

Amend Section 15210 to read:

§15210. Security Deposit.

(a) Public self insurers are not required to post or maintain a security deposit with the Director for workers' compensation liabilities.

(b) Private self insurers shall post and maintain a security deposit, in accordance with the provisions of Labor Code Section 3701 and the requirements of Article 3 of this subchapter 2 and/or in accordance with Labor Code Section 3701.8 and Article 3.1 of this subchapter 2.

(c) The minimum required security deposit pursuant to Labor Code Section 3701 for existing, private self insurer's shall be equal to:

(1) 135 percent of the private self insurer's estimated future liabilities for the payment of compensation for known claims, adjusted by any previously documented reductions to known claim liability for specific excess insurance coverage pursuant to Section 15300~~(f)~~(e) of these regulations; and

(2) a deposit, consisting of the average annual estimated future liability for the past five (5) years reported on the Self Insurer's Annual Report, posted in advance for liabilities of the current year; and

(3) an adjustment to reduce the liability to be reported on individual claims due to any new documentation of specific excess insurance coverage not previously reported pursuant to Section 15300~~(f)~~(e) of these regulations~~.~~

The required deposit may be increased at the Director's discretion as set forth in Article 3 of these regulations. Said future liability may be ascertained from any relevant source.

(d) New private self insurers shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The prior three (3) years' incurred liability; or

(2) The statutory minimum required by Labor Code Section 3701(b); or

(3) A higher amount approved by the Director.

(e) The addition of a new subsidiary or affiliate private self insurer to the holder of an existing Certificate to Self Insure shall initially post a security deposit pursuant to Labor Code Section 3701 in an amount equal to the greater of the following:

(1) The average one year incurred liability for the new subsidiary or affiliate self insurer based upon the prior three years' incurred liability; or

(2) A higher amount approved by the Director.

(f) Security deposit shall be posted in the form of:

(1) A surety bond executed on State issued bond and rider forms pursuant to Section 15212 of these regulations;

(2) An irrevocable letter of credit issued by a bank or savings institution or other financial institution pursuant to Section 15215 of these regulations;

(3) Approved securities in the form of government issued or corporate issued securities, meeting the requirements of Section 15213 of these regulations;

(4) Cash in trust deposited pursuant to requirements of Section 15214 of these regulations; or

(5) Any combination of one or more of the above four types of security deposit.

(g) Failure to maintain the required amount of deposit or to post an acceptable form of deposit as set forth in this Article shall be good cause for assessment of civil penalties pursuant to Labor Code Section 3702.9(a) by the Manager and/or, in the Director's discretion, revocation of the Certificate to Self Insure.

(h) Failure to post and maintain the required amount of security deposit for a period of 60 days shall be good cause for the Manager to summarily revoke a Certificate of Consent to Self-Insure. The summary revocation of the Self Insurer's Certificate of Consent will provide for a 15-day notice of termination, without a hearing.

(1) Notwithstanding subsection (h) above, the employer may still request a hearing on the Manager's Revocation Order before the Director as provided in Article 11 of this subchapter 2.

(2) A self insurer requesting a hearing pursuant to subsection (h)(1) shall be required to provide proof of workers' compensation coverage under a policy from an admitted carrier for the period of time without security deposit or proof of compliance with the Manager's request to post security.

Note: Authority cited: Sections 54, 55, and 3701.8, 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.10 and 3740- 3745, Labor Code.

Amend Section 15210.1 to read:

§15210.1. Adjustments in the Amount of Security Deposit.

(a) ~~The~~ Any amount of the security deposit required pursuant to Labor Code Section 3701 shall be reviewed by the Manager at least annually following receipt of the private Self-Insurer's Annual Report.

(b) The private self insurer shall post any annual increase in security deposit required by Labor Code Section 3701 indicated in the deposit calculations contained in the Self-Insurer's Annual Report or as determined by the Manager due to an audit, change in the self-insured employer's program or change in deposit rate. The deposit shall cover both prior known liabilities; ~~and plus~~ an advance deposit for the current year liabilities based on an average estimated future liability of claims for the past 5 years; minus credit for liabilities above the retention level of specific excess workers' compensation insurance policies as reported on the current year annual report. This deposit increase posting is due no later than May 1 each year.

(c) At the request of any private self insurer for a reduction or where a decrease in security deposit is indicated in the deposit calculations on the annual report, no reduction of security deposit already posted shall be made without prior written authorization of the Manager. Self Insurance Plans shall review each certificate holder's annual report and the certificate holder's file to determine the extent to which a decrease in deposit, if any, may be authorized.

