

Amend Section 15201 to read:

Section 15201. Definitions

The following definitions apply in Articles 1 through 13 of these regulations:

(a) Adjusting Location. The office address designated in accordance with Section 15402 of the regulations where:

(1) The named administrator of the self insurer fulfills his/her function; and

(2) The original records called for in Article 9 of these regulations are maintained.

(b) Administrative Director. The Administrative Director of the Division of Workers' Compensation within the Department of Industrial Relations.

(c) Administrative Agency. The person or firm that performs the day-to-day claims administration functions of a workers' compensation self insurance program. The administrative agency may be:

(1) An independent contractor possessing a certificate to administer and designated by a self-insurer to be the administrative agency for all or a portion of its claims; or

(2) A partnership or corporation possessing a master certificate to self insure, which administers its own claims and the claims of other affiliate or subsidiary self insurers issued affiliate or subsidiary certificates to self insure under the same master certificate number;

(3) A joint powers authority possessing a master certificate to self insure, which self administers in whole or part the claims of its affiliate public self insurers issued affiliate certificates to self insure under the same master certificate number of the joint powers authority; or

(4) The claims department of an insurance carrier admitted to transact workers' compensation insurance in California, which is exempt from the requirement to possess a certificate to administer under Labor Code Section 3702.1(a).

(d) Administrator. A competent person pursuant to Section 15452 of these regulations, at an adjusting location, who is responsible for day-to-day management of an employer's self-insurance workers' compensation program. The responsibility includes but is not limited to, the making and reviewing of decisions relating to the furnishing of all workers' compensation benefits in accordance with law and the maintenance of the self insurer's claim records.

(e) Affiliate Certificate.

(1) A type of certificate to self insure issued to a private self insurer that has common ownership to another private self insurer holding a master certificate to self insure, but the affiliated certificate holder is not a subsidiary to the master certificate holder; or

(2) A type of certificate to self insure issued to a public self insurer that is a member of a joint powers authority for pooling of workers' compensation liabilities with the master certificate number issued to the joint powers authority.

(3) A type of certificate to self insure issued to a private self insurer that is a member of a group self-insurance plan for pooling of workers' compensation liabilities with the master certificate number issued to the group self insurer.

(f) Alternative Composite Deposit. A security deposit system pursuant to Labor Code Section 3801.8 whereby all eligible private self insurers collectively secure, in whole or in part, aggregate self insured worker's compensation liabilities through the Self Insurer's Security Fund.

(g) Audit. Any examination of self insured workers' compensation claim files performed by or at the request of the Office of Self Insurance Plans pursuant to Labor Code Section 3702.6.

(h) Board of Trustees. In group self insurance, it is the representative body selected by the group member to be responsible for managing the assets and directing the affairs of the group self insurer corporation and assuring the group self insurer, through the group members, is financially sound and able to meet the workers' compensation liabilities under the statutes and regulations applicable in California.

(i) Cancellation of Surety Bond. An act whereby the surety gives written notice to the Manager, as beneficiary of the workers' compensation self insurance surety bond, that the surety is terminating its contractual obligations under the named bond pursuant to Sections 996.320 and 996.330 of the Code of Civil Procedure and the liability of the surety bond after the effective date of the cancellation is set forth in Section 996.360 of the Code of Civil Procedure.

(j) Certificate to Self Insure. A Certificate of Consent to Self-Insure issued to an employer pursuant to Section 3700(b) of the Labor Code.

(k) Certificate to Administer. A Certificate of Consent to Administer self insured workers' compensation claims issued to an administrative agency, except exempt insurance carriers, pursuant to Labor Code Section 3702.1.

(l) Claim File. A separate case file containing all pertinent documents and matters relating to a specific or companion work-injury claim. The claim file contents are specified in Section 15400 of these regulations.

(m) Claim Log. A manual or machine-produced ledger maintained by the self insurer or administrative agency listing each work injury claim by the calendar year for private sector self insurers and by the fiscal year for public self insurers in which the work injury was reported to the self insurer or administrative agency, whichever date occurred first. The claim log contents are specified in Section 15400.1 of these regulations.

(n) Compensation. Compensation as defined in Labor Code Section 3207.

(o) Contribution. The amount of payments required of each group member in order to fund the compensation and deposit obligations of the group self insurer.

(p) Director. The Director of the Department of Industrial Relations.

(q) Exoneration of Surety Bond. The discharge of a surety from all past, present and future liability under its workers' compensation self insurance surety bond by the execution of a "Release of Surety", Form A4-24 (Rev. 11/92) by the Manager.

(r) First Aid. First Aid as defined in Labor Code Section 5401(a).

(s) Group Self Insurer. A private, non-profit, mutual benefit corporation pursuant to Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporation Code established for the sole purpose of operating a group

workers' compensation self-insurance fund. Said self-insurance fund to pool California workers' compensation liabilities for two or more private employers in the same industry under the California workers' compensation statutes and regulations.

