

**TITLE 365. INSURANCE DEPARTMENT**  
**CHAPTER 25. LICENSURE OF PRODUCERS, ADJUSTERS, BAIL BONDSMEN,**  
**COMPANIES, PREPAID FUNERAL BENEFITS, CEMETERY MERCHANDISE**  
**TRUSTS, OKLAHOMA EMPLOYEE INJURY BENEFIT ACT QUALIFIED**  
**EMPLOYERS, AND VIATICAL SETTLEMENT PROVIDERS AND BROKERS**

**RULEMAKING ACTION:**

EMERGENCY adoption

**RULES:**

Subchapter 25.	Oklahoma Employee Injury Benefit Act
365:25-25-1.	Purpose [NEW]
365:25-25-2.	Scope [NEW]
365:25-25-3.	Authority [NEW]
365:25-25-4.	Definitions [NEW]
365:25-25-5.	Election Notification to the Oklahoma Insurance Department
[NEW]	
365:25-25-6.	Election Fee [NEW]
365:25-25-7.	Written Benefit Plan [NEW]
365:25-25-8.	Employee Notice [NEW]
365:25-25-9.	Funding of Qualified Employer's Benefit Plan, Liability, and Other
Insurable Risk [NEW]	
365:25-25-10.	Insuring Qualified Employer's Benefit Plan, Liability, and Other
Insurable Risk [NEW]	
365:25-25-11.	Self-Funding Qualified Employer's Benefit Plan, Liability, and
Other Insurable Risk [NEW]	
365:25-25-12.	Surety Bond and Irrevocable Letter of Credit [NEW]
365:25-25-13.	Release of Security Deposit [NEW]
365:25-25-14.	Oklahoma Option Self-Insured Guaranty Fund [NEW]
365:25-25-15.	Severability [NEW]
Appendix Z.	Notice to Employees Concerning Qualified Employer [NEW]

**AUTHORITY:**

Insurance Commissioner, 85A O.S. §§ 202, 204

**DATES:**

**Adoption:**

January 31, 2014

**Effective:**

Immediately upon approval by the Governor

**Expiration:**

Effective through September 14, 2015, unless superseded by another rule or disapproved by the Legislature

**SUPERSEDED EMERGENCY RULES:**

n/a

**INCORPORATION BY REFERENCE:**

n/a

**FINDING OF EMERGENCY:**

The rule amendments are necessary to implement the provisions of Title 85A of the Oklahoma Statutes, which was enacted by Senate Bill 1062 in 2013.

**ANALYSIS:**

These rules set out the procedure and requirements for employers to elect to become a Qualified Employer under the Oklahoma Employee Injury Benefit Act, 85A O.S. § 200 et seq. Sections 365:25-25-1 through 3 set out the purpose, scope, and authority for promulgating these rules. Section 4 sets out the definitions of terms used in the Subchapter. Section 5 describes the process for an employer to elect to become a Qualified Employer. Section 6 sets out the fee for electing to become a Qualified Employer. Section 7 outlines the specific documents and information an employer must file along with its election form. Section 8 requires an Employee Notice be provided by employers electing to become a Qualified Employer, and provides specific instructions for the use and placement of the Notice. Section 9 sets out the ways in which a Qualified Employer may fund its benefit plan. Section 10 sets out the requirements for Qualified Employers choosing to insure its benefits payable under its benefit plan. Section 11 sets out the requirements for Qualified Employers choosing to self-fund its benefits payable under its benefit plan. Section 12 sets out the guidelines for security bonds and irrevocable letters of credit. Section 13 sets out the procedure for the release of a Qualified Employer's deposit. Section 14 sets out the procedure for the Commissioner to petition the Workers' Compensation Commission for its approval that the Commissioner release a Qualified Employer's security and notify the Oklahoma Property and Casualty Insurance Guaranty Association. Section 15 is a severability clause.

**CONTACT PERSON:**

Buddy Combs, Oklahoma Insurance Department, (405) 522-4609

**PURSUANT TO THE ACTIONS DESCRIBED HEREIN, THE FOLLOWING EMERGENCY RULES ARE CONSIDERED PROMULGATED UPON APPROVAL BY THE GOVERNOR AS SET FORTH IN 75 O.S. SECTION 253(D):**

**SUBCHAPTER 25. OKLAHOMA EMPLOYEE INJURY BENEFIT ACT**

**365:25-25-1. Purpose**

The purpose of this Subchapter is to set forth the regulations and procedures for employers to secure compensation for their covered employees for work-related injuries under the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.

