



THE COMMONWEALTH OF MASSACHUSETTS

Department of Industrial Accidents

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INFORMATIONAL BULLETIN
PUBLIC EMPLOYER OPT OUT
DIA/OFFICE OF LEGAL COUNSEL

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The Department of Industrial Accidents (“DIA” or “Department”), through its Office of Legal Counsel is issuing this informational bulletin to clarify issues regarding the definition of a public entity or public employer (hereinafter, “public employer”) for the purposes of determining the Trust Fund assessment rates as required under M.G.L. c. 152, § 65 (4) (d). This bulletin will also clarify the process whereby a public employer may file a notice of non-participation and the resultant effect on its right to reimbursement from the Workers’ Compensation Trust Fund (“Trust Fund”).

M.G.L. c. 152, § 65 (2) requires that the Commonwealth and any of its political subdivisions subject to the Workers’ Compensation Act pay assessments in order to fund the Trust Fund: Section 65 (2) goes on to provide that “... neither the commonwealth, nor any city, town, or other political subdivision of the commonwealth or public employer self-insurance group shall be required to pay assessments... if such employer or group has given up an entitlement to reimbursement ... by “filing a notice of non-participation with the department”. This process is commonly referred to as “opting out”. There are two ways that a public employer can opt-out of the fund. The public employer can opt out on its own, or it may be a member of a public self-insurance group which opts out. When a public employer opts out it is irrevocable. After opt out, the public employer is not required to pay assessments. It is likewise no longer entitled to reimbursement from the Trust Fund. Reimbursement from the Trust Fund is barred for the public employer which has opted out and its insurer or self-insurance group for dates of injury before and after the date the public employer opted out. Insurers and self-insurance groups must then seek reimbursement from the public employer. See, M.G.L. c. 152, § 65 (2). As of July 1, 2005 all cities and towns in the Commonwealth had opted out of the Trust Fund. The following examples are provided to assist in defining what is a “public employer” and the effect of opting out:

- There is no assessment due from a public employer that opts out and then becomes privately insured. Neither the public employer nor the insurance company is entitled to reimbursement from the Trust Fund after the public employer opts out. The determinative factor is that the public employer has opted out.

- A public employer that is a member of a self-insurance group is bound by the election of that group to opt out. There is no assessment due from a public employer that is a member of that public employer self-insurance group where the group opts out. Neither the public employer nor the public employer self-insurance group is entitled to reimbursement from the Trust Fund after either of them opts out.

- Where a public employer is privately insured, and then becomes self-insured, neither the public employer nor the private insurer that previously insured the public employer is entitled to reimbursement from the Trust Fund if the public employer elects individually or as a member of a public self-insurance group to opt out. Once a public employer opts out it is no longer entitled to any reimbursement from the Trust Fund, even for dates of injury before its opt out.

- As set forth in M.G.L. c. 152, § 65 (2), the term “public employer” includes the commonwealth, cities, towns, political subdivisions of the commonwealth or public employer self-insurance groups. For purposes of § 65, housing authorities are not considered political subdivisions of the Commonwealth, and thus, are not “public employers” as that term is used therein.

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