

PROPOSED RULES CHANGES

Effective date July 1, 2016

(Strikeouts=deletions; Underline=additions)

1. Rule 61(a)-Addition of Board's website to the rule

The Board's website address www.sbwc.gerogia.gov will be inserted after the first sentence of Rule 61(a).

2. Rule 61(b) (2)—Form WC-2-Notice of Payment or Suspension of Benefits will be amended as follows:

Mail **Serve** a copy of the Form WC-2 and attachments, if any, to **on** the employee and their **the employee's** attorney, if one has been retained.

3. Rule 61 (b)(10)

Rule 61(b)(10) will be amended by deleting the following parenthetical sentence from the Rule:

~~(A request for hearing by an employee will be considered only after the time required of the employer/insurer to make the first payment of income benefits has expired as provided in O.C.G.A. §34-9-221).~~

4. The following sentence will be added:

Specific body parts injured must be listed on the WC-14.

5. Rule 102 (A)(1) The following statement will be added as the last sentence to this paragraph:

The Board and its administrative law judges shall comply with the Code of Judicial Conduct.

6. Rule 104—Effective Date of Conversion

A new Section (d) will be added to Rule 104 that provides as follows:

(d) The date that benefits may be converted from temporary total disability benefits to temporary partial disability benefits shall be determined by the date the employee was released to work with restrictions.

Rules changes necessary to correspond to 2016 legislation

Rule 121. Insurance in More Than One Company; Self-Insurance; Insurance by Counties and Municipalities.

(b) Any employer desiring to become a self-insurer shall apply on the form prescribed by the Self-Insurers Guaranty Trust Fund Board of Trustees and approved by the Board. Such employer shall provide the Board with sufficient information for the Board to make an adequate assessment of the employer's workers' compensation exposure and liabilities and shall further provide evidence satisfactory to the Board of such employer's financial ability to pay the compensation directly in the amount and manner when due, as provided in this chapter. All inquiries must be answered fully and will be treated as strictly confidential. The Self-Insurers Board of Trustees, with the approval of the Board, shall set the amount of security in the form of a surety bond or letter of credit to be required, but in no event shall the amount be less than \$250,000.00. It shall be at the discretion of the Self-Insurers Guaranty Trust Fund Board of Trustees if other forms of security are acceptable. Each case will be considered on its own merits with strict regard to the hazards of the business involved. So long as an employer shall continue solvent and promptly pay any and all compensation legally due in accordance with the provision of the law there shall be no effort to collect under the securities.

Rule 381. Definitions as used in this Article.

- (a) "Applicant" means an employee entitled to workers' compensation benefits.
- (b) "Board" means the State Board of Workers' Compensation.
- (c) "Board of trustees" means the Board of trustees of the Fund.
- (d) "Company" means a corporation, association, partnership, proprietorship, firm, or other form of business organization
- (e) "Fund" means the Self-Insurers Guaranty Trust Fund.
- (f) "Insolvent self-insurer" means a self-insurer who files for relief under the Federal Bankruptcy Act, a self-insurer against whom involuntary bankruptcy proceedings are filed, a self-insurer for whom a receiver is appointed in a federal or state court of this state or any other jurisdiction; a self-insurer who is in default on workers' compensation obligations; or a self-insurer who is determined by the Board to be in noncompliance with ~~default of its~~ workers' compensation obligations or requirements according to rules and regulations ~~promulgated by the Board of trustees and approved by~~ of the Board.
- (g) "Participant" means a self-insurer who is a member of the Fund.
- (h) "Self-insurer" means a private employer, including any hospital authority created

pursuant to the provisions of Article 4 of Chapter 7 of Title 31, the “Hospital Authorities Law,” that has been authorized to self-insure its payment of workers' compensation benefits pursuant to this Chapter, except any governmental self-insurer or other employer who elects to group self-insure pursuant to Code Section 34-9-152, or captive insurers as provided for in Chapter 41 of Title 33, or employers who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter. A “self-insurer” shall further not include any individual or company who enters into a contract or agreement with an employer under which the employer outsources its workers’ compensation risks, responsibilities, obligations or liabilities to such individual or company; and pursuant to such contract or agreement, is required to provide workers’ compensation benefits to an injured employee even though no common-law master-servant relationship or contract of employments exists between the injured employee and the individual or company providing the benefits.

(i) “Trustee” means a member of the Self-Insurers Guaranty Trust Fund Board of Trustees.

Rule 382. Purpose.

