

**DRAFT RULES**  
**OKLAHOMA INSURANCE DEPARTMENT**  
**OKLAHOMA EMPLOYEE INJURY BENEFIT ACT**

**Oklahoma Employee Injury Benefit Act, 365:25-25-1 et seq.**

**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.

**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.

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 thirty (30) 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 thirty (30) 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.
- (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 with any insurance carrier authorized to do business in this state 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 with an insurance carrier authorized to do business in this state, 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 accidental insurance coverage in an amount equal to the compensation obligation with any insurance carrier, including property and casualty insurance carriers; life, health and accident insurance carriers; or surplus lines insurance carriers; provided, however, that such insurance carrier 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 all the following requirements:

- (1) Provide the dollar amount and documentation to support its average of the yearly claims for the last three (3) years. Such documentation shall include the total incurred claims cost for the prior three (3) 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) year period ending not more than ninety (90) days prior to the employer's Qualified Employer election notification date, with all losses valued as of that same date;
- (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) Employers that have less than one hundred (100) employees or less than One Million Dollars (\$1,000,000.00) in net assets must deposit with the Oklahoma Insurance Department securities, an irrevocable letter of credit, or surety bond payable to the State of Oklahoma, in an amount determined by the Commissioner equal to at least the employer's average of its yearly incurred claims for the last three (3) years.
  - (B) Employers that have one hundred (100) or more employees and One Million Dollars (\$1,000,000.00) or more in net assets must secure a surety bond payable to the

State of Oklahoma or an irrevocable letter of credit, in an amount determined by the Commissioner equal to at least the employer's average of its yearly incurred claims for the last three (3) years.

(C) Provide proof of excess coverage with such terms and conditions as is commensurate with the employer's ability to pay the benefits required by the Oklahoma Employee Injury Benefit Act.

(D) By furnishing any other security as may be approved by the Oklahoma Insurance Department.

(E) The Oklahoma Insurance Department may waive these requirements in an amount which is commensurate with the ability of the employer to pay the benefits required by the provisions of the Oklahoma Employee Injury Benefit Act. Irrevocable letters of credit shall contain such terms as may be prescribed by the Oklahoma Insurance Department and shall be issued for the benefit of the State of Oklahoma by a financial institution whose deposits are insured by the Federal Deposit Insurance Corporation.

#### **365:25-25-12. 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.

#### **365:25-25-13. 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.