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Special Issue



## To Be Self-Insured or Not to Be Self-Insured? That is the Question.

by James B. Yates and A. Brooke Phelps

A recent flurry of activity at the Ohio Bureau of Workers' Compensation (BWC) will produce dramatic changes in workers' compensation premium rates for Ohio employers. For many reasons, including the most recent BWC changes, self-insurance for Ohio workers' compensation is becoming an increasingly attractive option for eligible employers.

Ohio employers can carry workers' compensation coverage in one of two very different ways: participate in the Ohio State Workers' Compensation Insurance Fund (state-fund employer) or self-insure (SI employer). While many of Ohio's workers' compensation laws apply equally to state-fund and SI employers, there are significant differences between the two types of coverage. These differences often provide SI employers significant advantages over state-fund employers in claim management decisions and cost control.

### State-Fund Premium Basics

Ohio's state-run (monopolistic) workers' compensation insurance system is extremely unique nationwide. State fund coverage often

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is confusing to multi-state employers that are used to obtaining workers' compensation coverage and managing claims much differently, usually via the involvement of private insurance companies.


A state-fund employer pays premiums into the state-fund based upon numerous factors. These may include employer-specific claim costs and reserves as well as others which may be out of a state-fund employer's control – such as judicial, legislative or administrative changes to reserving systems and available rating and discount programs. Once an employer pays premiums to the state-fund, the BWC pays compensation and medical benefits to an eligible workers' compensation claimant. As noted, numerous aspects of the state-fund system are undergoing drastic changes, and many of those changes have resulted in significant and unpredictable premium increases for Ohio state-fund employers while other state-fund employers may experience a premium reduction. Even after these changes, the state-fund makeover does not appear to be anywhere near complete.

In basic terms, state-fund premiums are based upon the type of work employees perform (worker classification rate) and the gross wages paid by the employer. After participating in Ohio's workers' compensation system for two years and paying "base rate" premiums to the state-fund, an employer's future premiums are adjusted up or down from the base rates established upon past claim "experience" (losses). The adjustment rate, called the experience modification rate, is a percentage calculated by comparing the employer's total actual losses (including claim reserves) during an experience period with the BWC's formula for determining anticipated losses based upon the worker classification rates and employer payroll. After the experience modification rate is determined and applied, state-fund employers can do better than base rating (be "credit" rated) or worse than base rating (be "penalty" rated) with their premiums affected accordingly.

Many experience-rated employers pool themselves into groups to gain premium rate discounts. Group-rated employers have achieved significant credit ratings under the BWC's formula. However, substantial group premium discounts in recent years have resulted in significant premium disparities between group-rated employers (the haves) and non-group-rated employers (the have nots). The premium disparities have spawned litigation (brought by the have nots) over the legality of specific aspects of the group rating programs. In addition to various rating programs, the BWC adopted discount programs to reduce employer premiums (i.e. Drug-Free Workplace Program, Premium Discount Program, Safety Council participation discounts and One Claim Program) but many of those programs now are being scaled back or in jeopardy of being eliminated altogether (particularly for group-rated employers). Recent BWC pronouncements may make group rating less feasible (and less advantageous) for many state-fund employers.

Other recent changes impacting state-fund employer premium calculations are the reduction in base rates for worker classifications by 12% but lower maximum credit ratings this year and next. Additionally, the BWC will lower its "expected loss" tables which may make it more difficult for employers to achieve a favorable experience modification rate (and the resultant credit rating). Another unwelcome change for group-rated employers is a significant surcharge that will be assessed against all group-rated employers. Many more changes are imminent.

In sum, state-fund employers are at the mercy of the BWC which determines rates and rating programs and creates, modifies and eliminates discount programs. Unfortunately, it has been nearly impossible



for state-fund employers to predict or budget for workers' compensation premiums in the current climate. In stark contrast, SI employers pay actual workers' compensation claim costs directly out of pocket and do not participate in the state-fund premium game.

### **Control Over Claim Management**

Another significant difference between a state-fund employer and an SI employer is the amount of control exercised over managing claims. When a claim is filed, employers have the opportunity to certify or contest the claim. If an SI employer certifies a claim for certain conditions, those conditions are allowed in the claim without any involvement from the BWC. A state-fund employer, however, has no such control as the BWC retains control over claim certification and processing.

If an SI employer disputes a claim, the issue of the claim allowance will immediately proceed to a hearing before the Industrial Commission without any involvement from the BWC. Conversely, if a state-fund employer disputes a claim, the BWC may schedule the claimant for a medical examination and then issue a tentative order either allowing or disallowing the claim based upon the results of that examination or it may refer the claim for a hearing without accepting or rejecting the claim. Either the state-fund employer or the claimant may appeal a BWC order, and the issue will proceed to a hearing before the Commission.

An SI employer's right of first refusal or acceptance also applies to requests for medical treatment or compensation. Because an SI employer manages the claim, the SI employer necessarily becomes involved in and gains knowledge of every aspect of claim management. The BWC requires state-fund employers to select a managed care organization (MCO) to address medical treatment issues. MCO treatment denials often result in lengthy and tedious dispute resolution procedures which also may significantly delay treatment. SI employers approve and pay for treatment without intervention by a third party. With this greater involvement and ability to manage each claim, an SI employer can establish more effective return to work programs and other cost containment practices. An employer who can return injured workers to work quickly will recognize significant bottom-line savings.

### **Self-Insurance Requirements**

In light of current uncertainties associated with the state-fund system and the many advantages of a well-run self-insurance program, those employers who are able to meet the statutory prerequisites to be self-insured would be well advised to strongly consider that option. Generally, to become self-insured for Ohio workers' compensation, the following requirements must be met:

1. 500 or more employees;
2. state-fund coverage for at least 2 years;
3. sound financial stability;
4. ability to administer a self-insured program;
5. strong safety program;
6. ability to provide a medical management program.

Of course, there are risks to self-insurance as well including the potential for large claims and the potential for SI employers paying assessments if large self-insuring Ohio employers go out of business.

Employers who wish to explore the option of obtaining the privilege of self-insurance need to thoroughly analyze the potential financial and legal consequences of becoming self-insured and are encouraged to consult an attorney before making a final determination.

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