

**\*\*\*DRAFT - NOT FOR FILING\*\*\***

**4123-19-03 Where an employer desires to secure the privilege to pay compensation, etc., directly.**

- (A) All employers granted the privilege to pay compensation directly shall demonstrate sufficient financial strength and administrative ability to assure that all obligations under section 4123.35 of the Revised Code will be met promptly. The administrator of workers' compensation shall deny the privilege to pay compensation, etc., directly, where the employer is unable to demonstrate its ability to promptly meet all the obligations under the rules of the commission and bureau and section 4123.35 of the Revised Code. The administrator shall consider, but shall not be limited to the factors in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code where they are applicable in determining the employer's ability to meet all obligations under section 4123.35 of the Revised Code.

The administrator shall review all financial records, documents, and data necessary to provide a full financial disclosure of the employer, ~~certified by a certified public accountant,~~ including but not limited to, the balance sheets and a profit and loss history for the current year and the previous four years. ~~For purposes of this rule, certified financial statements shall be construed by the administrator as~~ Unless an applicant obtains waiver under paragraph (E) of rule 4123-19-03.1 of the Administrative Code, financial records submitted to the bureau must be audited by a certified public accountant, in accordance with generally accepted accounting principles, and shall include the certified public accountant's audit opinion.

- (1) ~~In determining whether to grant a waiver of the requirement of division (B)(1)(e) of section 4123.35 of the Revised Code for certified financial records, the administrator shall consider the following criteria and conditions. The administrator may waive certain requirements of division (B)(1) and (B)(2) of section 4123.35 of the Revised Code pursuant to rule 4123-19-03.1 of the Administrative Code.~~
- ~~(a) (a) The administrator shall require reviewed financial statements, including full footnote disclosure, to be prepared and submitted in accordance with generally accepted accounting principles. For the purposes of this rule, "reviewed financial statements" shall mean financial statements that have been subject to procedures performed by a certified public accountant in accordance with AICPA Professional Standards, specifically, Statements on Standards for Accounting and Review Services, Section 100, Paragraph .24 through .38, December 1978.~~
  - ~~(b) (b) The administrator may utilize the services of a commercial credit reporting bureau to assist in the evaluation of an applicant's ability to meet its workers' compensation obligations. The cost of this commercial reporting service shall be assumed by the applicant employer.~~
  - ~~(c) (c) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and paid prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~
- (2) ~~(2) In determining whether to grant a waiver of the requirement of division (B)(2)(b) of section 4123.35 of the Revised Code for financial statements reflecting the unreserved and undesignated year-end fund balance in the public employer's general fund, the administrator shall consider the following criteria and conditions:~~

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~~(a) (a) The administrator may require a supplemental schedule reflecting the public employer's unreserved and undesignated year-end fund balance in the public employer's general fund.~~

~~(b) (b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~

~~(3) (3) In determining whether to grant a waiver of the requirement of division (B)(2)(f) of section 4123.35 of the Revised Code for an annual financial audit released by the auditor of state within seven months after the end of the public employer's fiscal year, the administrator shall consider the following criteria and conditions:~~

~~(a) (a) The administrator may accept an annual financial audit released by the auditor of state within nine months after the end of the public employer's fiscal year.~~

~~(b) (b) Notwithstanding the above criteria, the administrator may deem it necessary for an applicant public employer to provide additional security to ensure meeting its workers' compensation obligations. The amount of such additional security shall be in the form and amount as determined by the administrator and provided prior to the granting of self insurance. Pursuant to paragraph (F) of this rule, in the event of the default of the self-insuring employer, the bureau shall first seek reimbursement from the additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code.~~

~~(4) (2) The administrator shall not grant the status of self-insuring employer to the state, except that the administrator may grant the status of self-insuring employer to a state institution of higher education, including its hospitals.~~

- (B) The employer shall secure from the bureau of workers' compensation proper application form(s) for completion. The completed application shall be filed with the bureau at least ninety days prior to the effective date of the employer's requested status as a self-insurer. The administrator may require that the application be accompanied by an application fee as established by bureau resolution to cover the cost of processing the application in accordance with section 4123.35 of the Revised Code. The application shall not be deemed complete until all required information is attached thereto. Prior to presentation to the administrator, applicable items listed in divisions (B)(1) and (B)(2) of section 4123.35 of the Revised Code shall be made available to the bureau and shall be reviewed by the bureau of workers' compensation. The bureau shall only accept applications which contain the required information.
- (C) The bureau shall recognize only such application forms which provide answers to all questions asked and furnish such information as may be required.
- (D) Return of the completed forms required by this rule and any additional information required by the bureau to process the employer's application should be submitted at least ninety days prior to the effective date of the employer's requested status as a self-insurer.

