

RULES CERTIFICATE

STATE OF WISCONSIN)
) SS
 DEPT. OF INDUSTRY,)
 LABOR & HUMAN RELATIONS)

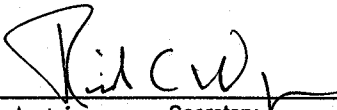
TO ALL TO WHOM THESE PRESENTS SHALL COME, GREETINGS:

Richard C. Wegner
 I, ~~Carol Skomicka~~ Richard C. Wegner Acting Secretary of the Department of Industry, Labor and
 Human Relations, and custodian of the official records of said department, do hereby certify that the
 annexed rule(s) relating to the Uninsured Employers Fund
 (Subject)

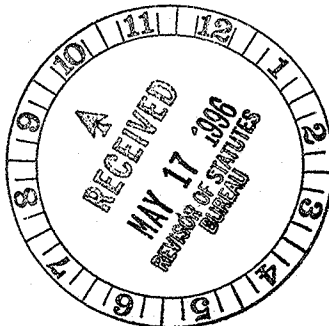
were duly approved and adopted by this department on 5/16/96
 (Date)

I further certify that said copy has been compared by me with the original on file in the
 department and that the same is a true copy thereof, and of the whole of such original.

IN TESTIMONY WHEREOF, I have hereunto
 set my hand and affixed the official seal of the
 department at 8:00am
 in the city of Madison, this 16th
 day of May A.D. 1996.



 Acting Secretary



ORDER OF ADOPTION

Pursuant to authority vested in the Department of Industry, Labor and Human Relations by section(s)

102.15 (1)

Stats., the Department of Industry, Labor and Human Relations creates; amends;

repeals and recreates; repeals and adopts rules of Wisconsin Administrative Code chapter(s):

Ind 80.62

(Number)

Uninsured Employers Fund

(Title)

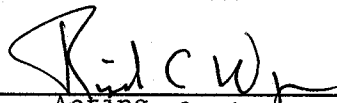
The attached rules shall take effect on July 1, 1996 publication

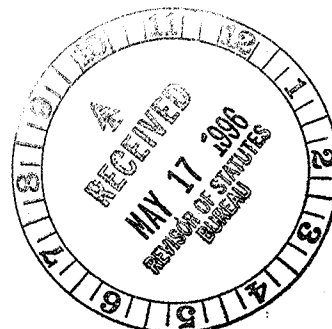
pursuant to section 227.22, Stats.

Adopted at Madison, Wisconsin this

date: May 16, 1996

DEPARTMENT OF INDUSTRY, LABOR AND
HUMAN RELATIONS


Acting Secretary





State of Wisconsin \ Department of Industry, Labor and Human Relations

RULES in FINAL DRAFT FORM



Rule No.:

Ind 80.62

Relating to:

Uninsured Employers Fund

The Wisconsin Department of Industry Labor and Human Relations proposes an order to create Section Ind 80.62

Analysis of Proposed Rule

Statutory Authority: s. 102.15 (1), Stats.
Other Related Statutes: s. 102.80 to 102.87, Stats.

Sections 102.80 (3) (a) and 102.81 (1) (a), Stats., provide that the uninsured employers fund program described in this rule is effective on the first day of July after the Secretary of the Department of Industry Labor and Human Relations certifies that the fund has a \$4 million cash balance. Currently, revenue comes into the fund primarily from penalties against uninsured employers and from interest on the fund's cash balance. (After the fund begins making payments, reimbursement from uninsured employers for payments made from the fund may be the primary revenue source.) The Department expects certification to occur in early 1996. For injuries on or after the first day of July after certification of the \$4 million fund balance (expected to be July 1, 1996) employees of uninsured employers are eligible to apply to the fund for worker's compensation benefits.

Currently, the Department may impose serious penalties against an employer who is uninsured for worker's compensation purposes. However, injured workers have few effective remedies to receive benefits if their employers are uninsured. For workers injured after July 1, 1996 it is anticipated that the uninsured employers fund will provide an effective source of worker's compensation benefits.

Ind 80.62 clarifies the Department's procedures for handling claims for compensation to injured worker's from the uninsured employers fund. The Department intends to select an experienced third-party administrator as its agent for handling individual claims. Except as described in the rule, the Department or its agent will have the same rights and responsibilities for administering worker's compensation claims as any other insurance carrier authorized to do business in Wisconsin.

This rule also defines the financial standards and actuarial principles which the department will use to monitor the solvency of the fund and to determine if the Secretary should file a certificate of insolvency under 102.80 (3) (ag), Stats. It also requires quarterly reporting to the Governor and the legislature. The Department developed this program over the past five years with extensive participation from the Council on Worker's Compensation. More recently, the Department has developed several scenarios projecting the assets and liabilities of the fund into the future. Despite the Department's attention to modeling different scenarios, all observers agree that the Department must pay careful attention to the funds assets and liabilities. At some future date, if the Department Secretary, after consulting with the Council on Worker's Compensation, believes the funds assets are (or within three months, will become) insufficient to meet its obligations to pay benefits, the rule provides that the Department will stop accepting and paying new applications for benefits as described in s. 102.80 (3) (ag), Stats.

