



FILED
1985 MAY 23 PM 3:23
WORKERS' COMPENSATION FUND

OFFICE OF THE SECRETARY OF STATE
ARCH A. MOORE, JR.
Governor
601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301
May 23, 1985

MARY MARTHA MERRITT
Commissioner

NOTICE OF FINAL FILING - LEGISLATIVE RULE

LEGISLATIVE RULE: Hearing and Review Process Regarding the
Performance of Self-Insured Employers, Series V.

The attached legislative rule is hereby final filed with the Secretary
of State by Workers' Compensation Fund
as authorized by Senate Bill 399 Section 64-2-23(1)(15)(a).

Mary Martha Merritt

Mary Martha Merritt
Commissioner

FILED

1985 MAY 23 PM 3:23

OFFICE OF THE SECRETARY OF STATE

KEN HECHLER
Secretary of State

MARY P. RATLIFF
Deputy Secretary of State

BARBARA STARCHER
Deputy Secretary of State

RICHARD S. STEPHENSON
Deputy Secretary of State

Telephone: (304) 345-4000
Corporations 345-8000



STATE OF WEST VIRGINIA
SECRETARY OF STATE

Charleston 25305

May 23, 1985

FILED

1085 MAY 23 PM 1:01

WILLIAM H. HARRINGTON
Chief of Staff

RICH O. HARTMAN
Director, Administrative Law

DONALD P. WILKES
Director, Corporations

VIRGINIA SKEEN
Special Assistant

(Plus all the volunteer
help we can get)

PROPOSED RULES

STATE REGISTER FILING

=====

AGENCY Workers' Compensation Fund

CONTACT PERSON William Mitchell PHONE 348-2580

TYPE OF RULE Legislative

TITLE OF RULE Hearing and Review Process Regarding the Performance
of Self-Insured Employers.

CHAPTER 23 ARTICLE 2 SERIES V

AUTHORITY 23-1-15

+++++

CHECK APPLICABLE ITEMS BELOW TO SHOW KIND OF ACTION BEING TAKEN

☒ NEW RULE

☐ NOTICE OF HEARING

☐ AMENDMENTS TO EXISTING RULE

☐ NOTICE OF AGENCY APPROVAL
(legislative rules only)

☐ REPEAL OF EXISTING RULE

☐ NOTICE OF AGENCY ADOPTION
(interpretive & procedural
rules only)

NOTE: ALL FILINGS REQUIRE ONLY
ONE COPY, EXCEPT FINAL
FILING OF RULES WHICH
REQUIRES AN ORIGINAL AND
A COPY.

☒ FINAL FILING

☐ FIRST EMERGENCY FILING

☐ SECOND EMERGENCY FILING

Modification
~~SUGGESTED AMENDMENT~~ TO WORKERS' COMPENSATION RULES - SELF INSURERS

4.02 An employer may reapply for self-insured status after five (5) successive years as a premium paying subscriber during which no proven violation of the ^{Workers' Compensation} Commission statutes or rules has occurred. Reinstatement as a self-insurer shall follow those requirements for self-insured status in effect at the time of reapplication.

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
WORKERS' COMPENSATION COMMISSIONER

Chapter 23-2
Series V
(1984)

SELF-INSURED

TABLE OF CONTENTS

	<u>PAGE</u>
Section 1. General	1
Section 2. Complaint Procedure	2
Section 3. Hearing; Notice; Review	4
Section 4. Penalties	4

=====

File 10/25-84
W

WEST VIRGINIA ADMINISTRATIVE REGULATIONS
WORKERS' COMPENSATION COMMISSIONER

Chapter 23-2
Series V
(1984)

Subject: These rules provide for the general administration of a hearing and review process regarding the performance of self-insured employers.

Section 1. GENERAL

1.01. Scope. These are ~~emergency-legislative-rules~~ Agency Approved Proposed Legislative Rules establishing a hearing and review process for consideration of complaints filed by claimants about the performance of employers who are permitted to self-insure their workers' compensation liability.

1.02. Authority. These ~~emergency-legislative-rules~~ Agency Approved Proposed Legislative Rules are promulgated pursuant to the authority of West Virginia Code, Chapter 23, Article 1, Section 15, and Article 2, Section 9, as judicially interpreted by the Supreme Court of Appeals of West Virginia in the case of UMWA, et al v. Lewis, W.Va. , 309 S.E.2d 58 (1983).

1.03. Filing Date. These rules were filed on the 6th 25th day of June, October, 1984, in the Secretary of State's office.

1.04. Effective Date. Submission Date. These rules ~~are to become effective on the 6th day of June, 1984, as emergency-legislative-rules.~~ were submitted on the 25th day of October, 1984, to the Legislative Rule-Making Review Committee as required by law.