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- (1) If the administrator determines to grant the privilege of self-insurance, the bureau shall issue a "Finding of Facts" statement which has been prepared by the bureau, signed by the administrator, subject to all conditions outlined in paragraph (L)(3) of this rule.
  - (2) If the administrator determines not to grant the privilege of self-insurance, the bureau shall so notify the employer, whereupon the employer shall be required to continue to pay its full premium into the state insurance fund.
- (E) All employers that have secured the privilege to pay compensation, etc., directly, will be required to make contributions as determined by the administrator to the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code, and, if an additional security is required by the bureau, in the amount or form that may be specified by the bureau. If the additional security is in the form of a surety bond, the bond shall be from a company approved by the bureau and authorized to do business in the state of Ohio by the Ohio department of insurance. The surety bond shall be in the form prescribed by the bureau. The penal amount of such additional security is to be fixed by the administrator.
- (F) The surety bond or additional security furnished by the employer shall be for an amount and period as established by the bureau and may be periodically reviewed and reevaluated by the bureau. The surety bond or additional security shall provide on its face that the surety shall be responsible for the payment of all claims where the cause of action, as determined by the date of injury or date of occupational disease, arose during the liability of the surety bond or additional security. The liability under the surety bond or additional security and the rights and obligations of the surety shall be limited to reimbursement for the amounts paid from the surplus accounts of the state insurance fund by reason of the default of the self-insuring employer in accordance with division (B) of section 4123.82 of the Revised Code; however, in the event of such self-insuring employer's default, the bureau shall first seek reimbursement from the surety bond or additional security, which shall be first liable and exhausted, before payment is made from the self-insuring employers' guaranty fund established under section 4123.351 of the Revised Code. Upon default of the self-insuring employer, it shall be the responsibility of the administrator of the bureau of workers' compensation to represent the interests of the state insurance fund and the self-insuring employers' guaranty fund. The administrator, on behalf of the self-insuring employers' guaranty fund, has the rights of reimbursement and subrogation and shall collect from a defaulting self-insuring employer or other liable person all amounts the bureau has paid or reasonably expects to pay from the guaranty fund on account of the defaulting self-insuring employer.
- (G) The security herein required to be given by the employer shall be given to the state of Ohio, for the benefit of the disabled or the dependents of killed employees of the employer filing the same, and shall be conditioned for the payment by the employer of such compensation to disabled employees or the dependents of killed employees of such employer, and the furnishing to them of medical, surgical, nursing and hospital attention and services, medicines and funeral expenses equal to or greater than is provided by the Ohio workers' compensation law and for the full compliance with the rules and regulations of the commission and bureau and rules of procedure.
- (H) If another or parent corporation or entity owns fifty per cent or more of the stock of an employer, the bureau may, in its discretion, require the employer to furnish a contract of guaranty executed by the ultimate domestic parent corporation or entity. The bureau shall require an alternative form of security if it does not require a contract of guaranty executed by the ultimate domestic parent corporation or entity.
- (I) From the effective date of this rule, employees having one or more years of experience as a workers' compensation administrator for a self-insuring employer in Ohio shall be deemed sufficiently competent and

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knowledgeable to administer a program of self-insurance. Those self-insuring employers that employ workers' compensation administrators who have less than one year of experience as a workers' compensation administrator in Ohio shall not have its status as a self-insuring employer affected pending notification by bureau of workers' compensation as to whether mandatory attendance of the administrator at a bureau of workers' compensation training program is required. If the bureau determines that the administrator is not able to administer a self-insuring program, the bureau may direct mandatory attendance of the administrator at a bureau of workers' compensation training program until such time as the bureau determines that the administrator is sufficiently competent and knowledgeable to run such a workers' compensation program. The cost of the bureau's training of the administrator(s) under this rule will be borne by the self-insuring employer or self-insuring employer applicant. By accepting the privilege of self-insurance, an employer acknowledges that the ultimate responsibility for the administration of workers' compensation claims in accordance with the law and rules of the bureau of workers' compensation and the commission rests with that employer. The self-insuring employer's records and compliance with the bureau of workers' compensation and commission rules shall be subject to periodic audit by the bureau of workers' compensation.

