Self-Insureds Oppose Comp Debt Payoff Plan

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When Weirton Steel declared bankruptcy, the state of West Virginia was left with a $70 million I.O.U from the self-insured company's unpaid workers' compensation claims.

Now officials with the Workers' Compensation Commission are asking other large employers to pay off that debt.

On May 18, members of the Workers' Compensation Board of Managers are expected to vote on a plan that would establish two pools of money that could be used to pay off injuries to workers who are employed at bankrupt self-insured companies. The first pool would pay off injury claims filed before July 1, 2004, while the second pool would pay off injury claims filed after July 1, 2004.

"It's there to protect us against future Weirtons," said Greg Burton, executive director of the Workers' Compensation Commission.

The two pools will be funded through assessments on self-insured employers. Burton said the state plans to stop collecting money for the second pool when it reaches $30 million but will resume assessments if the fund drops below $30 million.

More than 120 employers in West Virginia are self-insured. Those employers include companies such as American Electric Power, several coal companies and many chemical companies. Five cities also are self-insured: Huntington, Charleston, Parkersburg, Fairmont and Wheeling.

In addition to the new safety measures to protect Workers' Compensation from having to pay for bankrupt employers, the commission plans to increase the amount of money self-insured companies must have in reserve to pay off employees' injury claims. Employers have until July 1, 2006, to set aside the extra money, which could be in the millions for some companies. If an employer fails to meet that deadline, commission attorney T.J. Obrokta said the company will lose self-insured status and be sent back to the regular subscribers' version of workers' compensation.

That's not good news for many self-insured employers who complain the reforms will send their workers' comp bills through the roof. Not only do employers have to set aside money for the two pools, employers also have to pay their regular workers' comp premium tax -- a tax that is going up for some.

The commission's board of managers recently voted to adjust the experience modifier rate for self-insured employers. The rate, known as an e-mod, is adjusted based on a company's claim history and the costs of those claims. Burton said some companies that have had a lot of claims filed against them saw their e-mods increase dramatically. Other companies that have been able to prevent injuries and control costs had their e-mod go down.

Self-insured companies object to the new fees and assessments on the grounds that they are inconsistent with the rate freeze promised last year. Employers also said it is wrong for the state to charge just self-insured companies for the two pools.

"I must express to you how dismayed (self-insured companies) are that you pass out rates for 2005 that include these fees," said Henry Bowen, executive secretary for the West Virginia Self-Insured Association. "We understand the system is cash poor and the system has an obligation to increase revenues. But you may recall … that workers' compensation costs have increased for employers since 1995 by 50 percent."

Bowen said Weirton Steel has been under-secured for more than 15 years, and no other company comes close to matching the steel company's debt to the state system. He said making other self-insured employers pay off the debt now was unfair and possibly illegal. Obrokta told board members he was confident the proposal could withstand legal challenge.

Bowen said the increased rates, fees and assessments would increase the average self-insured employer's workers' compensation rates by 30 percent. However, he's heard of at least one company in the Eastern Panhandle that expects costs to increase by 100 percent.

"The more security you require, the safer you are making the system from another Weirton, but the harder you are making it for self-insured employers to invest in West Virginia," Bowen said.

Leslie Messina with the Affiliated Construction Trades Foundation said not changing the system is unfair to the companies that follow the law.

"There is a hostile environment already for West Virginia companies that have paid the right rate for years," Messina said. "They have to compete against those who skirt the system for years."