(d) For good cause, the Manager shall require the private self insurer to post and maintain additional security deposit or adjust the deposit rate for a specific private self insurer above the statutory minimum deposit set forth in Labor Code Sections 3701, ~~and~~ 3701.7, and 3701.8. Good cause includes, but is not limited to, understated future liability of claims on the Self-Insurer's Annual Report; a pattern of understated liabilities in claim files audited in an audit; failure to report all claims; poor administration of claims or payment of benefits due injured workers found in the audit results of the Office of Benefits Audits and Enforcement in the Division of Workers' Compensation or audits by Self Insurance Plans; lack of an effective safety and health program as indicated by final citations issued by the Division of Occupational Safety and Health showing repeat or willful violation of safety and health regulations; impairment of financial condition of the self insurer; the result of evaluation of an application to self-insure; or to cover a period of unlawful self insurance; or being required to post security deposit in whole or part pursuant to Section 3701.8 of the Labor Code and Article 3.1 (commencing with Section 15220) of this subchapter 2.

(e) Whenever the Manager determines that a deposit increase is required to be posted by a self insurer, the Manager shall send written notice to the self insurer pursuant to Labor Code Section 3701(b) and ~~(g)~~ (j) of the amount of

deposit due in order to create a perfected security interest for the Self Insurer's Security Fund.

(f) Any increase in a required self insurer's security deposit due to understated liabilities on the private employer's Self Insurer's Annual Report, shall be reported to the Security Fund. The Security Fund shall be authorized to adjust the deposit assessment for the alternative composite deposit.

NOTE: Authority cited: Sections 54, 55, 3701.8, and 3702.10, Labor Code. Reference: Sections 59, 3700, 3701, 3701.5, 3701.7, 3701.8, 3702, 3702.3, 3702.6, 3702.10, 3740, 3741, 3742, 6319(f), 6401.7, Labor Code.

Amend Section 15210.2 to read:

§15210.2. Deposit Adjustment Upon Revocation of Certificate to Self Insure.

(a) As part of the revocation of a Certificate to Self Insure pursuant to Sections 15422 and 15423 of these regulations, the Manager shall determine the need for a special revocation audit of the claims of any private self insurer and the need for a deposit adjustment to secure future liabilities of the revoked private self insurer pursuant to Labor Code Section 3701 and/or Section 3701.8.

(b) The amount of deposit or deposit rate required by the Manager on a revocation of a private self insurer's certificate to self insure may be at an amount or rate above the minimum required by Labor Code Section 3701 and /or Section 3701.8. The Manager in his/her discretion shall adjust the rate of deposit or the amount of deposit down to the statutory minimum required to secure the remaining workers' compensation liabilities for a revoked self insurer as necessary over time as the liabilities of the remaining claims inventory are run off by the administrator.

NOTE: Authority cited: Sections 54, 55, 3701.8, and 3702.10, Labor Code. Reference: Sections 59, 129, 3700, 3701, 3701.5, 3701.8, 3702, 3702.3, 3702.6, 3702.8, 3740-3745, Labor Code.

Amend Section 15216 to read:

§15216. Administration of ~~Insolvent~~ Defaulted Self-Insurer's Claims.

(a) In the event the self insurer fails to pay workers' compensation benefits due, the cost of administration and legal expenses of existing and new claims shall be made from the security deposit set aside for this purpose pursuant to Labor Code Section 3701.5.

(b) If claims have been administered from out of state, the Director may order all remaining and future claims to be administered from California or may turn them over to the Self-Insurer's Security Fund.

(c) The Manager shall determine the adequacy of the existing security deposit to pay the ~~insolvent, bankrupt, or~~ defaulting self insurer's workers' compensation liabilities within 90 days of the ~~self-insurer's~~ Manager's determination that the self-insured has defaulted~~ing~~, and shall report his/her findings to the Director and the Self Insurer's Security Fund.

(d) If it is necessary for the Director to call or cash any security deposit, a trust shall be established by the Manager to receive the funds from the deposit, except in the following situations:

(1) Where the surety company elects, and the Director approves, handling of the claims directly by the provider of the surety bond; or

(2) Where the funds and responsibility for the claims are turned over to the Self-Insurer's Security Fund pursuant to Labor Code Sections ~~3740-3747~~ 3701.5.

(e) In the event of a default, all security deposits, regardless of form that is posted by the self insured employer, shall be the first in order to be called upon to pay benefits due. If any portion of the defaulting self insurer's liabilities are secured in whole or part by an alternative composite deposit posted by the Security Fund, the alternative composite deposit shall be next in order to be called upon to pay benefits due. The Director may at his/her discretion call any portion of the entire security deposit posted at any time without waiting for the exhaustion of all funds in the prior level or call order contained in this subsection.

~~(e)~~ (f) The Manager shall advise the Self-Insurers' Security Fund of the receipt of any verified information indicating a self-insurer's failure to pay benefits due, the filing of bankruptcy, or inability to post and maintain required security deposit.

~~(f)~~ (g) The Director, at his/her discretion, may order the Security Fund to assume full liability for any self insurer's insolvency or failure to pay benefits regardless of whether or not there is a shortfall in the deposit to pay benefits due.

NOTE: Authority cited: Sections 54, 55, 3701.8, and 3702.10, Labor Code. Reference: Sections 59, 129, 3701, 3701.5,

3701.8, 3702, 3702.3, 3702.6, 3703, 3705 and 3740-3745,
Labor Code.