1.05. Definitions. As used in these rules:

- A. Self-Insured Employers shall mean those employers who have elected and been granted permission to self-insure their workers' compensation liability pursuant to the provisions of West Virginia Code, Chapter 23, Article 2, Section 9.
- B. Fund shall mean the West Virginia Workers' Compensation Fund created by West Virginia Code, Chapter 23, Article 3, Section 1.
- C. Commissioner shall mean the Workers' Compensation Commissioner appointed pursuant to West Virginia Code, Chapter 23, Article 1, Section 1.

Section 2. COMPLAINT PROCEDURE

2.01. Filing of Complaint; Proper Cause for Failure to Honor Pay Orders.

~~A claimant employed by a self-insured employer, or a dependent of a fatally injured employee of a self-insured employer, having reason to believe that the employer has refused or failed to properly discharge its responsibility in paying compensation and expenses directly to its employees as required by law may file in the office of the Commissioner a written complaint regarding the alleged refusal or failure of the employer. The written complaint should contain specific information including dates, amounts, names and other pertinent facts upon which the complaint is based.~~

- A. An injured employee of a self-insured employer, or a dependent of a fatally injured employee of a self-insured employer, where

such person's claim has been ruled compensable, who has reason to believe that the employer has refused or failed without proper cause to discharge its responsibility in paying compensation and expenses in that claim directly to that injured employee or that dependent of a fatally injured employee as required by law may file in the office of the Commissioner a written complaint regarding the alleged refusal or failure of the employer. Such a written complaint must be made with specificity and include dates, amounts, names and other pertinent facts upon which the complaint is based.

- B. Proper cause for failure to promptly honor a pay order to a claimant shall include, but not be limited to, those instances where a self-insured employer fails to receive notice of a properly promulgated pay order, or those instances in which a pay order has been promulgated in substantive error, is on its face obviously in error as to the amount due, or orders the payment of temporary total disability benefits past the date on which the claimant returned to work.

2.02. Investigation of Complaint. Upon receipt of a written complaint the Commissioner shall forward a copy to the employer and give the employer an opportunity to respond to the complaint in writing. The employer shall respond within thirty days of receipt of the complaint. The matter shall then be investigated by review of the claim records, communication with the employer and complainant or their representatives, and by audit of the employer's

operations and records, or otherwise, as may be deemed appropriate by the Commissioner.

2.03. Initial Determination. After investigation the Commissioner shall give notice in writing to the parties of the initial determination. If investigation of the matter and communications with the interested parties produce a satisfactory resolution of the matter in dispute, or if it shall appear that the employer has substantially complied with all requirements of law, the complaint shall be dismissed. Otherwise, a hearing shall be scheduled.

Section 3. HEARING; NOTICE; REVIEW

3.01. Hearing. Hearings shall be conducted pursuant to the provisions of West Virginia Code, Chapter 23, Article 5, Section 1.

3.02. Notice of Decision. After hearing the Commissioner shall give written notice of the action taken upon the complaint in the form of an appealable order.

3.03. Appeal. If the employer or the complainant shall feel aggrieved by any action of the Commissioner the right to appeal provided by West Virginia Code, Chapter 23, Article 5, Sections 1, 3, and 4 shall be applicable.

Section 4. PENALTIES

4.01. Financial Penalty. If after hearing the Commissioner finds that the employer has refused or failed without proper cause to discharge its responsibility in paying compensation and expenses in a compensable claim as

required by law directly to its employees to the claimant or dependent or
has otherwise failed to comply with the requirements of law in its performance
as a self-insured employer the Commissioner ~~shall~~ may assess against the
employer a financial penalty, payable to the claimant in the claim which gave
rise to the complaint, in an amount not to exceed five thousand dollars.

4.02. Revocation of Self-Insurance Privilege. In addition to the
financial penalty provided in Section 4.01, above, where the Commissioner
determines that the self-insured employer has refused or failed without proper
cause to discharge its responsibility in paying compensation and expenses as
required by law with such frequency as to produce a substantial impairment of
the rights of its employees and their dependents, based upon proven infractions
found and penalized by the Commissioner pursuant to these rules, the Commissioner
may revoke the privilege of the employer to self-insure its risk and require the
employer to become a premium-paying subscriber to the Fund.

An employer's privilege to self-insure a subsidiary or division or other
operating entity of a parent company may be revoked when the evidence of record
clearly reflects that the subsidiary or division or other operating entity is
operated at a different location from the parent company and that the improper
conduct requiring revocation was neither directed nor authorized by the parent
company.

