

GOVERNOR  
MARY FALLIN



INSURANCE COMMISSIONER  
JOHN D. DOAK

INSURANCE COMMISSIONER  
**State of Oklahoma**

**To:** All Interested Parties

**From:** Buddy Combs  
Assistant General Counsel  
Rulemaking Liaison

**Date:** December 2, 2013

**Subject:** Notice of proposed emergency rulemaking action by the Oklahoma Insurance Department, Title 365

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The Oklahoma Insurance Department has submitted a notice of rulemaking intent to the Office of Administrative Rules for Chapter 25 of the Insurance Department Rules found in Title 365 of the Oklahoma Administrative Code.

Copies of the notice of rulemaking intent for the proposed new rules are enclosed for your review. The notice sets forth summaries of the proposed changes and information regarding the public comment period and public hearing date.

Copies of the notice, rule impact statement, and text of the proposed emergency rules may be obtained by contacting the Insurance Department at the address and telephone number set out below. The notice, rule impact statement, and text of the proposed rules may be viewed on the website of the Insurance Department at [www.ok.gov/oid](http://www.ok.gov/oid) by clicking on the drop down menu item "Public Information" and then clicking on "Legal" followed by clicking on "Statutes and Rules" and then the link "Rule Amendments – Insurance Department, Title 365."

Please address any comments or questions to:

Oklahoma Insurance Commissioner  
State Insurance Department  
Attn: Buddy Combs  
3625 NW 56<sup>th</sup> Street, Suite 100  
Oklahoma City, OK 73112  
(405) 521-2746

**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:**

Notice of proposed EMERGENCY rulemaking

**PROPOSED 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.	Oklahoma Option Self-Insured Guaranty Fund [NEW]
365:25-25-13.	Severability [NEW]
Appendix Z.	Employee Notice [NEW]

**SUMMARY:**

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 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 13 is a severability clause.

**AUTHORITY:**

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

**COMMENT PERIOD:**

Written or oral comments regarding the proposed rule amendment shall be received on or before December 18, 2013. Comments shall be directed to Buddy Combs, Assistant General Counsel, Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56<sup>th</sup> St., Suite 100, Oklahoma City, Oklahoma 73112.

**PUBLIC HEARING:**

A public hearing regarding the proposed rules will be held December 19, 2013, at 9:30 a.m. at the Oklahoma Insurance Department, Five Corporate Plaza, 3625 NW 56<sup>th</sup> St., Suite 100, Oklahoma City, Oklahoma 73112.

**REQUEST FOR COMMENTS FROM BUSINESS ENTITIES:**

Business entities are requested to provide any increase in costs expected to be incurred due to compliance with the proposed rules. The comments shall be submitted to Buddy Combs, Assistant General Counsel, Oklahoma Insurance Department, at the mailing address above on or before December 18, 2013.

**COPIES OF PROPOSED RULES:**

Copies of the proposed rule amendments may be inspected at the Oklahoma Insurance Department at the physical address listed above. Office hours are from 8:00 a.m. through 5:00 p.m., Monday through Friday. Additional copies of the rules may also be obtained at the Oklahoma Insurance Department.

**RULE IMPACT STATEMENT:**

A rule impact statement will be available on and after December 2, 2013, in accordance with 75 O.S. § 253(B)(2). A copy of the statement may be obtained at the physical address above.

**CONTACT PERSON:**

Buddy Combs, Assistant General Counsel, (405) 521-2746.

## RULE IMPACT STATEMENT

### 1. RULE

#### Proposed EMERGENCY 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.	Oklahoma Option Self-Insured Guaranty Fund [NEW]
365:25-25-13.	Severability [NEW]
Appendix Z.	Employee Notice [NEW]

### 2. DESCRIPTION

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 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 13 is a severability clause.

### 3. CLASSES AFFECTED:

- A. Qualified Employers under the Oklahoma Employee Injury Benefit Act

### 4. COST IMPACTS ON PRIVATE OR PUBLIC ENTITIES:

- No information

### 5. CLASSES BENEFITTED:

- A. Qualified Employers under the Oklahoma Employee Injury Benefit Act

**6. ECONOMIC IMPACT:**

Unknown

**7. PROBABLE COST TO AGENCY AND EFFECT ON STATE REVENUES:**

None Anticipated

**8. SOURCE OF REVENUE:**

Normal yearly budgeted funds

**9. MEASURES TAKEN TO MINIMIZE COMPLIANCE COSTS:**

None

**10. EFFECT ON THE PUBLIC HEALTH, SAFETY AND ENVIRONMENT:**

Unknown

**11. LESS COSTLY/LESS INTRUSIVE METHODS:**

Unknown

**12. EFFECT ON PUBLIC HEALTH, SAFETY AND ENVIRONMENT IF RULE NOT IMPLEMENTED:**

Unknown

**13. EFFECT ON SMALL BUSINESS**

Implementation of the proposed rule will not have an adverse effect on small business as provided by the Oklahoma Small Business Regulatory Flexibility Act.

**14. DATE PREPARED:**

December 2, 2013

**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**

**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.

# **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: \_\_\_\_\_