

Chapter 5.00 Self Insurers

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5.01 Scope and Authority

452 CMR 5.00 is promulgated pursuant to MGL c. 152, § 5, as amended by St. 1985, c. 572, § 16, for the purpose of carrying out the provisions of MGL c. 152. The regulation of insurers and self-insurers by the Department of Industrial Accidents shall be in accordance with 452 CMR 5.00 herein published or subsequently amended.

5.02: Licensing of Self Insurers

(1) Every employer desiring to be licensed as a self-insurer shall make application therefore on forms provided by the department. The application shall be in such form as the Department may provide and shall contain such information as the Department may require. Employers shall, upon request of the Department, furnish such additional information as the Department may require. Except as provided by any law to the contrary, any information shall be confidential and used only for the purpose of determining the ability of the employer to be a self-insurer. A new application shall be filed with the department at least 90 days prior to the proposed effective date of said license; a renewal application shall be filed at least 60 days prior to the renewal date.

(2) In addition to the above, each applicant shall furnish to the Department:

(a) a sworn, itemized statement of the assets and liabilities of the applicant, separately showing assets owned in the Commonwealth;

(b) a payroll report for the preceding fiscal year and expected payroll for the next fiscal year along with the total number of persons employed by the applicant in the Commonwealth;

- (c) a detailed description of the nature and kind of business carried on by the applicant in the Commonwealth including the legal status of the applicant and its status as a subsidiary or other affiliate of any other business entity;
- (d) the location of the applicant's home address, principal office and all offices and locations in the Commonwealth, including mailing addresses and contact persons;
- (e) a list of the names and addresses of owners, partners, officers and directors of the applicant including the name(s) of in-state residents for purposes of service of process;
- (f) a report showing the name of the applicant's reinsurers, the effective dates of the policies, whether the reinsurance is specific or aggregate and the minimum and maximum amount of such coverage;
- (g) the amount, if any, of outstanding workers' compensation liabilities, both incurred and paid, of previous policy years. A new application must list the previous three years of premium, losses and experience modification factors. A renewal application will show the complete loss experience for the prior four years if self insured for that period;
- (h) evidence that the applicant has complied with MGL c.152, § 25A(2) and 452 CMR 5.03;
- (i) evidence that the corporate policy of the applicant is to comply with OSHA safety requirements;
- (j) a report showing arrangements made by the applicant for the handling of work related injuries in conformity with MGL c.152;
- (k) a copy of the applicant's latest annual report, certified by a public accountant.
- (l) in any instance in which the applicant intends to utilize an approved insurance company for servicing its claims, a copy of an agreement prescribed by the Department and the Division of Insurance, signed by the applicant and the insurance company, providing that the signatories agree to be governed by the provisions of MGL c.176D and any relevant regulations promulgated thereunder.

5.03: Reinsurance, Surety Bond and Securities Deposit

(1) As a condition precedent to the issuance of a license to self insure, the employer shall either deposit securities or furnish a surety bond with the state treasurer in an amount determined by the Department, together with satisfactory evidence that the reinsurance required by the Department under MGL c. 152, § 25A(2)(c), is in effect. Such deposit of securities or surety bond shall be in an amount equal to the applicant's liabilities both incurred and to be incurred, as shall be determined by the Office of Insurance, provided that the minimum deposit or bond shall be \$100,000.00.

(2) The deposit required by MGL c. 152, § 25A(2)(a), or the securities to be deposited with the state treasurer after demand made by the Department in conformity with the provisions of a surety bond furnished by a self insurer as provided in MGL c. 152, § 25 (2)(b) shall be in the form of cash or such bonds, notes or other negotiable obligations which may be legal investments for savings banks on this Commonwealth as determined from time to time by the commissioner of banks of this commonwealth. Registered securities shall be registered as follows: "Treasurer and Receiver General of the Commonwealth of Massachusetts in trust for the benefit and security of the employees of the self insurer." Any securities deposited shall be accompanied by an agreement in the form approved by the Department and deposited with the securities in the Office of the State Treasurer.

