

4123-19-16

Self-insured construction projects.

(A) As used in this rule:

- (1) "Responsible self-insured employer" or "responsible employer" means the self-insuring employer or the public school employer that enters into a construction contract and applies for permission to self-insure the construction contract. The responsible employer is the entity responsible for the cost of the construction project and generally will be the owner of the project. The responsible employer is the payor under the contract. "Responsible self-insured employer" or "responsible employer" may include a self-insured general contractor or construction manager whose principal source of business is the execution of construction projects.
- (2) "Public school employer" means an employer defined in division (R) of section 4123.35 of the Revised Code that enters into a construction contract exceeding twenty five million dollars and applies for permission to self-insure the construction contract, whether or not the employer is a self-insuring employer.
- (3) "General contractor" means a self-insured employer that has entered into a contract with an owner to perform more than fifty per cent, by value, of the work on a construction project.
- (4) "Construction manager" means a self-insured employer that has entered into a contract with an owner to provide substantially the same services described in division (A) of section 9.33 of the Revised Code in connection with a construction project. Regardless of any contrary terms of section 9.33 of the Revised Code, for purposes of this rule, the term "construction manager" is not limited to public projects and may apply even if the construction manager also performs construction work on the project.
- (5) "Contracting employer" or "subcontracting employer" means any employer, whether state fund or self-insured, that has contracted either directly with a responsible self-insuring employer or with a contracting or subcontracting employer to perform construction services on the construction project. The contracting employer is the payee under the contract, except for where the contracting employer has subcontracted with another contracting employer.

(B) The purpose of this rule is to establish standards by which the administrator may permit a responsible self-insuring employer to self-insure a construction project entered into by the responsible self-insuring employer pursuant to division (O) of section 4123.35 of the Revised Code.

- (C) The administrator's authority to grant self-insured status for a construction project is permissive. The bureau of workers' compensation may establish criteria for granting self-insured status to ensure the financial stability and claims continuity of the workers' compensation program. The burden of proof is on the responsible self-insured employer to satisfy the requirements of divisions (O), (P), and (Q) of section 4123.35 of the Revised Code, including designation of a safety professional and employment of an ombudsperson for the construction project, and such other requirements as the administrator may establish by this rule or other policy for granting permission to self-insure a construction project.
- (D) A responsible employer filing an application to self-insure a construction project shall be a self-insuring employer under the Ohio workers' compensation statutes, except that a public school employer may be a state fund employer. A public school employer shall be self-insured for the construction project only and shall maintain state fund coverage for its employees.
- (E) In order for a responsible employer to be considered for self-insurance under division (O) of section 4123.35 of the Revised Code, the responsible employer must submit an application including, but not limited to, the following information:
- (1) Dates the construction project is scheduled to begin and end, including the site(s) of the construction project;
 - (2) The estimated cost of the project;
 - (3) The contracting and subcontracting employers whose employees are to be self-insured by the responsible employer, including estimated payroll (any changes to the list of contracting and subcontracting employers during the duration of the project shall be sent to the bureau within two business days);
 - (4) The provisions of a safety program specifically designed for the project;
 - (5) A statement as to whether a collective bargaining agreement governing the rights, duties, and obligations of each of the parties to the agreement with respect to the project exists between the self-insuring employer and a labor organization.
 - (6) All applications must be submitted ninety days prior to the desired effective date.

The administrator may require other information as needed to aid in the decision-making process.

- (F) If the administrator approves the application, the administrator shall mail to the responsible self-insured employer a certificate granting the privilege to self-insure the construction project. Upon approval, the responsible employer is responsible for the administration and payment for the life of the claim of all claims under Chapters 4121. and 4123. of the Revised Code for the employees of any contracting employers and subcontracting employers covered under the certificate who receive injuries or are killed in the course of and arising out of employment on the project, or who contract an occupational disease in the course of employment on the project.
- (G) The responsible employer is entitled to all of the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the employees of the contracting and subcontracting employers covered under the certificate as if the employees were employees of the responsible employer.
- (H) The contracting and subcontracting employers included under the certificate are entitled to the protections provided under Chapters 4121. and 4123. of the Revised Code with respect to the contracting and subcontracting employer's employees who are employed on the construction project which is the subject of the certificate.
- (I) The contracting and subcontracting employers included under the certificate shall identify in their payroll records for audit and compliance purposes the employees who are considered the employees of the responsible employer listed in that certificate for purposes of Chapters 4121. and 4123. of the Revised Code, and the amount that those employees earned from employment on the project that is subject to the certificate. The contracting or subcontracting employer shall exclude the payroll for its employees under the construction project from its payroll report and the administrator shall not consider the payroll when determining those contracting or subcontracting employers' premiums or assessments required under Chapters 4121. and 4123. of the Revised Code.
- (J) The responsible employer shall include in the amount of paid compensation it reports pursuant to division (L) of section 4123.35 of the Revised Code, the amount of paid compensation that the responsible employer paid pursuant to division (O) of section 4123.35 of the Revised Code.
- (K) For a public school employer, the bureau may grant the privilege of participating as a self-insured employer for a construction project under this rule on a one year basis, and shall consider the project for renewal annually pursuant to rule 4123-19-08 of the Administrative Code.
- (1) Surety bond or letter of credit.