(t) Group Member. A private employer issued an Affiliate Certificate as a member in a group self-insurance program that has, in turn, been issued a Certificate to Self Insure as a group self insurer.

(u) Group Administrator. The individual authorized to serve as the representative of a group self insurer and its group members in carrying out the policies of the Board of Trustees of the Group Self Insurer and managing the activities of the group self insurer corporation.

(v) Indemnity Agreement and Power of Attorney. The written agreement executed by each group member or proposed group member of a group self insurer pursuant to Section 15479 of these regulations.

(w) Indemnity Claim. A work-injury case which has or may result in any of the following benefits:

- (1) Temporary Disability or salary in lieu thereof
- (2) Permanent Disability
- (3) Life Pension
- (4) Death Benefits
- (5) Vocational Rehabilitation

(x) Industry. Employer classification as determined using the first two digits of the Standard Industrial Classification Code (SIC Code), provided by the Department of Commerce, Bureau of Management and Budget.

(y) Joint Powers Authority. A public entity created by agreement of two or more public agencies pursuant to Division 7, Chapter 5, Article 1, Sections 6500 et seq. of the Government Code. These regulations apply only to Joint Powers Authorities who have among their purposes for existence, the forming of workers' compensation liability pooling arrangements.

(z) Labor Code. The Labor Code of the State of California.

(aa) Manager. The Manager, Office of Self-Insurance Plans, in the Department of Industrial Relations.

(bb) Medical-Only Claim. A work-injury case which does not result in compensable lost time but results in medical treatment beyond first aid.

Note: Payment of medical examinations pursuant to Labor Code Section 4600 will be considered a medical payment.

(cc) Open Claim. A work-injury case in which it appears that one or more future payments of workers' compensation benefits may be due.

(dd) Release of Surety Bond. Action of Manager of Self Insurance Plans by which a surety is exonerated. A released surety bond does not constitute part of the security deposit of a self insured entity.

(ee) Self-Insurer. An individual public or private sector employer or joint powers authority or private group of employers that has been issued and lawfully holds a valid Certificate to Self-Insure its workers' compensation liabilities pursuant to:

- (1) The provisions of Section 29(a), Chapter 586, Laws of 1917 and amendments thereto; and/or
- (2) Labor Code, Section 3700(b) and 3700(c).

(ff) Special Audit. Any audit performed other than that in accordance with Labor Code Section 3702.6.

(gg) Subsidiary Certificate. A type of certificate to self insure issued to a subsidiary of a self-insurer, where the self insurer holds the master certificate to self insure.

(hh) Security Fund. The Self Insurer's Security Fund as defined in Labor Code sections 3740 et. seq.

(ii) Termination of Surety Bond. See definition of "Cancellation of Surety Bond".

(jj) Work-Injury Claim. An injury that is reported or reportable to the Division of Labor Statistics and Research pursuant to Labor Code Sections 6409, 6409.1 and 6413.

Note: Authority cited: Sections 54, 55 and 3702.10, Labor Code.
Reference: Sections 59, 129, 3700, 3701, 3701.5 3702, 3702.3, 3702.5, 3702.6, 3702.10, 3703, 3705, 3740-3747 and 3850, Labor Code; Section 6500, Government Code; and Sections 995.430, 996.320 and 996.330, Code of Civil Procedure.

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 these regulations 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) 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) 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) ~~and/or, in the Director's discretion, revocation of the Certificate to Self Insure.~~ 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-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 hearing.

(1) The employer may request a hearing on the Manager's Revocation Order before the Director as provided in Article 11.

(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 complied with the Manager's request for adequate security.

a Certificate to Self Insure with 15 day notice of termination date without hearing. The employer may request a hearing on the Manager's Revocation Order before the Director. However, it will be a condition precedent of such a request for hearing on such a revocation to provide proof of workers' compensation coverage under a policy from an admitted carrier pursuant to Labor Code Section 3700 (a).

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; ~~plus plus "minus" or "less"~~ an advance deposit for the current year liabilities based on an average estimated future liability of claims for the past 5 years; ~~plus minus credit for liabilities above the retention level of specific 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 Section 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 Labor Code 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) 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 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.

~~(c) Failure to post and maintain the required amount of deposit in an acceptable form as set forth in this Article after revocation of the Certificate of Consent to Self Insure shall be good cause for assessment of civil penalties pursuant to Labor Code Section 3702.9 (a) and for the Manager to withhold any interest payments from cash or securities posted with the Director.~~

NOTE: Authority cited: Sections 54, 55 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, 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 insolvency or 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 insolvent or defaulting self insurer's liabilities are secured in whole or part by an alternative composite deposit posted by the Security Fund, the cash portion of any such alternative composite deposit shall be next in order to be called upon to pay benefits due. The remainder of the alternative security posted by the Self Insurers' Security Fund shall be third in call order to pay~~

~~benefits due to the injured workers of the insolvent or defaulting self insured employer.~~ 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 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.