**Section 9100.40 Requirements for Approval as a Self-Insurer**

a) Application

1) Initial Application

A) Any private employer under the Workers' Compensation Act [820 ILCS 305] (the Act) and/or the Workers' Occupational Diseases Act [820 ILCS 310] (WODA) who desires to be approved as a self-insurer shall file with the Commission an Application for Approval on a form prescribed by the Commission and the most current 3 years' audited financial statements. *A private employer does not include group self-insured employers under Section 4(a) of* the Act *or Section 4(a) of WODA or the State of Illinois, any political subdivision of the State, unit of local government or school district, or any other public authorities or quasi-governmental bodies, including any subunits of the foregoing entities.* (Section 4a-2(c) of the Act) Any reference in this Part to workers' compensation insurance coverage shall encompass coverage under both the Act and WODA.

B) *The application and current financial statements shall be signed and sworn to by the president or vice-president and secretary or assistant secretary of the employer, if it is a corporation, or by all of the partners, if it is a copartnership, or by the owner if it is neither a copartnership nor a corporation.* (Section 4(a)(1) of the Act)

C) In the event the employer does not have audited financial statements, the employer must submit financial statements that have been prepared by an outside accounting firm.

D) Each controlled employer or subsidiary requesting approval as a self-insurer shall provide the current financial statements of the parent corporations or each of its controlling persons designated by the Commission.

i) A subsidiary means any entity in which another company, directly or indirectly, owns, controls or holds, with the power to vote a majority (more than 50 percent) of the outstanding voting securities of the company.

ii) Controlled employer means a not-for-profit corporation with respect to which an individual or another entity has the right either to elect or appoint, directly or indirectly, a majority of the directors, trustees or other governing body of a not-for-profit corporation, or has the right to approve or disapprove, directly or indirectly, the persons appointed as a majority of the directors, trustees or other governing body of a not-for-profit corporation.

iii) Controlling person means an individual or entity that has the right to elect or appoint, directly or indirectly, a majority of the directors, trustees or other governing body of a not-for-profit corporation, or has the right to approve or disapprove, directly or indirectly, the persons appointed as a majority of the directors, trustees or other governing body of a not-for-profit corporation.

E) *All initial applications and financial statements shall be submitted at least 60 days prior to the requested effective date of self-insurance.* (Section 4(a)(1) of the Act)

F) All initial applications must include evidence of current workers' compensation insurance coverage that shall be maintained until final approval as a self-insurer is granted.

G) Each private employer applying for self-insurance shall indicate how it will service its self-insurance program. The employer shall provide adequate facilities for the investigation, administration and payment of claims or shall contract with a service company possessing the personnel and facilities to provide those services. In determining whether facilities are adequate for the investigation, administration and payment of claims, the following shall be considered:

i) whether there is personnel experienced in the adjudication of workers' compensation claims;

ii) whether there is a reporting system for workers' compensation claims;

iii) whether the reporting system is automated and the frequency of reports generated by the system;

iv) the response system to claims filing; and

v) whether a current estimate of the expected total cost for each claim is established based on facts of each claim, medical information, and provisions of the Act. This estimation is not trended, based on discounted present value, or actuarially developed.

H) If the employer has contracted with a service company for the administration of claims, a copy of the contract shall be submitted with the initial application.

2) Renewal Application

A) Each private self-insurer shall, upon notice from the Commission, file annually an application to continue the self-insurance privilege. The renewal application shall be on a form prescribed by the Commission and shall be accompanied by thefinancial statements described in subsection (a)(1)(A). The renewal application and financial statements shall be signed and sworn to in accordance with subsection (a)(1)(B). Each subsidiary or controlled employer requesting approval as a self‑insurer shall provide the current financial statement of its parent corporations or controlling persons designated by the Commission.