A self-insuring employer or applicant shall designate one of its Ohio employees who is knowledgeable and experienced with the requirements of the Ohio Workers' Compensation Act and rules and regulations therein, as administrator of its self-insuring program. The requirement for an Ohio administrator may be waived at the discretion of the bureau. The name and telephone number of the Ohio administrator, or non-Ohio administrator where the Ohio requisite has been waived, shall be posted by the employer in a prominent place at all the employer's locations. The administrator's duties shall include, but not be limited to:

- (1) Acting as liaison between the employer, the bureau of workers' compensation and the commission, and providing information to the agency upon request;
- (2) Providing assistance to claimants in the filing of claims and applications for benefits;
- (3) Providing information to claimants regarding the processing of claims and the benefits to which claimants may be entitled;
- (4) Providing the various forms to be used in seeking compensation or benefits;
- (5) Accepting or rejecting claims for benefits;
- (6) Approving the payment of compensation and benefits to, or on behalf of, claimants, pursuant to paragraph (K) of this rule.

This rule is not intended to prevent the hiring of an attorney or representative to assist the employer in the handling and processing of workers' compensation claims.

- (J) Employers that are granted the privilege of paying compensation, etc., directly, in accordance with these rules and regulations shall file with the bureau a report of paid compensation annually, shall keep a record of all injuries and occupational diseases resulting in more than seven days of temporary total disability or death occurring to its employees and report the same to the bureau upon forms to be furnished by it, and shall observe all the rules and regulations of the commission and bureau and their rules of procedure with reference to determining the amount of compensation, etc., due to the disabled employee or the dependents of killed employees, and payment of the same. All employers granted the privilege of paying compensation, etc., directly shall annually report paid compensation electronically via the bureau's website.

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If a self-insured employer fails to timely file its annual report of paid compensation, the bureau may estimate the amount of paid compensation and assess the employer based on this estimate pursuant to rule 4123-17-32 of the Administrative Code. If the employer subsequently provides the bureau with actual paid compensation figures, the bureau shall adjust the paid compensation and any assessment accordingly. A self-insured employer that is no longer a self-insured employer in Ohio and has failed to timely file a report of paid compensation shall be subject to this rule.

(K) Minimal level of performance as a criterion for granting and maintaining the privilege to pay compensation directly.

(1) The employer must be able to furnish or make arrangements for reasonable medical services during all working hours. A written explanation of what arrangements have been made or will be made to provide medical treatment shall be supplied with the application for self-insurance.

For an employer desiring to be first granted the privilege of self-insured status on or after the effective date of this rule, the employer shall provide to the bureau for the bureau's approval the employer's plan for the following:

(a) Criteria for the selective contracting of health care providers;

(b) Plan structure and financial stability for the medical management of claims;

(c) Procedures for the resolution of medical disputes between an employee and the employer, an employee and a provider, or the employer and a provider, prior to an appeal under section 4123.511 of the Revised Code;

(d) Upon the request of the bureau, provide a timely and accurate method of reporting to the administrator necessary information regarding medical and health care service and supply costs, quality, and utilization; and,

(e) Provide an employee the right to change health care providers.

(2) The employer shall promptly pay the fees of outside medical specialists to whom the commission or bureau shall refer claimants for examination or where the commission or bureau refers the claim file for review and opinion by such specialist except as provided by law in cases where the claim was subsequently disallowed. Such fees shall be paid within the time limits provided for payment of medical bills under paragraph (K)(5) of this rule.

(3) Every employer shall keep a record of all injuries and occupational diseases resulting in more than seven days of total disability or death as well as all contested or denied claims and shall report them to the bureau, and to the employee or the claimant's surviving dependents in accordance with rule 4123-3-03 of the Administrative Code.

(4) The employer shall provide to the claimant and upon request, shall file with the bureau or the commission, medical reports relating thereto and received by it from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease, or any injury or occupational disease for which a claim has been filed. The claimant shall provide to the employer and, upon request, shall file with the bureau or the commission, medical reports relating thereto and received from the treating physician and physicians who have seen the claimant in consultation for the allowed injury or occupational disease or any injury or occupational disease for which a claim has been filed. The claimant shall honor the employer's request for appropriate written authorization to obtain medical

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reports to the extent that such reports pertain to the claim.

