

Text 317.20 Amendment

Section 317.20 of Title 12 NYCRR is hereby amended to read as follows:

Section 317.20. Insolvent; assessments; termination and dissolution of the group

(a) [Definition.] Insolvent, in the context of a determination by the Chair, or his or her designee, to levy an assessment pursuant to the provisions of Workers' Compensation Law section 50(5)(g), shall mean the inability of a private group self-insurer, to pay its outstanding lawful obligations under the Workers' Compensation Law as they mature in the regular course of business, as may be shown by:

(1) the self-insurer being under-funded as defined in Workers' Compensation Law, section 50 (3-a); and

(2) the sum of the self-insurer's assets, as defined by section 317.2(n) of this Part, plus the available security deposit held by the Chair pursuant to Workers' Compensation Law, section 50(3-a) and section 317.5 of this Part, being less than the total cost of all of the self-insurers anticipated workers' compensation liabilities, as defined by section 317.2(o) of this Part, that will accrue within the succeeding six months.

(b) The Chair shall levy an assessment against all private group self-insurers, pursuant to Workers' Compensation Law, section 50(5)(g), whenever he or she, or his or her designee, determines that workers' compensation benefits may be unpaid by reason of the default of an insolvent private group self-insurer as defined in subdivision (a) of this section.

(c) [Termination and dissolution of the group.] The group shall continue for such time as may be necessary to accomplish the purpose for which it was created, and so long as all requirements to maintain authorization as set forth in this Part continue to be met. Upon termination of the group's status as a group self-insurer, the group will continue to administer the workers' compensation liabilities incurred by the group. Such a group shall be designated terminated.

(1) In the event a terminated group is deemed underfunded by the Chair, the group remains subject to provisions of this Part relative to underfunded groups. In connection therewith the group may be required to levy an assessment upon the group members as part of an overall plan of dissolution designed to extinguish all of the group's accrued liabilities. Such plan should contemplate the execution of an assumption of workers' compensation liability insurance policy securing the group's contingent and future liability arising out of prior workers' compensation claims.

(2) As part of a plan of dissolution a terminated group may apply to the Chair for financial assistance in meeting any unfunded claims obligations as defined in Workers' Compensation Law section 50(3-a). The unfunded claims liabilities set forth in such plan shall be quantified based upon the quoted price for an assumption of liability policy

issued by an insurance carrier authorized to execute same. In no event shall the Chair be required to provide any group qualifying under this section more than forty percent of the cost of an assumption of workers' compensation liability policy premium nor more than fifty million dollars regardless of the percentage of the assumption of workers' compensation liability policy premium. Subject to this maximum threshold the Chair, in his or her discretion, may supply funding to the group in the amount of such unfunded claims obligations provided the following criteria have been met by the group:

(i) The group has submitted a dissolution plan setting forth the manner in which the group shall wind down all of its remaining obligations and operations including, but not limited to, the execution of an assumption of workers' compensation liability insurance policy, the issuance of releases of joint and several liability and/or the return of funds to the employer members of the group who supply the agreements set forth in paragraph three below. Said plan shall include the retainer of independent legal counsel for such purpose and shall, to the extent that the Board requires additional funds to fully recoup any financial assistance provided hereunder, provide for the remittance of funds from the group to the Board, from the members of the group that do not supply the agreements referenced in paragraph three below. The Chair shall review said plan for reasonableness and approve said plan where appropriate; and

(ii) The group has levied an assessment on all of the group's members in an amount sufficient to discharge the full value of the group's unfunded claims liability and all other remaining liabilities of the group.

(3) In the event that a terminated group meets the terms and conditions enumerated in paragraph two above, the group shall provide, in a form acceptable to the Chair, signed and notarized repayment agreements and confessions of judgment in favor of the workers' compensation board from the former members of the group in the aggregate amount of the funds sought by the group. In connection therewith, if deemed necessary by the Chair, the group shall reconcile the previously levied assessment to account for any members of the group that have been deemed unable to contribute to the group's liabilities and/or otherwise participate in the plan of dissolution.

(4) Upon the receipt and approval of agreements referenced above, the Chair shall use reasonable efforts to facilitate the group's execution of an assumption of liability policy, including, where appropriate, releasing the security held by the Chair on behalf of the group in furtherance of the execution of the assumption of liability policy and providing the funding referenced in paragraph two above to the assumption of liability policy carrier. In connection therewith, the group shall remain liable to provide all additional funding for the execution of the assumption of liability policy including but not limited to all required premium surcharges as set forth in Workers' Compensation Law section 50(3-a)(7)(a). In the event that the assumption of liability policy is ultimately

disapproved by the superintendent of the department of financial services or is not executed for any other reason, the Chair shall be under no obligation to provide funding assistance to the terminated group and shall retain the security held by the Chair on behalf of the group, and the repayment agreements and confessions of judgment referenced in paragraph (3) above shall be deemed void and unenforceable.

(d) Upon failure on the part of the group to properly administer such liabilities, the Chair shall assume the administration and final distribution of the group's assets and liabilities.