**365:25-25-2. Scope**

This Subchapter shall apply to all Oklahoma employers who voluntarily elect to be exempt from the Administrative Workers' Compensation Act and become a Qualified Employer under the Oklahoma Employee Injury Benefit Act. Employers seeking to self-insure under the Administrative Workers' Compensation Act are subject to the rules of the Oklahoma Workers' Compensation Commission in Title 810, Chapter 5 of the Oklahoma Administrative Code.

**365:25-25-3. Authority**

This Subchapter is promulgated under the authority granted to the Insurance Commissioner under the Administrative Workers' Compensation Act, 85A O.S. §§ 1 et seq., and the Oklahoma Employee Injury Benefit Act, 85A O.S. §§ 200 et seq.

#### **365:25-25-4. Definitions**

The following words and terms, when used in this Subchapter, shall have the following meaning, unless the context clearly indicates otherwise:

**“Benefit plan”** means a plan established by a Qualified Employer under the requirements of 85A O.S. § 203.

**“Commission”** means the Workers' Compensation Commission under the Administrative Workers' Compensation Act.

**“Commissioner”** means the Insurance Commissioner of the State of Oklahoma.

**“Covered employee”** means the employee whose employment with a Qualified Employer is principally located within the state.

**“Employer,”** except when otherwise expressly stated, means a person, partnership, association, limited liability company, corporation, and the legal representatives of a deceased employer, or the receiver or trustee of a person, partnership, association, limited liability company, corporation, department, instrumentality or institution of this state and divisions thereof and other political subdivisions of this state and public trusts employing a person included within the term employee as defined herein.

**“Financial Statement”** means an employer's audited financial statement or financial statement signed by two (2) company executives that includes a balance sheet and income statement.

**“Occupational Injury”** means an injury, including death, or occupational illness, causing internal or external harm to the body, which arises out of and in the course of employment.

**“Qualified Employer”** means an employer otherwise subject to the Administrative Workers' Compensation Act that voluntarily elects to be exempt from such act by satisfying the requirements under the Oklahoma Employee Injury Benefit Act.

**“Statutory Limits”** means an insurer's amount of liability under a specific excess insurance policy, capped at the maximum amount allowed by statute.

Unless otherwise specified in this Subchapter, defined terms in the Administrative Workers' Compensation Act shall have the same meaning herein.

#### **365:25-25-5. Election Notification to the Oklahoma Insurance Department**

(a) Each employer that elects to become a Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the desired effective date of its election to become a Qualified Employer.

(b) If a Qualified Employer elects to renew its status as a Qualified Employer after the expiration of its initial one (1) year term as a Qualified Employer, or for any renewal thereafter, the Qualified Employer shall electronically complete the Qualified Employer Election Form and provide all information requested at least sixty (60) days prior to the expiration as a Qualified Employer.

(c) The Qualified Employer Election Form shall include complete answers to all questions therein and shall include satisfactory proof of the employer's ability to secure compensation for its covered employees for work-related injuries prior to being confirmed as a Qualified Employer by the Oklahoma Insurance Department.

(d) Upon written confirmation by the Oklahoma Insurance Department that the employer has satisfied all the requirements to be recognized as a Qualified Employer, the employer may proceed with its written benefit plan and notification of employees as provided in 365:25-25-8.

(e) Upon request by the Oklahoma Insurance Department, a Qualified Employer shall submit documentation to affirm its continued compliance with the Oklahoma Employee Injury Benefit Act and this Subchapter. In addition, a Qualified Employer shall notify the Oklahoma Insurance Department of any change in information required to be submitted to the Commissioner under this Subchapter within fourteen (14) days after the change. Upon a finding that a Qualified Employer is no longer in compliance with the Oklahoma Employee Injury Benefit Act or this Subchapter, the Oklahoma Insurance Department may withdraw its confirmation of the employer as a Qualified Employer.

