

WORKERS' DISABILITY COMPENSATION SELF-INSURER LETTER OF CREDIT INFORMATION

Pursuant to the Michigan Workers' Disability Compensation Act, Sec. 418.611 (1) (a), the director may require and accept a Letter of Credit as one condition for granting self-insured authority.

1. **Letter of Credit Required Language**

Specific language is required and any deviations will not be accepted. See attached sample.

2. **Acceptable Banks**

Irrevocable letters of credit shall be issued by a state-chartered bank, a federally chartered bank or foreign bank. Funds shall be immediately payable on demand. The director may require confirmation of acceptable letters of credit from any state, federally or foreign chartered bank without state operations or branch services within this state. If a confirmation is required, it shall be by a State of Michigan chartered bank or federally chartered bank with Michigan branch operations and state that the confirmation bank is primarily obligated on the letter of credit.

3. **Memorandum of Understanding**

The employer must furnish a Memorandum of Understanding with the Letter of Credit on a form provided by the Workers' Compensation Agency (Agency). See attached form.

In summary, the Memorandum of Understanding confirms the following:

- a. The Letter of Credit is in lieu of a surety bond and is a requirement to obtaining self-insured authority.
- b. The Letter of Credit is automatically extended every year.
- c. A policy of insurance or a surety bond of equal amount may be substituted for a Letter of Credit subject to prior approval by the Agency.
- d. The employer affirms that the Letter of Credit can be called if in the judgment of the Agency it is needed to cover any workers' disability claims or if the Agency receives notice of termination of the Letter of Credit. If drawn, all monies from the Letter of Credit shall be paid and used in accordance with paragraph 4, number 6 of the Memorandum of Understanding, which is attached.
- e. Legal proceedings shall be subject to Michigan courts and law.

Review the Memorandum of Understanding and Rule R408.43q for complete terms and conditions.

The Letter of Credit together with the Memorandum of Understanding must be furnished to and accepted by the Agency before an effective date will be granted for self-insured authority.

MAIL COMPLETED DOCUMENTS TO:

Department of Licensing and Regulatory Affairs
Workers' Compensation Agency
Self-Insured Programs
State Secondary Complex, General Office Bldg.
P.O. Box 30016
Lansing, MI 48909

If you have any questions, please contact us at (517) 322-1868

Required Language:

For Reference Only
Entity

IRREVOCABLE LETTER OF CREDIT No. _____

Department of Licensing and Regulatory Affairs
Workers' Compensation Agency
Self-Insured Programs
State Secondary Complex, General Office Bldg.
P.O. Box 30016
Lansing, MI 48909

Dear Madam or Sir:

We have established this Irrevocable Letter of Credit solely in your favor for drawing up to U.S. \$ _____ (_____) effective immediately and expiring at (bank address) with our close of business on _____.

We hereby undertake to promptly honor your sight draft(s) drawn on us, indicating our Letter of Credit No. _____, for all or any part of this Letter of Credit if presented at (bank address) on or before the expiry date or any automatically extended date.

Except as stated herein, this undertaking is not subject to any condition or qualification. The obligation of the Bank under this Letter of Credit shall be the individual obligation of the Bank, in no way contingent upon reimbursement with respect thereto.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without amendment for one year from the expiry date hereof, or any future expiry date, unless at least sixty (60) days prior to any expiry date we shall notify you by Registered Mail or Overnight Mail Service that we elect not to consider this Letter of Credit renewed for any such additional period.

It is a further condition of this Letter of Credit that any interruptions of the Bank's conduct of business, on the date of expiration, caused by an Act of God, riot, civil commotion, insurrection, war or other cause beyond the Bank's control, or by any strike or lockout, will automatically extend the expiry date hereof, as well as future expiry dates, by a period of 30 days after the resumption of business for you to draw against this Letter of Credit.

Should you have occasion to communicate with us regarding this Letter of Credit, kindly direct your communication to the attention of our Letter of Credit Department, making specific reference to our Letter of Credit No. _____.

This Letter of Credit is subject to and governed by the International Chamber of Commerce Publication No. 590 ("ISP 98") to the extent not inconsistent with Michigan Law. If any legal proceedings are initiated with respect to payment of this Letter of Credit it is agreed that such proceedings shall be subject to Michigan courts and law.

Sincerely,

Memorandum of Understanding

This is a Memorandum of Understanding between [EMPLOYER] and the Workers' Compensation Agency (Agency). As used in the Memorandum of Understanding, "Employer" means _____ and all its subsidiaries and affiliated entities that have been approved as self-insurers and any new entities approved as self-insurers as a result of future amendments to the application.