5.04: Criteria for Self Insurance

(1) The Department may decline to approve an application for self insurance if the applicant is unable to demonstrate that it will be able to meet all obligations and requirements of M.G.L. c.152 and 452 CMR 5.00. The following factors shall be used in determining if the applicant can meet these obligations:

- (a) Ratio of tangible net worth to annual self insurance retention;
- (b) Ratio of current assets to current liabilities;
- (c) Ratio of debt to tangible net worth;
- (d) Profit and loss history;
- (e) Organizational structure and management background;
- (f) Compensation loss history and proposed excess insurance coverage;
- (g) Source and reliability of financial information;
- (h) Ratio of net worth to annual compensation premium;
- (i) Number of employees;
- (j) Excess reinsurance;
- (k) Guarantee by parent company;
- (l) Surety bond or other security;
- (m) Claims administration arrangements and
- (n) SEC Form 10K or 10Q, where applicable

(2) In addition to the requirements of 452 CMR 5.04(1), every new applicant for the privilege of self insurance in Massachusetts must:

(a) have been in business for at least five years (where a company formed through merger, acquisition or reorganization has been in business for less than five years, the period of time the former corporate entities have been in business may be taken into account);

(b) have 300 or more employees; however, the ~~Commissioner~~Director may waive this requirement for good cause;

(c) have an unmodified manual premium of \$750,000 or more; however the ~~Commissioner~~Director may waive this requirement for good cause;

(d) provide to the Department a financial study and cash flow analysis (at applicant's expense) if an available Standard & Poor's or Moody's rating is below AA,A1 or Aa,aa respectively, or if the Dun & Bradstreet rating is below 5A1;

(e) provide to the Department an actuarial study and risk management study (at applicant's expense) showing trending and a plan for corrective action if the inter or intra state experience modification factor is 1.25 or higher as determined by a duly authorized rating bureau;

(f) demonstrate profitability in each of three most recent years, (or, if a non profit institution, an excess of revenues over operating expenses in each of the three most recent years), provided that where a company or institution formed through merger, acquisition or reorganization has been in business for less than five years, the past history of profitability of the former entities may be taken into account, and provided further that the ~~Commissioner~~Director may waive this requirement, in whole or in part, for good cause;

(g) have not been declared insolvent or discharged from federal bankruptcy proceedings in the past five years.

5.05: Parent and Subsidiary Corporations as Self Insurers

A parent corporation may add a subsidiary to its license only at the time of the original license application or when said license is renewed or on 60 days notice, if the self insurer amends its most recent filings, unless it is a subsidiary without employees, in which case, ten days notice is required. The parent corporation must be the sole owner of any subsidiary or other legal entity it wishes to include under its license. In applying for an original license, or a license renewal, which would cover one or more subsidiaries, the parent corporation shall provide information on each subsidiary on a form prescribed by the Department. The parent corporation must guarantee the liability of their subsidiaries on a form prescribed by the Department which must be signed, sealed and duly accepted by the Department. Where there is a parent/subsidiary combination, the requirements of 452 CMR 5.04 shall apply to the combined entity.

5.06: Cessation of Business as a Self Insurer

(1) Any employer who has obtained a license as a self insurer under the provisions of M.G.L. c.152, § 25A(2)(a) who thereafter ceases to be a self insurer under said sub paragraph, shall not be entitled to the return of the deposit for a period of at least six months following the date it ceases as a self-insurer as aforesaid, unless it furnishes a single premium non-cancelable policy as set forth in the foregoing mentioned sub paragraph.

(2) An employer holding a license as a self insurer who proposes to cease doing business in this Commonwealth, or proposes to dispose of, by sale or otherwise, the controlling interests of the business for which the license was issued shall ~~seasonably~~ notify the Department in writing of such proposed action.

5.07: Insurer and Self Insurer Claims Practices

Every self insurer shall file with the Department the names and addresses of all persons or attorneys, at least one of whom shall reside in this state, engaged by it to investigate, settle or adjust claims arising under MGL c.152, and any such person or attorney appearing before the Department shall have full power and authority to act for the self insurer in any matter before the Department.

5.08: Revocation or Denial for Renewal of Self Insurance License

(1) The failure of any self insurer to ~~seasonably~~ carry out the terms of an approved agreement of the parties, or an order, decision or other requirement of the Department; or the action of any self insurer in knowingly furnishing the Department with inaccurate or misleading information, shall be reasonable cause for revocation of, or refusal to renew the license of a self insurer.

(2) Failure to pay the Commonwealth, within 30 days from the time the Department certifies the amount chargeable to any licensee for its proportionate share of the expense of carrying out the provisions of MGL c. 152 so far as they relate to self insurers, shall be deemed reasonable cause for the revocation of, or refusal to renew the license of a self insurer.

5.09: Appeals Process

Any employer who is aggrieved by the actions of the Department in the application of 452 CMR 5.00 may file an appeal in accordance with the provisions of MGL c.152, § 25A.