**365:25-25-6. Election Fee**

A nonrefundable fee of One Thousand Five Hundred Dollars (\$1,500.00) is payable, via electronic funds transfer, upon filing an employer's initial Qualified Employer Election Form and upon filing a Qualified Employer Election Form for any annual renewal thereafter.

**365:25-25-7. Written Benefit Plan**

In addition to the Qualified Employer Election Form, the employer shall provide the following documents and information to the Oklahoma Insurance Department:

- (1) A copy of the employer's written benefit plan;
- (2) A written statement explaining the procedure used to notify the employer's covered employees that the employer has elected to become a Qualified Employer;
- (3) The name, title, address, and telephone number for a covered employee to contact for injury benefit claims administration, and whether that party is in-house, a third-party administrator, or an insurance carrier; and
- (4) A copy of the employer's Employee Notice.

**365:25-25-8. Employee Notice**

No employer shall act as a Qualified Employer in this state until such employer provides written notification to its covered employees in substantially the same form as the "Notice To Employees Concerning Qualified Employer" notice as set forth in Appendix Z of this Chapter. Such notice shall be provided to all employees upon the employer's confirmation as a Qualified

Employer by the Oklahoma Insurance Department. Subsequent newly hired employees shall receive the written notification upon the employees' date of hire. Such notice shall be necessarily posted at conspicuous locations at the Qualified Employer's places of business to provide reasonable notice to all employees that the employer is a Qualified Employer, that the employer does not carry workers' compensation insurance coverage, and that the employer's workers' compensation coverage has been terminated or cancelled.

**365:25-25-9. Funding of Qualified Employer's Benefit Plan, Liability, and Other Insurable Risk**

A Qualified Employer may self-fund or insure benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer.

**365:25-25-10. Insuring Qualified Employer's Benefit Plan, Liability, and Other Insurable Risk**

(a) A Qualified Employer that elects to insure benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall obtain insurance coverage in an amount equal to the compensation obligation with an admitted insurance carrier, including property and casualty insurance carrier; life, health and accident insurance carrier; or surplus lines insurer; provided, however, that such admitted or surplus lines insurer has an AM Best Rating of B+ or better. The Oklahoma Insurance Department does not approve insurance rates for any type of coverage under the Oklahoma Employee Injury Benefit Act.

(b) Such insurance coverage pertains to Oklahoma covered employees only. Employers with employees working in state(s) other than Oklahoma shall arrange separate insurance coverage in compliance with that state(s)'s laws.

**365:25-25-11. Self- Funding Qualified Employer's Benefit Plan, Liability, and Other Insurable Risk**

A Qualified Employer that elects to self-fund the benefits payable under the benefit plan, the employer's liability under the Oklahoma Employee Injury Benefit Act, and any other insurable risk related to its status as a Qualified Employer, shall secure compensation to covered employees by furnishing satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation and must meet the following requirements:

- (1) Provide the dollar amount and documentation to support its average of the yearly claims for the last three (3) calendar or fiscal years. Such documentation shall include the total incurred claims cost for the prior three (3) calendar or fiscal years and an attachment of the loss runs that include the total incurred amounts (all paid and reserved medical and indemnity) for Oklahoma occupational injury claims incurred during a three (3) calendar or fiscal year period ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer;
- (2) Attach employer's most recent financial statement which shall include a balance sheet and income statement;

(3) Furnish satisfactory proof to the Oklahoma Insurance Department of the employer's financial ability to pay the compensation as follows:

(A) An employer must have been continuously engaged in business for not less than three (3) years immediately preceding the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer, have at least one hundred (100) employees (all states included) and at least One Million Dollars (\$1,000,000.00) in net assets, and must secure a surety bond payable to the Oklahoma Insurance Department or an irrevocable letter of credit, in an amount determined by the Commissioner equal to at least the greater of: (1) One Hundred Thousand Dollars (\$100,000.00); or (2) the employer's average of its yearly incurred occupational injury claims for the last three (3) calendar or fiscal years ending not more than one hundred twenty (120) days prior to the employer's notification to the Oklahoma Insurance Department of its election to become a Qualified Employer; or (3) if the employer is renewing its status as a Qualified Employer, the amount of outstanding occupational injury claims reserves for the employer, as determined by an approved third-party administrator or benefits administrator; or

