

Proposed Amendments to the Uninsured Employers Guaranty Fund

****The Uninsured Employers Guaranty Fund (Article XVI of the Workers' Compensation Act) assures that employees who are injured while working for uninsured employers have a source of wage loss and medical benefits****

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SUMMARY

The language makes changes to the claims process for the Uninsured Employers Guaranty Fund; provides for additional funding; transfers \$3m to the Fund; allows the Secretary of L&I to take specific action during times of projected insolvency; and establishes new penalties. In addition, the language makes amendments to the Workers' Compensation Act with regards to out-of-state employers.

Definition of "Fund"

The Uninsured Employers Guaranty Fund is not considered an insurer and will not be subject to penalties, unreasonable contest fees, **interest** or any reporting and liability requirements under Section 440 of Pennsylvania Worker's Compensation Act.

Funding

In addition to the funding already provided for, the language adds a new source of funds to the Uninsured Employers Guaranty Fund: administrative penalties (described in this analysis). Current sources of funding include assessments and transfers for establishing and maintaining the Fund, reimbursements or restitution, and interest on money in the Fund.

Claims

No employee will receive compensation from the Uninsured Employers Guaranty Fund unless:

- The employee timely notifies the Fund within 45 days after the worker knew that the employer was uninsured; **and**
- The Department determines that the employer failed to voluntarily accept and pay the claim or subsequently defaulted on payments of compensation

Claim petitions against the Fund would not be allowed after 120 days from when initial notification is given by the employee. Claim petitions cannot be filed against the Fund until at least 21 days after notice of the claim is made to the Fund.

Lists of at least six designated health care providers accessible in each county may be created to identify providers that can treat work injuries. If such lists are created, the Fund will only reimburse expenses of medical treatments, services and accommodations provided by the

physicians or other health care providers on the list. After receiving notice from the employee, the Fund will provide he/she with the list of designated providers. If the employee receives treatments, services or accommodations from a health care provider not on the Fund's list, the Fund would not be liable for the payment of medical treatments, services or accommodations provided during the applicable period.

Payments made by the Fund for medical treatment, services or accommodations under this Act prior to the Fund receiving notification from the employee will not exceed the amount that would be reimbursed by the Medical Assistance Program for the same treatment. If a treatment or service is not reimbursed by the Medical Assistance Program, the same will not be reimbursed by the Fund.

Claim Petition

An employee may file a claim petition naming the employer and the Fund as defendants if the claim is not voluntarily accepted as payable. In any proceeding under this article, the Fund will not be liable for wage loss benefits unless the amount of wages the employee earned at the time of injury is established by one or more of the following:

- Checks, check stubs or payroll records
- Tax returns
- Unemployment compensation records
- Other written documentation created during the payment of wages

The testimony of the employer can be sufficient to establish the existence of an employment relationship, but such testimony will not be competent evidence of the payment or amount of wages for the purposes of a claim.

Department of Labor & Industry

The Department has the ability to lawfully go after the uninsured employer in order to collect the amount of a voluntary payment or award paid by the Fund and related costs/fees. Newly added language stipulates that the Fund will be entitled to restitution of all payments made under this article as the result of an injury to an employee of an uninsured employer. Restitution to the Fund under Section 305 of the Worker's Compensation Act will not be limited to the amount specified in the award of compensation, and shall include the amount of any voluntary payment or award and reimbursement of the fund's costs and the costs of the fund's attorney.

Insolvency

The liabilities of the Fund are limited to the assets in the Fund. Neither the Fund nor the Commonwealth may be required to incur any debt.

If the Department projects that payments during a fiscal year may exceed projected assets, the Secretary of the Department may limit payment of compensation to a certain percentage. That percentage can be adjusted based on updated projections. The Department must provide at least

60 days notice to the General Assembly in this instance, and must include a report of the pending funding shortfall. The GA may appropriate enough funds to the Uninsured Employers Guaranty Fund to continue full payment.

Administrative Penalties and Stop Work Orders

If the Department receives information indicating that an employer has failed to insure its obligations, the Department may require that the employer fill out a form certifying that it:

- Possess insurance (and provide the insurer's information)
- No longer operates a business
- Employs no one that is entitled to compensation; or
- Is exempt from the requirements of obtaining insurance (and identify the exemption)

The employer must return the form to L&I within 15 days of the Department's service.

If after 30 days of no response, or if a Department investigation determines the employer has failed to insure its liabilities, the Department may order the employer to cease operations. The order will remain in effect until it is lifted by the Department or the courts. The employer may appeal, as allowed by law.

If an employer fails to comply with any order issued under this section, the Commonwealth or Department may file suit to enforce the order.

Assessments and Transfers

In addition, the language transfers \$3 million from the Workmen's Compensation Administration Fund to the Uninsured Employers Guaranty Fund.

Workers' Compensation Act – Injuries occurring extraterritorially

The language also makes the following amendments to the Workers' Compensation Act with regards to out-of-state employers:

The Department of L&I may verify with another state that an out-of-state employer has secured the payment of compensation under that particular state's workmen's compensation law when an employee is entitled to benefits and the injury happened in Pennsylvania.

If the employer is a qualified self-insurer for workers' compensation under another state, that employer will be deemed to be a qualified self-insurer under Pennsylvania's Workers' Compensation Act.

If an out-of-state employer's insurance is liable for less than the total amount of compensation benefits the employee is entitled to under Pennsylvania's Workers'

Compensation Act, the Department may require the employer to file security to secure the payment of benefits due to the employee.

If an employer is in compliance it will not be considered an uninsured employer with regards to the Uninsured Employers Guaranty Fund.

If an out-of-state employer has not secured payment of compensation as required by Pennsylvania's Workers' Compensation Act, the employee must submit a decision, notice or ruling from the other state that the employee has sought and is not entitled to benefits in that state. No compensation will be paid to the employee until that information is submitted.

SPONSOR: N/A

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