- (5) Within thirty days after receipt of a hospital, medical, nursing or medication bill duly incurred by the claimant, the employer shall either pay such bill, or if the employer contests any of such matters, shall notify the provider, the employee, and, only upon request, the bureau or commission in writing. Such written notice shall specifically state the reason for nonpayment. The employer's notification to the employee shall indicate that the employee has the right to request a hearing before the industrial commission. If the matter is heard by the industrial commission, the employer shall pay compensation and benefits due and payable under an order as provided by section 4123.511 of the Revised Code. If the self-insuring employer allows a claim for benefits or compensation without a hearing, the employer shall pay such benefits or compensation no later than twenty-one days from acquiring knowledge of the claim or the claimant's filing of the C-84 form, whichever is later. The employer shall approve a written request for a change of physicians within seven days of receipt of such request that includes the name of the physician and proposed treatment. The employer shall approve or deny a written request for treatment within ten days of the receipt of the request. If the employer fails to respond to the request, the authorization for treatment shall be deemed granted and payment shall be made within thirty days of receipt of the bill.
- (6) The employer shall make its records and facilities available to the employees of the bureau at all reasonable times during regular business hours. A public employer shall make the reports required by section 4123.353 of the Revised Code available for inspection by the administrator of workers' compensation and any other person at all reasonable times during regular business hours.
- (7) The employer shall pay all compensation as required by the workers' compensation laws of the state of Ohio. By becoming self-insuring, the employer agrees to abide by the rules and regulations of the bureau and commission and further agrees to pay compensation and benefits subject to the provisions of these rules. The self-insuring employer shall proceed to make payment of compensation or medical benefits without any previous order from the bureau or commission and shall start such payments as required under the Workers' Compensation Act, unless it contests the claim.
- (8) The employer may notify the medical section and the claimant at least sixty days prior to the completion of the payment of two hundred weeks of compensation for temporary total disability with the request that the claimant be scheduled for examination by the medical section. Payment of temporary total disability compensation after two hundred weeks shall continue uninterrupted until further order of the commission up to the maximum required by law, unless the claimant has returned to work, or the treating physician has made a written statement that the claimant is capable of returning to his former position of employment or has reached maximum medical improvement or that the disability has become permanent, or, after hearing, an order is issued approving the termination of temporary total disability compensation.
- (9) Upon written request by the claimant or claimant's representative, the employer shall make available for review all the employer's records pertaining to the claim. Such review is to be made at a reasonable time (not to exceed seventy-two hours) and place. The claimant, upon written request, shall provide the employer or its representative with an appropriate written authorization to obtain medical reports and records pertaining to the claim.

Except as provided for in this rule, an employer may not assess a fee or charge the claimant or the claimant's representative for the cost of providing a copy of the employer's records pertaining to the claim. Where the employer has previously provided a copy of the record or records pertaining to the

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claim to the claimant or the claimant's representative, the employer may charge a fee for the copies. The employer's fee shall be based upon the actual cost of furnishing such copies, not to exceed twenty-five cents per page.