B) The self-insurer shall indicate any change in how it will service its self-insurance program. If the employer has contracted with a service company for the administration of claims, a copy of the current contract shall be submitted with the renewal application.

b) Application Fee

1) *Each private employer applying for self-insurance and each private self-insurer applying for renewal* (continuation) *of the self-insurance privilege shall pay a nonrefundable application fee of $500 that shall be deposited upon receipt by the Commission into the Self-Insurers Administration Fund.* (Section 4a-4(a) of the Act)

2) If the applicant is a corporation, *an application fee shall be required of each corporation and each and every corporate subsidiary.* (Section 4a-4(a) of the Act) If the applicant is a not-for-profit corporation employer, an application fee shall be required for each and every controlling person and each and every employer applying for the self-insurance privilege or the renewal of the self-insurance privilege.

3) The application fee shall be paid by check or money order, payable to the Self-Insurers Administration Fund.

c) Review of Application

1) *Within 45 days after receipt of an initial application or an application to renew the self-insurance privilege, the Self-Insurer's Advisory Board* (the Board) *shall review* or see to the review of the application *and submit its recommendations for disposition to the chairman of the Commission* (the Chairman). (Section 4(j) of the Act)

2) The review of the application shall include, but not be limited to, consideration of the earned points on the financial ratios set forth in this subsection (c)(2):

A) Earned Points on Financial Ratios

i) Current Assets to Current Liabilities

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2 | **:** | 1 | = | 6 points |
| 1.75 | **:** | 1 | = | 5 points |
| 1.6 | **:** | 1 | = | 4 points |
| 1.4 | **:** | 1 | = | 3 points |
| 1.25 | **:** | 1 | = | 2 points |
| 1.1 | **:** | 1 | = | 1 points |
| 1 | **:** | 1 | = | 0 points |

 (A negative ratio, one in which current assets are less than current liabilities, may be considered a reason to reject a new application.)

ii) Capital & Retained Earnings (Net of Treasury Stock) to Sales (Less Discounts)

|  |  |  |
| --- | --- | --- |
| 20% | = | 6 points |
| 17.5% | = | 5 points |
| 13.5% | = | 4 points |
| 10% | = | 3 points |
| 8.5% | = | 2 points |
| 7% | = | 1 points |
| 5% | = | 0 points |

iii) Capital & Retained Earnings to Long Term Debt

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| 2 | **:** | 1 | = | 6 points |
| 1.75 | **:** | 1 | = | 5 points |
| 1.6 | **:** | 1 | = | 4 points |
| 1.4 | **:** | 1 | = | 3 points |
| 1.25 | **:** | 1 | = | 2 points |
| 1.1 | **:** | 1 | = | 1 points |
| 1 | **:** | 1 | = | 0 points |

B) An employer who earns a total of 18 points in the 3 financial ratios in subsection (c)(2)(A) in each year of the most current 3 years' audited financial statements and has been self-insured for a minimum of 3 consecutive years may be deemed to have satisfied the Commission of its financial strength to meet its workers' compensation obligations without the necessity of furnishing security, indemnity or bond or making some other provision satisfactory to the Commission for securing its workers' compensation obligations pursuant to subsection (c)(3).

C) A total of 9 to 18 points earned in the 3 financial ratios in subsection (c)(2)(A) shall create a rebuttable presumption that the employer's application should be approved conditional upon the furnishing of appropriate security or other means satisfactory to the Commission for securing its workers' compensation obligations pursuant to subsection (c)(3).

D) The Board may recommend for approval applicants who earn less than 9 points in the financial ratios of subsection (c)(2)(A) if the employer's application and financial statement, together with appropriate security or other means satisfactory to the Commission for securing its workers' compensation obligations pursuant to subsection (c)(3), demonstrate the ability of the employer to meet its obligations under the Act/WODA.

3) Security

When an applicant is required to furnish security or provide some other means satisfactory to the Commission to guarantee payment of its workers' compensation obligation, the furnishing of that security or other provision shall be a condition precedent to the approval of the initial or renewal application for self-insurance. The Chairman shall also require that the applicant further secure payment of liabilities under the Act/WODA by obtaining a policy of excess workers' compensation insurance on such form as may be required by the Commission.