4.03. Continuing Liability and Jurisdiction. An employer that has the
privilege of self-insurance revoked pursuant to Section 4.02, above, shall
continue to be liable for the payment of claims incurred during the period of

Workers' Comp.
Adm. Reg. 23-2
Series V

self-insurance and the Commissioner shall continue to have jurisdiction over such claims and payments. The Commissioner may require reports from the employer and may conduct audits of the employer's records to identify the continuing liability of the employer.

SELF-INSUREDS

INDEX

		<u>PAGE</u>
Section 1.	General	1
Section 1.01	Scope	1
Section 1.02	Authority	1
Section 1.03	Filing Date	1
Section 1.04	Effective-Date <u>Submission Date</u>	1
Section 1.05	Definitions	2
Section 2.	Complaint Procedure	2
Section 2.01	Filing of Complaint	2
Section 2.02	Investigation of Complaint	3
Section 2.03	Initial Determination	4
Section 3.	Hearing; Notice; Review	4
Section 3.01	Hearing	4
Section 3.02	Notice of Decision	4
Section 3.03	Appeal	4
Section 4.	Penalties	4
Section 4.01	Financial Penalty	4
Section 4.02	Revocation of Self-Insurance Privilege	5
Section 4.03	Continuing Liability and Jurisdiction	5

SENATE BILL NO. 419

(By Mr. R. Williams

Introduced March 6, 1985

referred to the Committee on the Judiciary

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three (one)(fifteen), relating to authorizing the workers' compensation commissioner to promulgate legislative rules relating to self-insured employers.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three (one)(fifteen), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE LEGISLATIVE RULES.

§64-2-23(1)(15). Workers' compensation commissioner.

The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred

1 eighty-four, modified by the workers' compensation
2 commissioner to meet the objections of the legislative
3 rule-making review committee and refiled in the state
4 registered on the ninth day of January, one thousand nine
5 hundred eighty-five, relating to the workers' compensation
6 commissioner (self-insured employers) are authorized.

7

8 NOTE: The purpose of this bill is to authorize the
9 workers' compensation commissioner to promulgate legislative
10 rules relating to self-insured employers.

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.

H. B. 1601

(By Delegate Casey)

(Introduced March 6, 1985; referred to the
Committee on the Judiciary)

A BILL to amend article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three (one)(fifteen), relating to authorizing the workers' compensation commissioner to promulgate legislative rules relating to self-insured employers.

Be it enacted by the Legislature of West Virginia:

That article two, chapter sixty-four of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three (one)(fifteen), to read as follows:

ARTICLE 2. EXECUTIVE AGENCY AUTHORIZATION TO PROMULGATE
LEGISLATIVE RULES.

§64-2-23(1)(15). Workers' compensation commissioner.

The legislative rules filed in the state register on the twenty-fifth day of October, one thousand nine hundred

1 eighty-four, modified by the workers' compensation
2 commissioner to meet the objections of the legislative
3 rule-making review committee and refiled in the state
4 registered on the ninth day of January, one thousand nine
5 hundred eighty-five, relating to the workers' compensation
6 commissioner (self-insured employers) are authorized.

7

8 NOTE: The purpose of this bill is to authorize the
9 workers' compensation commissioner to promulgate legislative
10 rules relating to self-insured employers.

11 This section is new; therefore, strike-throughs and
12 underscoring have been omitted.



WORKERS' COMPENSATION FUND

601 MORRIS STREET
CHARLESTON, WEST VIRGINIA 25301

ARCH A. MOORE, JR.
Governor

MARY MARTHA MERRITT
Commissioner

May 23, 1985

Promulgation History Abstract

Rule Title: Hearing and Review Process Regarding the Performance of Self-Insured Employers.

Rule Type: Legislative.

Filed Notice for Public Hearing: September 6, 1984.

Public Hearing Held: October 4, 1984.

Filed Agency Approved Rule: October 25, 1984.

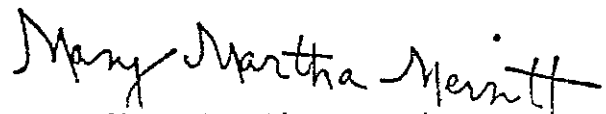
Filed Agency Approved Rule with LRMRC: October 25, 1984.

Action by LRMRC: Approved with modification, January 8, 1985.

Legislative Action: Authorized in Senate Bill 399, W.Va. Code, 64-2-23(1)(15)(a). Passed April 13, 1985; in effect from passage.

Final Rule Filed with Secretary of State: May 23, 1985.

Effective Date: May 23, 1985.


Mary Martha Merritt
Commissioner

Entered