change. Every self-insurer shall file with the director annually a report verifying the employer's continuing ability to pay compensation to the employer's employees.
 - (3) Every employer covered by the workers compensation act who is a member of a qualified group-funded workers compensation pool shall give written notice to the director or the director's designee, if such employer changes from a group-funded workers compensation pool to insuring through an insurance carrier or becoming a self-insurer, such notice to be given within 10 days after the effective date of such change.
 - (4) The mailing of any written notice or report required by this subsection (d) in a stamped envelope within the prescribed time shall comply with the requirements of this subsection.
 - (5) The director shall provide by regulation for the forms of written notices and reports required by this subsection (d).
- (i) As used in this section, "qualified group-funded workers compensation pool" means any qualified group-funded workers compensation pool under K.S.A. 44-581 through 44-591, and amendments thereto, or any group-funded pool under the Kansas municipal group-funded pool act which includes workers compensation and employers' liability under the workers compensation act.
- (j) A private firm shall not be eligible to apply to become a self-insurer unless it has been in continuous operation for at least five years or is purchasing an existing self-insured Kansas firm, plant or facility and the operation of the purchased firm, plant or facility:
- (1) Has been in continuous operation in Kansas for at least 10 years;
 - (2) has generated an after-tax profit of at least \$1,000,000 annually for the preceding three consecutive years; and
 - (3) has a ratio of debt to equity of not greater than 3.5 to 1. As used in this subsection, "debt" means the sum of long-term borrowing maturing in excess of one year plus the current portion of long-term borrowing plus short-term financial institution borrowing plus commercial paper borrowing, and "equity" means the sum of the book value of stock plus paid-in capital plus retained earnings. The method for calculating the amount of security required of self-insureds shall be reviewed by an actuary every five years, beginning in fiscal year 1997. The costs for these actuarial studies shall be paid from the workers compensation fee fund.
- (k) A corporation or other entity whose current identity is attributable to a merger or other transformation whereby the whole or a substantial part of a previous entity's assets and income have been transferred to it, and its liabilities have not increased beyond the financial review requirements of the director, which qualified under its previous identity as a self-insurer under other provisions of this statute, and amendments thereto, may apply for renewal as a self-insurer under its new name. The director may grant the application for renewal if satisfied that the new entity meets all necessary financial criteria for renewal that would have been applied to the previous self-insured entity. An application under these provisions shall be limited to an entity seeking renewal based upon the prior self-insured status of another entity or entities.

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DIRECTOR'S REGULATION

K.A.R. 51-14-4. Self-Insurance. An employer operating under the act shall only become qualified as a self-insurer through the process of applying to the division of workers' compensation for a self-insurance permit. An employer making an application shall, upon the request of the director, submit information that the director may require to effectively evaluate the financial status of the employer. An application for a self-insurance permit or a self-insured employer seeking a renewal permit, shall, if the director requests, pay the fees of a consultant approved by the division of workers' compensation to determine if the employer has the financial ability to become self-insured or to have his self-insurance permit renewed.

The applicant for a new permit or an employer seeking a renewal permit shall furnish to the division of workers compensation a bond written by a surety company admitted to the state, and authorized by the Kansas insurance department to write surety bonds as required by the division. The bond shall be in an amount to adequately insure that if the employer should become insolvent, payments on all claims will be guaranteed to the injured workers.

The applicant for a new permit or an employer seeking a renewal permit shall furnish a certificate of excess insurance in an amount that may be required by the division of workers' compensation, and the division shall be notified by the self-insured and insurance carrier at least 20 days prior to the cancellation or non-renewal of any excess insurance policy. The excess workers' compensation insurance shall be in conformity with Kansas insurance statutes and regulations of the Kansas insurance commissioner.

An applicant for a new permit or an employer seeking a renewal permit shall set up financial reserves, furnish letters of credit or provide other security in amounts and in a manner directed by the division of workers' compensation to insure the payment of all workers' compensation claims as may be required by the Kansas workers' compensation act.

An employer shall furnish to the division of workers' compensation any other information the division may request which will aid in fairly and adequately evaluating an application for a new or a renewal permit for self-insurance.

The self-insurance permit of any employer shall expire on the anniversary date of the issuance of a self-insurance permit and any anniversary date thereafter, except when it has been renewed by the division prior to that date. The employer shall furnish any information that the division of workers' compensation may require to effectively evaluate an application to renew a self-insurance permit at least 45 days prior to the anniversary date of the original permit.

An employer whose original or renewal application for self-insurance has been denied, or who takes exception to insurance or reserve requirements may request a reconsideration by the division of workers' compensation. The request shall be made within 20 days of the receipt by the employer of the information which the applicant wishes reconsidered. If the employer desires to have a record of the hearing, the reporter's costs shall be assessed to the employer. (Authorized by K.S.A. 44-573; implementing K.S.A. 44-505b, 44-505e, 44-505f, 44-532; effective Feb. 15, 1977; amended May 1, 1978; amended May 1, 1983; amended May 1, 1984.)