A) Security Determination

i) The amount of the security shall be based upon, but not be limited to, such criteria as the employer's financial strength, industry, the amount of excess insurance, and demonstrated loss experience.

ii) An employer's financial strength shall be determined by applying the financial ratio summarization in this subsection (c)(3)(A). The financial ratio summarization is based upon the total number of earned points as calculated by applying the financial ratios in subsection (c)(2)(A). A financial factor (percentage) is assigned to the financial ratio summarization. The applicable financial factor is applied in determining the amount of security in subsections (c)(3)(B) and (C).

|  |
| --- |
| Financial Ratio Summarization |
| Financial Factor | Earned Points |
|  |  |  |
| 16 - 18 points | = | 35% |
| 14 - 15 points | = | 40% |
| 12 - 13 points | = | 60% |
|  9 - 11 points | = | 70% |

B) Security/Loss Fund Determination

i) When the employer submits audited financial statements containing an unqualified opinion, the security requirement shall be determined by using the highest amount of security obtained after applying the following formulas:

Minimum security to be not less than $200,000.

RESERVE FORMULA

Total outstanding loss reserves are multiplied by the applicable trending factor. In the event that an employer's losses are affected by growth or size of the entity, the reserves may be equalized. The following formula is then applied:

total outstanding loss reserves (loss fund) x applicable trending factor x applicable financial factor = security.

PAID LOSS FORMULA

Paid losses for up to each of the last 5 years are multiplied by the applicable trending factors. The total of paid losses is divided by the number of years used to obtain the average yearly paid loss. However, in the event that an employer's losses are affected by growth or size of the entity, the paid losses may be equalized. The following formula is then applied:

average yearly paid loss (loss fund) x applicable trending factor x applicable financial factor = security.

ii) If the employer submits financial statements that do not contain an unqualified opinion or are not audited, the security requirements shall be determined by using the highest amount of security obtained after applying the following formulas:

Minimum security to be not less than $200,000.

RESERVE FORMULA

total outstanding loss reserves (loss fund) x applicable trending factor x 125% = security.

PAID LOSS FORMULA

Paid losses for up to each of the last 5 years are multiplied by the applicable trending factors. The total of paid losses is divided by the number of years used to obtain the average yearly paid loss. The following formula is then applied:

average yearly paid loss (loss fund) x applicable trending factor x 125% = security

iii) If the employer self-administers its workers' compensation claims program, or if the claims administration contract with an outside administrator does not include service on a life of claim basis, a factor of 120% is applied to the formulas used in subsection (c)(3)(B)(i) and (ii) to cover the contingent claims cost in the event of insolvency.

iv) All trending factors used in this subsection (b)(3)(C) are adopted by resolution of the Board and are available from the Board or the Commission upon request. Trending factors are determined by reviewing the rates of inflation for self-insurance, including claim payments, both medical and indemnity, and costs of claim administration. The trending factor shall be determined after consultation with a Fellow of the Casualty Actuarial Society.

C) The security requirement for self-insurers who, upon initial or renewal application, earn less than 9 points after applying the financial ratios in subsection (c)(2)(A), shall be determined as a percentage of the loss fund size as follows:

|  |  |  |
| --- | --- | --- |
| Points Scored | Loss Fund Size | Percentage of Loss Fund |
|  |  |  |
| 6 - 8.9 | 0 - 250,000 | 130 |
|  | 250,001-500,000 | 120 |
|  | 500,001-1,0000,000 | 110 |
|  | 1,000,001 + | 100 |
|  |  |  |
| 3 - 5.9 | 0 - 250,000 | 150 |
|  | 250,001-500,000 | 130 |
|  | 500,001-1,000,000 | 120 |
|  | 1,000,001 + | 110 |
|  |  |  |
| 0 - 2.9 | 0 - 250,000 | 200 |
|  | 250,001-500,000 | 175 |
|  | 500,001-1,000,000 | 150 |
|  | 1,000,001 + | 130 |

If the percentage of loss fund referred to in this subsection (b)(3)(C) is less than 125% and the employer has submitted financial statements that do not contain an unqualified opinion or are not audited, the percentage of loss fund used will be 125%. In addition, if the employer self-administers its workers' compensation claims program or if the claims administration contract with an outside administrator does not include service on a life of claim basis, a factor of 120% is applied to cover the contingent claims cost in the event of insolvency.