(a) The purpose of creating a Self-Insurers Guaranty Trust Fund is to make payments in accordance with this chapter for the benefit of workers injured on the job in the event a participant becomes insolvent. The Fund shall be administered by an administrator appointed by the Chairperson of the Board of trustees with approval of the Board of trustees. ~~Monies in the Fund will be invested by the Board of trustees in the same manner as provided by law for investments in government backed securities.~~ The fund assets shall be invested only in obligations issued or guaranteed by the United States government.

(b) All returns on investment shall be retained by the Fund. In addition to paying benefits, and administrative fees, operating costs of the fund, attorneys' fees incurred by the Board of trustees and other costs reasonably incurred by the Board will be paid from this Fund.

(c) As a condition of self-insurance all private employers must make application and be accepted in the Self-Insurers Guaranty Trust Fund.

(d) Membership in the Fund shall not be permitted for any of the following:

- (1) Any governmental employer authorized by the Board to self-insure;
- (2) Any employer who elects to group self-insure pursuant to Code Section 34-9-152;
- (3) Captive insurers as provided for in Chapter 41 of Title 33;
- (4) Any employer who, pursuant to any reciprocal agreements or contracts of indemnity executed prior to March 8, 1960, created funds for the purpose of satisfying the obligations of self-insured employers under this chapter;
- (5) Any individual or company who enters into a contract or agreement with an employer under which the employer outsources its workers’ compensation risks, responsibilities, obligations or liabilities to such

individual or company; and pursuant to such contract or agreement, is required to provide workers' compensation benefits to an injured employee even though no common-law master-servant relationship exists between the injured employee and the individual or company providing the benefits.

(e) Self-insurers must give written notice to the Board when they add or delete subsidiaries, affiliates, divisions or locations to their self-insurance certificate, or make any changes in their excess insurance policies. (See Rule 126(c).)

Rule 383. Board of Trustees; How Appointed.

(a) Each member of the Board of trustees shall be an employee of a participant. The Board of trustees shall consist of a chairperson and six trustees elected by the participants. The Board of trustees shall initially be appointed by the Governor not later than August 1, 1990. Three of the initial trustees shall be appointed for terms of office which shall end on January 1, 1993, and the chairperson and the three other initial trustees shall be appointed for terms of office which shall end on January 1, 1995. Thereafter, each trustee shall be elected to a four-year term and shall continue to serve unless otherwise ineligible under subsection (b) of this Code section. No later than 90 days prior to the end of any member's term of office, the chairperson shall select a nominating committee from among the participants to select candidates for election by the participants for the following term. In the event the chairperson fails to complete his or her term of office, a successor will be elected by the Board of trustees to fill the unexpired term of office.

(b) A vacancy in the office of the Board of trustees shall occur for the following reasons:

- (1) Resignation;
- (2) Death;
- (3) Conviction of felony;
- (4) Employer no longer qualifies as a self-insured participant;
- (5) Trustee is no longer an employee of the participant.

(c) The Board of trustees may remove any trustee from office for:

- (1) Formal finding of incompetence;
- (2) Neglect of duty; or
- (3) Malfeasance in office.

(d) The Board of trustees, within 30 days after the office of any elected member becomes vacant, shall elect a successor for the unexpired term.

Rule 384. Powers of the Board of Trustees.

The Board of trustees shall possess all powers necessary to accomplish objectives prescribed in this article including the following:

(a) Submit to the Board, for approval within 90 days from appointment, bylaws, rules, regulations, resolutions and application fee of \$500.00. Board of trustees may carry out its responsibilities by contract or other instrument; may purchase services, borrow money, purchase excess insurance, levy penalties and fines, and collect funds necessary to effectuate its activities. The Board of trustees shall appoint, retain and employ staff necessary to achieve the purposes of the Board of trustees with expenses incurred paid from the Fund.

(b) The Board of trustees shall meet quarterly or upon the call of the chairman issued to the trustees in writing not less than 48 hours prior to the day and hour of the meeting; upon a request submitted to the chairman 72 hours prior to the proposed day and hour by a majority of the trustees whereupon the chairman will provide notice as set forth above or by unanimous written agreement of the trustees.

~~(b)~~ (c) Any trustee may participate in a meeting of the board of trustees by telephone conference or similar communications technology which allows all individuals participating in the meeting to hear and speak with each other. Participation in a meeting pursuant to this subparagraph shall constitute presence at such meeting.

~~(c)~~ (d) Four trustees constitute a quorum.

~~(d)~~ (e) The Board of trustees shall serve without compensation; each member will be entitled to reimbursement for actual expenses incurred in the discharge of his official duties.

~~(e)~~ (f) The Board of trustees shall have the right to bring and defend actions in the name of the Fund. The administrator, the trustees, employers, agents, and employees shall not be liable jointly or individually for matters arising from or out of authorized conduct of the Fund in accordance with this article.