SECTION 1. 80.62 is created to read:

Ind 80.62 **UNINSURED EMPLOYERS FUND** (1) **PURPOSE.** The purpose of this section is to clarify the department's procedures for handling claims for compensation to injured workers under s. 102.81 (1), Stats. This section also defines the financial standards and actuarial principles which the department will use to monitor the adequacy of the cash balance in the fund to pay both known claims and claims incurred but not reported under s. 102.81 (1), Stats.

(2) **DEFINITIONS.** In this section:

(a) "Agent" means a third-party administrator or other person selected by the department to assist in the administration of the uninsured employers fund program.

(b) "Case reserve" means the best estimate documented in the claim-loss file of all liability to pay compensation on a claim under s. 102.81 (1), Stats.

(c) "Claim" means an injury suffered by an employe of an uninsured employer for which the uninsured employer is liable under s. 102.03, Stats., and which is reported to the department on a form approved by the department for reporting work-related injuries.

(d) "Fund" means the uninsured employers fund in s. 102.80, Stats.

(e) "Incurred but not reported reserve" or "IBNR reserve" means the best actuarial estimate of liability to pay compensation under s. 102.81 (1), Stats., for injuries which occurred on or prior to the current accounting date, for which there is no claim yet reported to the department.

(f) "Insolvent" means inadequate to fund all claims under s. 102.81 (1), Stats.

(g) "Solvent" means adequate to pay all claims under s. 102.81 (1), Stats.

(h) "Ultimate reserve" means the best actuarial estimate of aggregate case reserves from all claims, the expected future development of claims that have been reported, and IBNR reserve.

(i) "Uninsured employer" means an employer who is subject to chapter 102 under s. 102.04 (1), Stats., and who has not complied with the duty to insure or to obtain an exemption from the duty to insure under s. 102.28 (2) or (3), Stats.

(3) REPORTING A CLAIM. (a) In addition to the notice to an employer required under s. 102.12, Stats., an employe shall report a claim for compensation under s. 102.81, Stats., to the department on a form provided by the department within a reasonable time after the employe has reason to believe that an uninsured employer may be liable for the injury.

Note: For information regarding forms contact the worker's compensation division, P.O. Box 7901, Madison, Wisconsin 53707.

(b) After receiving a claim under par. (a), the department shall determine whether the employer is an uninsured employer by reviewing its own records and the records maintained by the Wisconsin compensation rating bureau. Within 14 days after receiving a claim under par. (a), the department shall send the employer written notice that a claim has been reported and that the department has made an initial determination that the employer is, or is not, an uninsured employer with respect to the claimed injury. The department shall send a copy of the notice to the employe who filed the claim. If the department later modifies its initial determination regarding the employer's insurance status with respect to a claim reported under this section, it shall promptly notify the employer and the employe

of the reason for the modification and the likely impact of this change on the claim, if any. The employer shall notify its insurance carrier of any modification if the department determines that the employer is an insured employer.

(c) If the department determines that the employer is an uninsured employer it shall promptly seek reimbursement as provided in s. 102.82 (1), Stats., and additional payments to the fund as provided in s. 102.82 (2), Stats. The department may also initiate penalty proceedings under s. 102.85, Stats. If the department determines that the employer is not an uninsured employer it shall notify the parties and close the claim. Nothing in this section shall prevent the department from taking other appropriate action on a claim including penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57 and 102.60, Stats.

(4) **PAYING A CLAIM.** Within 14 days after a claim is reported to the department, the department or its agent shall mail the first indemnity payment to the injured employee, deny the claim or explain to the employee who filed a claim the reason that the claim is still under review. The department or its agent shall report to the employee regarding the status of the claim at least once every 30 days from the date of the first notification that the claim is under review until the first indemnity payment is made or the claim is denied.

(5) **EMPLOYEE COOPERATION.** (a) An employee who makes a claim shall cooperate with the department or its agent in the investigation or payment of a claim.

(b) The department or its agent may deny compensation on a claim if an employee fails to provide reasonable assistance to the department or its agent, including recorded

interviews, questionnaire responses, medical and other releases, copies of relevant payroll checks, check stubs, bank records, wage statements, tax returns or other similar documentation to identify the employer who may be liable for the injury under s. 102.03, Stats. The department or its agent may also require the employe to document any medical treatment, vocational rehabilitation services or other bills or expenses related to a claim. To verify information submitted in support of a claim for compensation the department or its agent may share information related to a claim with other governmental agencies, including those responsible for tax collection, unemployment insurance, medical assistance, vocational rehabilitation, family support or general relief. Any information obtained from a patient health care record or that may constitute a patient health care record will be shared only to the extent authorized by ss. 146.81 to 146.84, Stats.

(c) If an employe fails to cooperate as required by par. (b), the department may suspend action upon an application filed under s. 102.17 (1), Stats., or may issue an order to dismiss the application with or without prejudice.