D) Acceptable Security Instruments

i) Surety Bond: Must be on a form prescribed by the Commission. No surety bond may be terminated unless the Chairman has received written notice of the prospective termination at least 60 days prior to the termination date.

ii) Escrow Agreement: *Deposits under escrow agreements shall be cash, negotiable United States government bonds or negotiable general obligation bonds of the State of Illinois. The cash or bonds shall be deposited in escrow with any State or national bank or trust company having trust authority in the State of Illinois.* (Section 4(b) of the Act) All escrow agreements shall be on a form provided by the Commission. Securities used to fund an escrow account shall have at all times a market value at least equal to the security requirement determined by the Chairman. (See subsection (c)(3)(A).)

iii) Letter of Credit: Must be issued by a financial institution acceptable to the Commission and be written in conformity with prescribed format. All letters of credit must be accompanied by a Self-Insurer's Agreement to Post on a form prescribed by the Commission.

4) Guarantee Agreement

A subsidiary or a controlled employer shall obtain a guarantee agreement executed by the parent company or controlling persons designated by the Commission. Pursuant to the agreement, the parent company or the controlling persons shall guarantee that the obligations of the subsidiary or the controlled employer under the Act/WODA shall be paid. The guarantee agreement shall be submitted on a form prescribed by the Commission. Whenever a guarantor under such an agreement ceases to be a parent company or controlling persons with respect to the subsidiary or controlled employer whose obligations it has guaranteed, the former parent company and subsidiary or controlling persons and controlled employer shall notify the Commission immediately. Notwithstanding any other provisions of this Part, if the Board determines that a controlled person or subsidiary is controlled by an alien controlling person or parent company, is a utility, or is unable or unwilling to provide a guarantee agreement, the Chairman may, in his or her discretion, waive the requirement that the controlled employer or subsidiary provide a guarantee agreement; if the controlled employer or subsidiary or utility furnishes to the Commission security in an amount to be determined by the same methods used when an unaudited financial statement has been provided in accordance with subsection (c)(3)(B)(ii). "Alien controlling person" or "parent company" means a controlling person or parent company created or organized under the laws of a jurisdiction other than the United States of America or any political subdivision thereof.

d) Decision

*Within 45 days after receipt of an initial application or application to renew* (continue) *the self-insurance privilege, the Board shall advise the Chairman of its recommendations regarding the disposition of that initial or renewal application. If the Chairman disagrees with any of the Board's recommendations, the Chairman shall, within 30 days after receipt of the Board's recommendations, notify the Board of the reasons in support of the decision. The Chairman shall also promptly notify the employer of the decision within 15 days after receipt of the recommendation of the Board.* (Section 4(j) of the Act)

1) Approval

A) The Chairman shall notify the applicant in writing that it has been approved as a self-insurer. Approval may be conditioned upon the furnishing of appropriate and adequate security. The notice shall set forth the requirements to be met, including, but not limited to, the furnishing of security and the basis for the security, obtaining appropriate excess workers' compensation insurance, submission of an appropriate claims administration and loss control program, and payment of assessments prescribed by the Commission (see Section 4a-7 of the Act).

B) Within 60 days after receipt of the notice described in subsection (d)(1)(A), the conditionally approved employer shall comply with all of the requirements of conditional approval stated in the notice. The Chairman shall then issue a certificate of approval as a self-insurer. The effective date of self-insurance shall be set forth in the certificate of approval.

C) Failure of the conditionally approved employer to comply with all requirements of conditional approval within 60 days after receipt of the notice or to file a request for reconsideration pursuant to subsection (f) shall cause the Chairman to issue an Order denying the request for approval as a self-insurer. The Order shall be subject to review under subsection (h). Nothing in this subsection (d)(1) shall bar the employer from reapplying for approval as a self-insurer.

2) Denial

A) The Chairman shall notify the employer in writing that the employer's initial or renewal application and financial statement do not warrant approval of the self-insurance privilege. The notice shall set forth the reasons why the employer's application for approval as a self-insurer should be denied.

B) Failure of the employer to file a request for reconsideration pursuant to subsection (f) shall cause the Chairman to issue an Order denying the request for approval as a self-insurer. The Order shall be subject to review under subsection (h).