(B) An employer provides proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act, as determined by the Oklahoma Insurance Department. Such excess insurance must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better. The self insured retention must be approved by the Oklahoma Insurance Department, and the excess carrier's limits of liability must be statutory. An amount less than Statutory Limits must be approved in advance by the Oklahoma Insurance Department. Aggregate excess insurance may be required by the Oklahoma Insurance Department if necessary; or

(C) An employer that does not satisfy the requirements of Subsection 3(A) of this Section, may petition the Oklahoma Insurance Department for a waiver of the requirements. The Oklahoma Insurance Department may waive some or all of the requirements for good cause, subject to such security deposit and/or excess insurance requirements in an amount, determined by the Oklahoma Insurance Department, to be commensurate with the ability of the employer to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act.

### **365: 25-25-12. Surety Bond and Irrevocable Letter of Credit**

Surety bonds must be from an admitted or surplus lines insurer with an AM Best Rating of B+ or better, and on a form prescribed by the Oklahoma Insurance Department. Irrevocable letters of credit shall contain such terms as may be prescribed by the Oklahoma Insurance Department, include an automatic renewal clause, and cannot be non-renewed without at least sixty (60) days' prior written notice to the Oklahoma Insurance Department, and shall be issued for the benefit of the Oklahoma Insurance Department by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation (FDIC). The financial institution must be approved in advance by the Oklahoma Insurance Department. The Oklahoma Insurance Department may make demand and collect on the posted letter of credit in whole or in part, in

the case of actual or imminent default of the employer to pay compensation liabilities, or the cancellation of the letter of credit without an adequate replacement.

**365:25-25-13. Release of Security Deposit**

(a) A security deposit posted with the Oklahoma Insurance Department as required by 365:25-25-11 must remain in place, at its existing amount, for two (2) years after a Qualified Employer ceases to self-insure its benefit plan. The Oklahoma Insurance Department may review the adequacy or excess of the security deposit in advance of the cessation date and require modifications to the security deposit amount as necessary.

(b) A security deposit may be reduced at the Oklahoma Insurance Department's discretion after the two (2) year waiting period upon application by the employer and submission of current financial statements and occupational injury loss runs.

(c) A security deposit may be released at the Oklahoma Insurance Department's discretion upon application by the employer and submission of current financial statements and a signed and notarized affidavit, from a duly authorized officer of the employer, affirming that all occupational injury claims incurred as a Qualified Employer have been permanently closed, and the statute of repose for reopening the claims has passed.

(d) The security deposit shall be released in full by the Oklahoma Insurance Department within a reasonable period following receipt of proof of an assumption agreement or equivalent, from a licensed insurance carrier, whereby the claims liability of the employer as a Qualified Employer is transferred to and assumed by the insurance company. The assumption agreement or equivalent may be entered into before expiration of the two (2) year period provided in Subsection (A) of this Section.

**365:25-25-14. Oklahoma Option Self-Insured Guaranty Fund**

Upon declaration by the Insurance Commissioner that a self-insurer has become an impaired insurer, the Insurance Commissioner shall petition the Commission for its approval that the Insurance Commissioner release the Qualified Employer's required security from the Office of State Treasurer and shall advise the Oklahoma Property and Casualty Insurance Guaranty Association of the impairment.

**365:25-25-15. Severability**

If any provisions of this Subchapter, or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or application of this Subchapter which shall be given effect without the invalid provision or application, and to that end the provisions of the Subchapter are severable.

**NOTICE TO EMPLOYEES  
CONCERNING QUALIFIED EMPLOYER  
[NEW]**

Your employer is a Qualified Employer pursuant to 85A O.S. §202 of the Oklahoma Employee Injury Benefit Act. Your employer does not carry workers' compensation insurance coverage under the Administrative Workers' Compensation Act and that coverage has terminated or been cancelled. If injured on the job, your benefits are governed by a written benefit plan sponsored by your employer. Contact your employer if you have questions about your benefits, rights, and responsibilities under the benefit plan.

The name title, address, and telephone number of the person you should contact for injury benefit claims administration is:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

E-mail: \_\_\_\_\_

Effective Date: \_\_\_\_\_