(6) **EMPLOYER COOPERATION.** An employer who is alleged to be uninsured shall cooperate with the department or its agent in the investigation of a claim by providing any records related to payroll, personnel, taxes, ownership of the business or its assets or other documents which the department or its agent request from the employer to determine the employer's liability under s. 102.03, Stats. If an employer fails to provide information requested under this subsection, the department may presume the employer is an uninsured employer.

(7) DEPARTMENT AGENTS. (a) The department may select one or more agents to assist the department in its administration of the uninsured employers program, including agents selected for any of the following:

1. To receive, review, record, investigate, pay or deny a claim.
2. To represent the legal interests of the uninsured employers fund and to make appearances on behalf of the uninsured employers fund in proceedings under ss. 102.16 to 102.29, Stats.
3. To seek reimbursement from employers under s. 102.82 (1), Stats., for payments made from the fund to or on behalf of employes or their dependents.
4. To seek additional payments to the fund under s. 102.82 (2), Stats.
5. To prepare reports, audits or other summary information related to the program.
6. To collect overpayments from employes or their dependents or from those to whom overpayments were made on behalf of employes or their dependents where benefits were improperly paid.

(b) Except as provided in this section, the department or its agent shall have the same rights and responsibilities in administering claims under chapter 102 as an insurer authorized to do business in this state. The department or its agent is not liable for penalties and interest due under ss. 102.16 (3), 102.18 (1) (b) and (bp), 102.22 (1), 102.35 (3), 102.57 and 102.60, Stats.

(8) **REPORTS.** Within 45 days following the end of each calendar quarter, the department shall submit a report to the governor and the presiding officer of each house of the legislature summarizing all of the following:

- (a) The claims activity related to the fund.
- (b) The payments made from the fund.
- (c) The net balance in the fund.
- (d) The department's enforcement activities against uninsured employers.

(9) **DETERMINING THE SOLVENCY OF THE FUND.** (a) The department shall monitor the fund's net balance of assets and liabilities to determine if the fund is solvent using the following accounting principles:

1. In determining the fund's assets, the department shall not include recoveries under s. 102.29 (1), Stats., unless they are in process of payment and due within 30 days, or vouchers in the process of payment which are not fully credited to the fund's account.

2. In determining the fund's liabilities, the department shall estimate the ultimate reserves without discounting, and shall not include reinsurance recoveries that are less than 60 days overdue.

(b) If the secretary determines that ultimate liabilities to the fund on known and IBNR claims exceed 85% of the cash balance in the fund, the secretary shall consult with the council on worker's compensation. If the secretary determines that the fund's ultimate liabilities exceed the fund's ultimate assets, or that there is a reasonable likelihood that the fund's liabilities will exceed the fund's assets within three months, the secretary shall file the certificate of insolvency in s. 102.80 (3) (ag), Stats.

(9) TEMPORARY REDUCTION OR DELAY OF PAYMENTS FROM THE

FUND. (a) If the secretary files a certificate under s. 102.80 (3) (ag), Stats., the department shall continue to pay compensation under s. 102.81 (1), Stats., on claims reported to the department prior to the date specified in that certificate after which no new claims under s. 102.81 (1), Stats., will be accepted or paid.

(b) If the cash balance in the fund is not sufficient to pay all compensation or other liabilities due in a timely manner, the department may temporarily reduce or delay payments on claims to employes, dependents of employes, health care providers, vocational rehabilitation specialists and others to whom the fund is liable. To manage the fund's cash flow, the department may adopt a uniform, pro-rata reduction schedule or it may establish different payment schedules for different types of liabilities. The department may amend its payment schedule as necessary.

(c) The department shall provide written notice to each person who does not receive timely compensation from the fund which explains the reduced or delayed payment schedule adopted by the department to resolve the cash-flow problem.

Tommy G. Thompson
Governor
Carol Skornicka
Secretary



Mailing Address:
201 E. Washington Avenue
Post Office Box 7946
Madison, WI 53707-7946
Telephone (608) 266-7552

State of Wisconsin Department of Industry, Labor and Human Relations

May 15, 1996

Gary Poulson
Assistant Revisor of Statutes
Suite 800
131 W. Wilson St.
Madison, Wisconsin 53703-3233

Douglas LaFollette
Secretary of State
10th Floor
30 West Mifflin Street
Madison, Wisconsin 53703

Dear Messrs. Poulson and LaFollette:

TRANSMITTAL OF RULE ADOPTION

CLEARINGHOUSE RULE NO.: 96-006

RULE NO.: Ind 80.62

RELATING TO: Uninsured Employers Fund

Pursuant to section 227.20, Stats., agencies are required to file a certified copy of every rule adopted by the agency with the offices of the Secretary of State and the Revisor of Statutes.

At this time, the following material is being submitted to you:

1. Order of Adoption.
2. Rules Certificate Form.
3. Rules in Final Draft Form.

Pursuant to section 227.114, Stats., a summary of the final regulatory flexibility analysis is included for permanent rules. A fiscal estimate and fiscal estimate worksheet is included with an emergency rule.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Carol Skornicka".

Carol Skornicka
Secretary

