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**State of California
Office of Administrative Law**

DEPT. OF INDUSTRIAL RELATIONS
OFFICE OF THE DIRECTOR

In re:
Department of Industrial Relations

NOTICE OF FILING AND PRINTING ONLY

Regulatory Action:

Government Code Section 11343.8

Title8, California Code of Regulations

Adopt sections:
Amend sections: 15600, 15605
Repeal sections:

OAL File No. 2013-1115-02 FP

This action amends the definition of "Indemnity" and the procedure for the collection of assessments and/or surcharges. This action is exempt from the rulemaking provisions of the Administrative Procedure Act pursuant to Labor Code section 62.5(f)(5).

OAL filed this regulation(s) or order(s) of repeal with the Secretary of State, and will publish the regulation(s) or order(s) of repeal in the California Code of Regulations.

Date: 12/2/2013




Kathleen Eddy
Senior Counsel

For: DEBRA M. CORNEZ
Director

Original: Christine Baker
Copy: Jon Wroten

Title 8. Industrial Relations

Division 1. Department of Industrial Relations

Chapter 8. Office of the Director

Subchapter 2.06. Workers' Compensation-Administration Revolving Fund Assessment, Uninsured Employers Benefits Trust Fund Assessment, Subsequent Injuries Benefits Trust Fund Assessments, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Fraud Surcharge and Cal-OSHA Targeted Inspection Assessment

Article 1. Definitions

§15600. Definitions.

(a) **Assessable Premium.** The premium to which the assessment and/or surcharge is to be applied is the premium the insured is charged after all rating adjustments (experience rating, schedule rating, premium discounts, expense constants, retrospective rating, etc.) except for adjustments resulting from the application of deductible plans or the return of policyholder dividends.

(b) **Assessment.** Includes those assessments levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund, the Uninsured Employers Benefits Trust Fund, the Labor Enforcement and Compliance Fund, the Occupational Safety and Health Fund, and the Subsequent Injuries Benefits Employers Trust Fund.

(c) **Base Year.** For purposes of calculating the self-insured employer assessment factors, that time period as provided by the Office of Self-Insurance Plans pursuant to section 15602. For public self-insured employers, the base year is a fiscal year basis. For private self-insured employers, the base year is a calendar year basis.

(d) **Director.** The Director of the Department of Industrial Relations.

(e) **Expected total current year premium.** Total direct workers' compensation premium of all insurers as reported to the Department of Insurance's designated licensed rating organization for the period of January 1 through June 30 of the year immediately preceding the assessment, and adjusted by the Department of Insurance's designated licensed rating organization, to a full year basis.

(f) **Indemnity.** The payments made by a self-insured employer directly to injured employees or their dependents as compensation pursuant to Labor Code divisions 4 and 4.5 including vocational rehabilitation maintenance and salary continuation payments pursuant to Labor Code sections 4800 and 4850. In reporting periods beginning July 1, 2013, and later, for the purpose of calculating self-insured employer assessments only, the indemnity amount attributable to payments made pursuant to Labor Code sections 4800 and 4850 will be calculated as if those payments had instead been made at the applicable temporary disability rate.

(g) Inception date. The inception date of a workers' compensation insurance policy is the normal anniversary rating date of a workers' compensation insurance policy as defined in the California Workers' Compensation Insurance Manual published by the Workers' Compensation Insurance Rating Bureau.

(h) Insured employer. Any employer, including any agency or division of the State of California, who secures workers' compensation insurance coverage under provisions of subdivision (a) of Labor Code section 3700.

(i) Insurer. Any person, including the State Compensation Insurance Fund, authorized to transact workers' compensation insurance in California.

(j) Labor Enforcement and Compliance Fund. The Labor Enforcement and Compliance Fund established pursuant to the provisions of Labor Code section 62.5.

(k) Labor Enforcement and Compliance Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Labor Enforcement and Compliance Fund.

(l) Occupational Safety and Health Fund. The Occupational Safety and Health Fund established pursuant to the provisions of Labor Code section 62.5.

(m) Occupational Safety and Health Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Occupational Safety and Health Fund.

(n) Payroll. Remuneration subject to workers' compensation insurance premium for insured employers and that remuneration to employees of a self-insured employer which would be subject to premium charges if the employer were an insured employer.

(o) Revolving Fund. The Workers' Compensation Administration Revolving Fund established pursuant to the provisions of Labor Code section 62.5.

(p) Revolving Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Workers' Compensation Administration Revolving Fund.

(q) Self-insured employer. Any employer who is authorized by the Director to self-insure its workers' compensation liability under subdivisions (b) or (c) of Labor Code section 3700. A self-insured employer shall include the State of California. For the limited purposes of the Targeted Inspection Assessment, the term "self-insured employer" shall not include the State of California or a public agency employer.

(r) Subsequent Injuries Fund. The Subsequent Injuries Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(s) Subsequent Injuries Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Subsequent Injuries Benefits Trust Fund.

(t) Surcharge. Surcharge means the “State Fraud Investigation and Prosecution Surcharge” assessed under authority of Labor Code Section 62.6.

