



Take C.A.R.E. When Going Self-Insured

by William D. Holt

Eastman & Smith attorneys James B. Yates and A. Brooke Phelps previously wrote about making the decision to become self-insured for Ohio workers' compensation purposes. Their article is in the May 2009 issue of *LawTrends*. (Eastman & Smith will be pleased to provide you a copy or you can directly access it under the "Published Articles" tab at www.eastmansmith.com.) This article picks up where they left off and presumes an employer has made the choice to join over 1,000 other Ohio employers in becoming directly responsible for the payment of its claims. The actual move to self-insurance requires that an employer take C.A.R.E.

First, the employer should take stock one last time and be sure that the actual "Concept" of self-insurance is understood. Self-insurance means that an employer assumes responsibility for all payments of compensation and benefits in its claims and that those claims will never pass from its experience as happens in state-fund claims. Subrogation, excess insurance, surplus fund reimbursements and other forms of offsetting or offloading costs may be present but the ultimate responsibility always will fall to the self-insured employer. A self-insured employer is held to a higher level of responsibility and assumes an obligation to comply with more complex rules than it had in the state-fund. There may be financial penalties for failure to comply. A self-insured employer is required to make provisions for payment of compensation and benefits and may decide to take on further responsibility for management of a third party administrator processing relationship.

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Whom to designate as the in state administrator or whether to secure a waiver, where to house official claim files and whether to manage claims on location or from a central office are only some of the issues that need to be considered. The employer should not be second guessing at the C stage its decision to pursue self-insurance. Rather, the employer should be reflecting on whether this is really the right next step. State-fund employers who qualify for self-insurance may want to consider the state-fund large deductible program or perhaps the retrospective rating program. A self-insured employer may return to the state-fund but there are potential drawbacks to such a decision. Generally speaking, it probably is easier to remain and work within the state-fund than it is to move to self-insurance only to try to undo that move at a later time.

A prospective self-insured employer who has gone through the C stage should then “Assess” whether it is ready to take the next step. The C stage is more of a mental check-up. The “A” step is a physical. Are the financial structures in place to support weekly, monthly and annual cash flow for the payment of claims? Have proposals been requested and evaluated for a third party administrator or will the employer be self administered? Are all contact points between the employer and third party administrator for claim and client relationships defined? If self administered, are check writing systems, claim storage systems and knowledgeable people to administer claims ready to go? Is the process to notify employees of the change designed? What provisions have been made for required medical services? Does the employer have a solid financial record and is the market available to provide additional security if necessary? Has the employer established a good record with the Bureau of Workers’ Compensation (BWC) in timely paying state-fund premiums? Have all state-fund claims been reviewed for potential impact on assessments over the first five years of self-insurance and with respect to potential Disabled Workers Relief Fund liability? Is there a domestic parent who will need to provide an unconditional guarantee? Is the employer able to say “We can do that” to all the specific requirements of Ohio Administrative Code Rule 4123-19-03? This list is not exhaustive but it exemplifies the point that an employer needs to consider one last time whether it has the physical structure and resources to perform successfully as a self-insured employer. The ultimate assessment, though, is to make sure that self-insurance is the best and right thing for the employer to do.

Ohio Revised Code Section 4123.35(B) lists “Requirements” for an employer who desires to become self-insured. The employer must be willing to abide by BWC rules. There must be sufficient financial ability (the BWC will require certified financial statements for the current and previous four years) and sufficient assets in the State to insure the employer’s solvency to make payments. The employer must have 500 employees in the State. The employer must have done business in the State for at least two years. Technically the employer must pay the “buy out” of its existing state-fund claims although no buy out has been required for the past several years. There must be a plan for program administration as well as a proposed plan to advise the employees about the change. Banking arrangements must be made so that checks are from an Ohio account, or from the same account as the employer’s payroll or clearly indicate they will be honored by a financial institution in Ohio. There are additional requirements if the employer is a public entity. The BWC may waive the 500 employee requirement, the doing business for two years requirement and the requirement that financial statements be certified, but there has been a recent tendency to hold employers very close to the statute and recommend that alternative state-fund rating programs be considered if the literal requirements are not met.

If the employer is sure the Concept of self-insurance is understood, has made an Assessment that it really wants to pursue self-insurance and is ready for the responsibility, and has reviewed and meets the Requirements to become self-insured, the next step is to Execute. Execution is really a three part process – application, application follow up and being self-insured. This article could never describe the last part. The second part actually depends on the completeness of the first part. The best thing to do in this article is discuss the first part and leave the rest for another day. There is an actual BWC self-insurance application form (SI-6). It asks for a lot of

information and documentation about the employer's organization, state-fund history and financials, so a little advance research and preparation may be required. Rule 4123-19-03 requires that the application with the required application fee (currently \$0) be submitted at least 90 days prior to the desired effective date of self-insurance. An employer would be wise to work much more in advance than 90 days. Other forms include an unconditional and continuing guarantee; options to not participate in the handicap reimbursement, Sysco reimbursement and rehabilitation reimbursement programs; state-fund buyout (which is subject to change but has been \$0 for the past several years); and authorization forms to designate representatives as appropriate. Many of these forms are very simple to complete but the decisions made while completing them are extremely significant. The prospective self-insured employer has a few options for delivery of the application to the BWC. The first basic option is to just mail the information to the Self-Insured Department. A better approach is to call the Self-Insured Department and speak to someone who is involved in the actual process. The advantages of this call are to make a direct contact for future use, to allow a final review of how the process will work, to find out what the timeline might be for a response or feedback, to at least give a "heads up" that the information is on its way and to get any other preliminary suggestions the BWC may have. The best approach is to contact the workers' compensation attorneys at Eastman & Smith for assistance in completing and reviewing the information and then delivering it to the BWC. The Eastman & Smith attorneys are experienced in working with the BWC Self-Insured Department.

Self-insurance can be a great opportunity for an employer in Ohio, but it is not necessarily the best opportunity. Any employer interested in self-insurance should read the May 2009 *LawTrends* article by James B. Yates and A. Brooke Phelps and then take C.A.R.E. Eastman & Smith is ready and willing to help.



Mr. Holt is an associate who practices workers' compensation law. His experience covers a wide range of workers' compensation issues with a particular emphasis in Ohio self-insurance. Mr. Holt may be reached by calling our Toledo office (419-241-6000).

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