- (a) A public school employer shall 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. In addition, the employer shall provide additional security as required by the bureau in the amount or form that may be specified by the bureau. At a minimum, the additional security shall be one hundred and twenty-five per cent of the expected workers' compensation losses of the construction project as determined by the bureau. The security shall be in force on or before the administrator grants the privilege to self-insure the construction project. In the event the initial calculation of expected losses is shown to be less than the actual losses, additional security shall be provided as required by the bureau.
- (b) The public school employer shall assign the additional security required by this rule to the bureau for the benefit of the disabled employees or the dependents of killed employees of the public school employer for the construction project. In addition, the security shall be applied to disabled workers' relief fund payments to employees of the construction project and administrative expenses of the bureau in the management of such claims of employees of the construction project.
- (c) Notwithstanding the authority of the bureau to seek reimbursement from the self-insuring employers' guaranty fund, or from surety, excess loss insurance, and any other sources provided by the employer, the legal obligation to pay the costs of injuries, occupational diseases, and deaths incurred under the construction project remains with the public school employer.

(2) Disabled workers relief fund.

A public school employer shall be required to pay the ultimate costs of disabled workers relief fund payments to employees of the construction project, no matter the status of the construction project at the time the disabled workers relief fund payments are made to the employees of the construction project.

(3) Excess loss insurance.

A public school employer may purchase excess loss insurance subject to the rules applying to self-insuring employers. In the event the excess loss insurance is purchased, all rights to recovery from that insurance must be assignable to the bureau in the event of bankruptcy of the public employer school facility employer.

(4) Reducing the costs of the construction project.

As a condition precedent to the bureau granting the privilege to self-insure the construction project, a public school employer shall certify to the bureau by a written document signed by the highest elected official(s) of the employer, the costs savings of self insuring the construction project. The certification shall include data as required by the bureau, including but not limited to a cost analysis showing the costs of insuring the project with the Ohio state insurance fund and the costs of self insuring the project.

(5) Safety plan.

A safety professional shall be assigned to each construction project. The safety professional shall be responsible for ensuring that activities are performed in accordance with the site-specific health and safety plan ("HASP") and training of site personnel.

A site-specific "HASP" shall be created prior to the start of the project and shall, at a minimum, contain the following elements:

- (a) Identify all recognized site hazards associated with each phase of the project. Particular attention should be given to fall hazards, trenching operations, and electrical hazards.
- (b) Identify key personnel and alternates responsible for site safety and health and the appointment of a site safety and health officer. Roles and responsibilities must be defined.
- (c) Evaluate the risks associated with each operation and identify the appropriate control measures to be taken to minimize or eliminate those risks.
- (d) Address training requirements for both routine and non-routine activities.
- (e) Include contingencies in the "HASP." Contingencies may include: communications (internal and external), first aid provisions and providers, identification of nearest medical facility, post emergency phone numbers, and site control (prevent access by unauthorized personnel).
- (f) Include employee involvement, such as involvement in inspections, incident investigations, and hazard analyses.

- (g) Collect documentation of information, such as hazard inspections, audits of the "HASP," injury/illness data, incident investigations, industrial hygiene surveys, maintenance records, and job hazard analyses.

(6) Organizational Plan Criteria.

The public school employer shall:

- (a) Identify a self-insured program administrator to be knowledgeable in the rules and laws of Ohio self-insurance for workers' compensation;
- (b) Identify its plan to obtain timely payroll information for all contractors and subcontractors covered, to ensure timely calculation and distribution of injured worker benefits; its methodology for payment of compensation and medical fee bills; and its method of educating each contractor and its employers as to proper claim reporting and access to medical care procedures;
- (c) Designate where claim files will be located;
- (d) ~~Implement a Qualified Health Plan system under section 4121.442 of the Revised Code, including its plan for alternative dispute resolution, its network of providers, and its medical management process~~ Provide to the bureau for the bureau's approval the employer's plan for medical management of claims as required by paragraph (K)(1) of rule 4123-19-03 of the Administrative Code;
- (e) Plan to ensure accurate accounting of workers covered under the construction project;
- (f) Identify the bank being used for the workers' compensation account.

(7) Ombudsperson duties.

The public school employer shall employ an ombudsperson for the construction project. The ombudsperson shall:

- (a) Have experience in workers' compensation or the construction industry, or both.
- (b) Communicate with and provide information to employees who are injured

in the course of, and arising out of, employment on the construction project.

- (c) Investigate the status of a claim upon the request of an employee.
- (d) Provide information to claimants, third party administrators, employers, and other persons in protecting their rights under the workers' compensation laws and rules.

Effective:

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Certification

Date

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