- (10) The employer shall inform a claimant, and the bureau of workers' compensation, in writing, within thirty days from the filing of the claim, as to what conditions it has recognized as related to the injury or occupational disease and what, if any, it has denied. The same timeframe shall apply when the employer rejects a medical only claim.
  - (11) The employer shall post notices of its self-insuring status indicating the location in the plant(s) for the filing of a claim and the job title and department of the employees designated by the employer to be the person or persons responsible for the processing of workers' compensation claims.
  - (12) A public employer, except for a board of county commissioners described in division (G) of section 4123.01 of the Revised Code, a board of a county hospital, or a publicly owned utility, who is granted the status of self-insuring employer pursuant to section 4123.35 of the Revised Code shall comply with the section 4123.353 of the Revised Code.
- (L) If a state insurance fund employer or a succeeding employer, as described in rule 4123-17-02 of the Administrative Code, applies for the privilege of paying compensation, etc., directly, by transferring from state fund to self-insurance, the actuary of the bureau shall determine the amount of the liability of such employer to the bureau for its proportionate share of any deficit in the fund. To determine an employer's liability under this rule, the actuary of the bureau shall develop a set of factors to be applied to the pure premium paid by an employer on payroll for a seven year period, as described below. The factors shall be based on the full past experience of the commission and bureau as reflected in the most recent calendar year end audited combined financial statement of the commission and bureau, and shall also accommodate any projected change in the financial condition of the fund for the current calendar year, or any additional period for which an audited combined financial statement is unavailable. The factors shall be revised annually effective July first based on the most recent calendar year audited combined financial statement and the projected change in the financial condition of the fund in the current calendar year or any additional period for which an audited combined financial statement is unavailable. The annually revised factors shall be adopted by rule 4123-17-40 of the Administrative Code, and filed with the secretary of state and the legislative service commission at least ten days prior to July first of each year. Factors effective July first of each year shall apply to all applications for self-insurance filed on or after July first of that year through June thirtieth of the following year. The revised factors shall be applied to the pure premium paid by the employer on payroll for the seven calendar accident years ending December thirty-first of the year preceding the year in which the factors are adopted under rule 4123-17-40 of the Administrative Code. In the event the audited combined financial statement of the commission and bureau reveals that no deficit exists, or in the event the application of the factors adopted by rule 4123-17-40 of the Administrative Code yields a negative number, the employer will incur no liability under this paragraph, but will not receive any refund for prior premiums paid except for those matters specifically addressed in paragraph (L)(2) of this rule. As used in this rule, "pure premium paid" means premiums actually paid under a base rating plan or an experience rating plan and minimum premium paid under a retrospective rating plan. It does not include premiums billed for actual claims costs, including reserves at the end of ten years, under a retrospective rating plan. Obligations under a retrospective rating plan remain the responsibility of the employer regardless of the employer's status. The same principles shall apply to cases of a merger by a self-insuring employer and a state fund employer under the self-insurer's status. In addition, the provisions listed below shall apply:
- (1) Within thirty days of the receipt from the employer of the necessary forms and of a separate statement of

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assets and liabilities, the bureau will forward to the employer a letter stating the amount of liability (if any) due the state fund as outlined above and a copy of the computation of such liability (if any).

- (2) Within thirty days of the date of mailing of the letter by the bureau as outlined in paragraph (L)(1) of this rule, the employer shall reply by a letter, signed in handwriting, acknowledging that the employer agrees with the amount of liability specified in the letter and that there are no protests or claims hearings pending which could affect the amount of the liability. If any such matters are pending and would affect the liability, they must be detailed and set forth in the letter from the employer. This letter must also acknowledge that any protest letters, applications for handicap reimbursement or other requests affecting the risk's state fund experience filed subsequent to the date of this letter shall be considered invalid for both rebate of premium on state fund experience and the calculation of liability cited above. This letter must also specify the suggested effective date of the transfer to self-insurance which the employer requests, subject to paragraph (B) of this rule which requires that the effective date must be at least ninety days after the date the application forms are received by the bureau. Failure to comply with the requirements set forth herein shall terminate further consideration of the application.
  - (3) Subsequent to the approval of the employer's self-insurance status and the effective date thereof by the administrator, the bureau shall issue a settlement sheet statement containing the adjustment required above and billing for an advance deposit as required by other rules of the commission. The employer shall pay the amounts required by this paragraph, pay the contribution to the self-insuring employers' guaranty fund under section 4123.351 of the Revised Code, submit a performance surety bond or additional security, if required by the bureau, and estimated final payroll report as a state fund risk, all within thirty days of the date of the mailing of the self-insured certificate.
  - (4) The final adjustments of all premiums due the state fund for the final payroll reports and final bureau audit (if any), as well as the pending protests, etc., as specified in paragraph (L)(2) of this rule, shall all be settled and paid within six months from the date of transfer from state fund to self-insuring status. Employer's records must be made available promptly for final audit which must also be completed within six months from the date of the transfer from state risk to self-insurance.
- (M) If there is any change involving additions, mergers, or deletions of entities or ownership changes of a self-insuring employer, which would materially affect the administration of the employer's self-insuring employer program or the number of employees included in such program, the employer shall notify the bureau self-insuring employer's section within thirty days after the change occurs. Based upon the information provided or additional information requested by the bureau, the bureau will determine the effect of the change on the employer's self-insuring employer status, the adequacy of the employer's contribution to the self-insuring employers' guaranty fund, and the need for additional security.
- (N) If a public employer granted the privilege of self-insurance elects to provide coverage for volunteers and probationers performing services for the political subdivision, the employer shall include such volunteers and probationers as employees to be covered under the self-insurance policy. A public employer's coverage of a "work-relief employee" under Chapter 4127. of the Revised Code shall be included in the public employer's self-insurance policy.