Rule 385. Participant Filing for Relief Under the Federal Bankruptcy Act.

(a) Within 30 days of the occurrence of filing for relief under the Federal Bankruptcy Act or against whom bankruptcy proceedings are filed or for whom a receiver is appointed, the participant shall file a written notice with the Board and the Board of trustees.

(b) ~~Any person~~ individual who files filing an application for adjustment of a claim against a participant ~~who has filed for relief under the Federal Bankruptcy Act, or against whom bankruptcy proceedings have been filed or a receiver appointed~~ is or becomes an insolvent self-insurer shall must file a written notice of such participant's status with the Board and the Board of trustees within 30 days of such ~~person's individual having knowledge of the participant becoming an insolvent insurer~~.

(c) Upon receipt of any notice as provided in subsections (a) and (b) of this Code Section, the Board shall determine whether the participant is an insolvent self-insurer. The Board of trustees shall refer for investigation all facts, circumstances, and

information in its possession to a properly designated authorized certified public accountant for determination of the question of insolvency according to generally accepted accounting principles. Upon receipt of the notice referenced herein, a participant shall be required to execute a release of any and all financial information, banking records, books of account, tax returns or other records determined by the Board of trustees to be necessary in making a determination of insolvency and the participant shall assist in the production of said information when requested to do so by the Board of trustees.

(d) When a participant is determined to be an insolvent self-insurer, the Board of trustees is empowered and shall assume on behalf of the participant the following:

(1) Outstanding workers' compensation obligations excluding penalties, fines and claimant's attorney fees assessed pursuant to § 34-9-108(b).

(2) Responsibility for taking necessary steps to collect, recover, and enforce all outstanding security, indemnity, insurance, or bonds for the purpose of paying outstanding and continuing obligations of participants.

(3) Refunding any funds remaining from such security to the appropriate party one year from the date of final payment, provided no liabilities remain against the Fund and all applicable statutes of limitation have run.

(e) The Fund shall be a party in interest in all proceedings in the payment of workers' compensation claims for a participant and shall be subrogated to the rights of the participant. The Fund may exercise all rights and defenses of the participant including:

(1) Appear, defend and appeal claims.

(2) Receive notice of, investigate, adjust, compromise, settle and pay claims.

(3) Investigate, handle and controvert claims.

(f) Should payment of benefits be stayed in bankruptcy court, the Board of trustees or a designated representative shall appear in the bankruptcy court and move to lift the stay.

(g) The Board of trustees shall notify all employees with pending claims of the name, address and telephone number of the party administering and defending against their claim.

(h) The Board has the discretion to direct the Fund to pay, in whole or in part, the contractual fee arrangement between an attorney and a claimant pursuant to § 34-9-108(a). The attorney must apply to the Board and provide notice to the employee with a pending claim. Any party may make an objection to the application and all objections will be considered by the Board.

(i) This code section shall not impair any claims, to the extent those claims are unpaid, in the insolvent self-insurer's bankruptcy by the board of trustees, any employees, or any provider of services related to the insolvent self-insurer's workers' compensation obligations, to the extent those claims remain unpaid. Provider of

services includes, but is not limited to, medical providers or the attorneys representing the insolvent self-insurer or the claimant, if the services provided are related to the insolvent self-insurer's workers' compensation obligations.

Rule 386. Method of Assessment.

- (a) (1) The Board of trustees shall, commencing January 1, 1991, assess each participant in accordance with paragraph (2) of this subsection. Upon reaching a funded level of ~~\$40~~ 15 million, all annual assessments against participants who have paid at least three prior assessments shall cease except as specifically provided in paragraph (4) of this subsection.
- (2) Assessment for each new participant in the first calendar year of participation shall be \$8,000.00. Thereafter, assessments shall be in accordance with paragraphs (3) and (4) of this subsection.
- (3) After the first calendar year of participation, the assessment of each participant shall be made on the basis of a percentage of the total of indemnity benefits paid by, or on behalf of, the participant during the previous calendar year. Except as provided in paragraph (2) of this subsection for the first calendar year of participation and paragraph (4) of this subsection, a participant will be assessed 1.5 percent of the indemnity benefits paid by that participant during the previous calendar year or \$2,000.00, whichever is greater. The maximum amount of annual assessments, not including those special assessments provided for in paragraph (4) of this subsection, in any calendar year against any one participant shall be \$8,000.00.
- (4) If the fund is reduced to an amount below \$5 million net of all liabilities as the result of the payment of claims, the administration of claims, or the costs of administration of the Fund, the Board of trustees may levy a special assessment against participants in an amount sufficient to increase the funded level of \$5 million net of all liabilities; provided however, that such assessment in any calendar year against any one participant shall not exceed \$8,000.00.
- (5) Funds obtained by such assessment shall be used only for the purposes set forth in this article and shall be deposited upon receipt by the Board of trustees into the fund. If payment of any assessment, penalty or fine made under this article is not made within 30 days of the sending of the notice to the participant, the Board of trustees is authorized to do any or all of the following:
- (A) Levy fines or penalties
 - (B) Proceed in court for judgment against the participant, including the amount of the assessment, fines, penalties, the costs of suit, interest, and reasonable attorneys' fees;
 - (C) Proceed directly against the security pledged by the participant for the collection of same; or
 - (D) Seek revocation of the participant's ~~insured~~ self-insured status.