(u) Targeted Inspection Assessment. The user fee assessment levied upon self-insured employers to establish and maintain the Cal-OSHA Targeted Inspection and Consultation Fund established pursuant to the provisions of Labor Code section 62.7.

(v) Uninsured Employers Fund. The Uninsured Employers Benefits Trust Fund established pursuant to the provisions of Labor Code section 62.5.

(w) Uninsured Employers Fund Assessment. The user fee assessment levied upon insured and self-insured employers to establish and maintain the Uninsured Employers Benefits Trust Fund.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 51, 62.5, 62.6, 3700, ~~and 3701~~, 4800 and 4850, Labor Code; Section 1872.83, Insurance Code.

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Article 3. Collection of Assessments and/or Surcharges

§ 15605. Collection of the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and Fraud Surcharge from Self-Insured Employers.

(a) The Director designates the Manager of Self-Insurance Plans to collect the Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge from self-insured employers on the Director's behalf.

(b) No later than December 1 of each year, the Manager of Self-Insurance Plans shall bill each self-insured employer for the amount of the individual self-insured employer's Revolving Fund Assessment, Subsequent Injuries Fund Assessment, Labor Enforcement and Compliance Fund Assessment, Occupational Safety and Health Fund Assessment, Uninsured Employers Fund Assessment, and/or Fraud Surcharge. The billing shall identify each assessment and/or surcharge separately and shall include the calculations utilized to determine each assessment factor. Each individual assessment and/or surcharge shall be determined by multiplying the self-insured employer assessment factor by the total amount of worker's compensation indemnity paid and reported by each self-insured employer on its Self-Insurer's Annual Report during the base year, as determined by the Office of Self-Insurance Plans. The Self-Insurer's Annual Report shall include all indemnity payments as defined in section 15600 (ef). For reporting periods beginning July 1, 2013, and later, the Self-Insurer's Annual Report shall include, as separate items, both: (1) the full amount of any vocational rehabilitation maintenance or salary continuation payments made pursuant to Labor Code sections 4800 and 4850, and (2) the amount that would have been paid for those benefits had they instead been paid at the applicable temporary disability rate. The latter amount will be used when calculating self-insured employers' assessments under this section.

(c) The amount of any assessment and/or surcharge shall be paid to the Office of Self-Insurance Plans within 30 days of the billing. Upon the request of any Joint Powers Authority, the Manager may agree to bill the Joint Powers Authority directly for the total amount of each assessment and/or surcharge owed by its public agency members.

(d) In the event the Manager collects funds in excess of the total self-insured employer assessment in the (1) Revolving Fund Assessment; (2) Subsequent Injuries Fund Assessment; (3) Labor Enforcement and Compliance Fund Assessment (4) Occupational Safety and Health Fund Assessment; (5) Uninsured Employers Fund Assessment; and/or (6) Fraud Surcharge, such excess funds shall be paid over to the Director to be held in a trust account and credited to the next year's respective assessments and/or surcharge on self-insured employers.

(e) Should the Manager determine that any self-insured employer has understated or overstated its total payroll or indemnity paid on the self-insured employer's annual report, the Manager may issue a corrected billing.

(f) If an employer has paid the assessments and/or surcharge as an insured employer, and during the year of such assessments and/or surcharge is granted a certificate of consent to self-insure, the newly self-insured employer is not required to pay an additional assessments and/or surcharge as a self-insured employer for the current assessments and/or surcharge year. Such an employer shall submit to the Manager a copy of the assessments and/or surcharge billing paid as insured employer in lieu of payment as a self-insured employer.

(g) A self-insured employer that does not have a self-insurers' annual report on file with the Office of Self-Insurance Plans which covers the base year of the assessments and/or surcharge, and that did not pay the assessments and/or surcharge for the base year as an insured employer, shall pay the assessments and/or surcharge through the Office of Self-Insurance Plans.

(1) To enable the Manager to determine such self-insured employer's liability for the assessments and/or surcharge, each such self-insured employer shall file a report prescribed by the Manager, setting forth such self-insured employer's total annual payroll for the base year, and the total workers' compensation premium paid for each calendar quarter of the preceding year.

(2) The Manager shall bill the self-insured employer by applying the self-insured employer assessment factors to the last annual premium paid by the self-insured employer until the self-insured employer's experience as a self-insured employer exceeds two complete calendar years for private self-insured employers or two complete fiscal years for public self-insured employers.

(h) A self-insured employer that ceases to be self-insured and ceases to operate as a functioning employer with no legal requirement to secure the payment of compensation, but continues to have open workers' compensation claims arising from the period of self-insurance, shall continue to be liable for assessments and/or surcharge for a period of 3 calendar years following the termination, revocation, or surrender of the employer's certificate of consent to self-insure. The Manager shall bill the former self-insured employer in accordance with this Section.

Note: Authority cited: Sections 54, 55 and 62.5, Labor Code; and Section 1872.83, Insurance Code. Reference: Sections 62.5, ~~and 62.6~~, 4800 and 4850, Labor Code; and Section 1872.83, Insurance Code.