C) When the Chairman denies an application for renewal of the self-insurance privilege, nothing in this subsection (d)(2) shall bar an employer from reapplying for approval as a self-insurer. A reapplication shall be considered an initial application and must qualify under subsection (c)(2).

e) Additional Information

1) The Chairman may at any time, on his or her own initiative or at the request of the Board, require a self-insurer to file additional information related to the self insurer's ability to adequately secure payment of its financial obligations under the Act/WODA. That information shall include, but not be limited to, information related to:

A) the employer's financial condition;

B) the employer's ability to provide an adequate claims administration program;

C) the employer's loss control or safety program; and

D) the employer's ability to provide adequate excess insurance coverage.

2) Upon review of the additional information, if the Chairman finds, after consultation with the Board, that the security furnished by the self-insurer should be adjusted or that the self-insurance privilege should be terminated, the Chairman shall notify the employer of any change in the security requirement or of his or her intent to terminate the self-insurance privilege and the reasons for termination. The notice shall set forth a time and place of hearing on the matter, which shall be within 30 days after the date of the notice. The Chairman shall notify the employer of the decision in writing after the hearing date. These decisions shall be subject to review under subsection (h).

3) Failure of a self-insurer to comply with a request for additional information, without good cause, may cause the Chairman to initiate proceedings to terminate the self-insurance privilege.

f) Petition for Reconsideration

1) Within 21 days after receipt of a notice of conditional approval or a notice that the employer's initial or renewal application does not warrant approval of the self-insurance privilege, the employer may file a petition for reconsideration of the Chairman's determination.

2) The petition for reconsideration shall be made in writing and must state the reasons why the Chairman should reconsider the decision.

3) The petition shall be accompanied by any documents that support the employer's position and, if applicable, any information not previously considered. The information may include, but is not limited to, evidence of an improving financial condition that was not available to the Board when the application was reviewed.

4) Request for Hearing

A) The employer may request a hearing on the petition for reconsideration. The request for hearing must be filed with the request for reconsideration.

B) Upon the filing of a timely petition for reconsideration and request for hearing, the Chairman shall issue a notice that sets forth a place and time of hearing, which shall be within 30 days after the date of the notice.

C) Hearings on the petition for reconsideration shall be conducted in accordance with subsection (g).

D) In the absence of a request for hearing, the Chairman may consider all matters at issue from the petition for reconsideration and accompanying documentation.

5) The Chairman shall issue an order notifying the employer of his or her final decision and the reasons for that decision. The Order shall be subject to review under subsection (h).

g) Conduct of Hearings

1) All hearings under this Section shall be conducted by the Chairman or a Commissioner designated by the Chairman.

2) All hearings shall be conducted in accordance with the requirements of Article 10 of the Illinois Administrative Procedure Act [5 ILCS 100/Art. 10].

3) At the hearing, the employer shall have the right to respond and to call witnesses, cross-examine witnesses and present evidence.

4) *The Commission, or any member of the Commission, shall have the power to administer oaths, to subpoena and examine witnesses, and issue subpoena duces tecum requiring the production of such books, papers, records or documents as may be evidence to determine the issues of* denial or termination of the self-insurance privilege or adjustment of the security. (Section 16 of the Act)

5) The Illinois Rules of Evidence and Article VIII of the Code of Civil Procedure [35 ILCS 5/Art. VIII] shall apply at the hearing.

h) Appeal

*All Orders made by the Chairman under* Section 4(j) of the Act *shall be subject to review in the same manner and within the same time as provided by Section 19(f) of the Act for review of awards and decisions of the Commission.* (Section 4(j) of the Act)

i) Requirements Following Termination of the Self-Insurance Privilege

1) Termination of the employer's self-insurance privilege does not terminate its obligation to provide the Commission with security. The Chairman shall approve release of the security when the Chairman determines, in his or her discretion, that the employer, as a private self-insurer, has no outstanding liability under the Act/WODA.

2) *Former self-insurers shall be liable for any and all assessments until they have discharged all obligations to pay compensation that arose during the self-insurance period.* (Section 4a-7(b) of the Act)

(Source: Amended at 40 Ill. Reg. 15788, effective November 9, 2016)