(b) (1) The Fund shall be liable for claims arising out of injuries occurring after January 1, 1991; provided, however, no claim may be asserted against the Fund until the funding level has reached \$1.5 million.

(2) All participants shall be required to maintain surety bonds or the Board of trustees may, in its discretion, accept ~~any~~ an irrevocable letter of credit ~~or other acceptable forms of security~~ in the amount of no less than \$250,000.00. In addition, each active participant shall be required to purchase excess insurance for statutory limits with a self-insured retention specified by the Board, and the excess policy shall include the bankruptcy endorsement required by the board and Board of trustees. For participants who are no longer active, security in an amount commensurate with their remaining exposure, as determined by the board, shall be required until all self-insured claims have been closed and all applicable statutes of limitations have run.

(c) A participant who ceases to be a self-insurer shall be liable for any and all assessments, penalties and fines made pursuant to this code section for so long as indemnity or medical benefits are paid for claims which originated when the participant was a self-insurer. Assessments of such a participant shall be based on the indemnity benefits paid by the participant during the previous calendar year.

(d) Upon refusal to pay assessments, penalties, or fines to the Fund or upon refusal to comply with a board order ~~increasing security~~, the Fund may treat the self-insurer as being in default with this Chapter and the self-insurer shall be subject to revocation of its Board authorization to self-insure and forfeiture of its security.

Rule 387. Rights and Obligations of Board of Trustees to Obtain Reimbursement from Participant.

(a) The Board of trustees shall have the right and duty to obtain reimbursement from any participant for compensation obligations in the amount of the participant's compensation obligations assumed by the Board of trustees and paid for claims as well as reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be approved by the Board of trustees.

(b) The Board of trustees shall have the right to use the security deposit of a participant, its excess insurance coverage, and any other guarantee to pay the participant's workers' compensation obligations assumed by the Board of trustees including reasonable administrative and legal costs. The amount of the claims for reimbursement of reasonable administrative and legal costs shall be subject to the approval of the Board of trustees.

(c) The Board of trustees shall be a party in interest in any action or proceeding to obtain the security deposit of a participant for the payment of the participant's compensation obligations, in any action or proceeding under the participant's excess insurance policy, and in any other action or proceeding to enforce an agreement of any security deposit; or captive or excess insurance carrier; and from any other guarantee to satisfy such obligations. The fund is authorized to file a claim against a ~~bankrupt~~ an

insolvent participant or the participant's agents and seek reimbursement for any payments made by the fund on behalf of the participant pursuant to this chapter. The fund is subrogated to the claim of any employee whose benefits are paid by the fund. Further, the fund shall have a lien against any reimbursement payments the participant is entitled to from the Subsequent Injury Trust fund in an amount equal to the payments made by the fund to satisfy the participant's liability for workers' compensation benefits

Rule 388. Duties of the Board to Board of trustees.

- (a) Report to Board of trustees when the Board has cause to believe participant examined may be in danger of insolvency.
- (b) The Board shall, at the inception of the participant's self-insured status and at least annually thereafter, so long as the participant remains self-insured, furnish the Board of trustees with a complete, original bound copy of each participant's ~~audit~~ audited annual financial statement performed in accordance with generally accepted accounting standards by an independent certified public accounting firm, three to five years of loss history, name of the ~~person~~ individual or company to administer claims, and any other pertinent information submitted to the Board to authenticate the participant's self-insured status. The Board of trustees may contract for the services of a qualified certified public accountant or firm to review, analyze, and make recommendations on these documents. All financial information submitted by a participant shall be considered confidential and not public information.
- (c) The Board of trustees shall make reports and recommendation to the Board on any matter germane to solvency, liquidation or rehabilitation of any participant. Reports and documents shall not be considered public documents.
- (d) The Board of trustees shall review all applications and shall make recommendations to the Board for acceptance of self-insurers. If the Board rejects the recommendations of the Board of trustees, the Board shall notify the Board of trustees in writing within ten days prior to accepting the application for self-insurance.