Employer has applied for the privilege of self-insuring its obligations under the Workers' Disability Compensation Act; and

The Agency has approved that application contingent upon Employer posting security in the initial amount of \$_____, with said amount subject to change as directed by the Agency; and

Employer wishes to meet this security requirement by posting a Letter of Credit issued by a Michigan state chartered bank, federally chartered bank, or a foreign bank. If a confirmation is required, it shall be by a State of Michigan chartered bank or a federally chartered bank with Michigan branch operations.

Pursuant to administrative rule 408.43q, the Employer agrees:

1. The Letter of Credit is being furnished to the Agency in order to meet the condition established by the agency for approval of self-insured status.
2. Unless the Agency is notified otherwise by registered mail, at least 60 days before the expiration date, the Letter of Credit will be automatically extended without amendment for an additional one year period.
3. If the agency is notified that the Letter of Credit will not be renewed the Agency may, at its discretion and after 30 days from the date of receipt of the nonrenewal notice, draw on the Letter of Credit.
4. The Agency may, at its discretion, draw on the Letter of Credit at any time if needed to pay any Michigan workers' disability compensation liability which is the Employer's responsibility.
5. All proceeds resulting from the Agency drawing on the Letter of Credit shall be deposited with the State Treasurer and a trust shall be established to pay the obligations of the Employer under the Michigan Workers' Disability Compensation Act. The Director of the Agency shall be the grantor of the trust. In the event that monies remain in the trust after all current claims have been paid the remaining funds will be paid to the Self Insurers' Security Fund.
6. The Letter of Credit and this Memorandum of Understanding shall be governed and interpreted under the laws of Michigan. Any legal action with respect to the Letter of Credit shall be subject to Michigan courts and law.

Employer: _____

BY: _____
Type Name of Officer

SIGNATURE: _____

TITLE: _____
Type Title of Officer Signing

DATE: _____

WORKERS' COMPENSATION AGENCY

R408.43q - EFFECTIVE MARCH 1, 2007

R 408.43q Irrevocable letter of credit; acceptance; requirements; payment of surety bond or letter of credit.

Rule 13q. (1) An irrevocable letter of credit may be accepted by the bureau as other security for a Self-insured program as provided by section 611(1)(a) of the act. The bureau will retain discretion in each particular case to determine if the letter of credit is acceptable and if its language and format are satisfactory.

(2) Irrevocable letters of credit shall be issued by a state-chartered bank, a federally chartered bank or foreign bank. Funds shall be immediately payable on demand. The director may require confirmation of acceptable letters of credit from any state, federally or foreign chartered bank without state operations or branch services within this state. If a confirmation is required, it shall be by a State of Michigan chartered bank or federally chartered bank with Michigan branch operations and state that the confirming bank is primarily obligated on the letter of credit.

(3) An employer who elects an irrevocable letter of credit as other security for a self-insured program shall furnish a memorandum of understanding with the letter of credit, on a form provided by the bureau, which affirms the employer's acceptance of all of the following requirements:

(a) A letter of credit is furnished to the bureau instead of a surety bond as one of the requirements for approval of a self-insured program.

(b) The employer understands that the letter of credit shall be deemed automatically extended without amendment for 1 year from the expiry date or any future expiry date unless, 60 days before any expiry date, the bureau is notified, by courier, certified or registered mail, that the letter of credit shall not be renewed for any additional period.

(c) A policy of insurance or a surety bond of equal amount may be furnished at a later date as a substitute for the letter of credit if the policy of insurance or surety bond covers all claims that would have been covered by the letter of credit. All policies of insurance and surety bonds furnished as substitutes for letters of credit are subject to prior bureau approval.

(d) The employer shall affirm that the irrevocable letter of credit in the amount requested by the bureau is being offered with the understanding that if the bureau receives notice that the letter of credit will not be renewed, then the bureau, in its discretion, may, after 30 days from the date of receipt of the notice, call the proceeds of the letter of credit and deposit the proceeds in the state treasury. And further, if, in the judgment of the bureau, the letter of credit is needed to cover any worker's disability compensation claims, then the proceeds of the letter of credit shall be called immediately and deposited in the state treasury for such purpose.

(e) If legal proceedings are initiated by any party with respect to payment of any letter of credit, then the proceedings shall be subject to Michigan courts and law.

(4) The bureau shall not grant an effective date for a self-insured program until a completed letter of credit and the memorandum of understanding have been reviewed and accepted by the bureau.

(5) If it is necessary for the director, under statute and bureau rules, to call the bond or other security, then a trust shall be established with the funds, unless the provider of the bond or other security elects to handle the claims directly and the bureau approves. If a trust is established, the funds shall be deposited in the state treasury and the state treasurer, as provided by section 551(7) of the act, shall be the custodian of the trust. The trustees of the trust shall be the trustees of the funds denominated in chapter 5 of the act and also those who are appointed as trustees under section 511 of the act. The service company of the self-insured employer, if any, shall continue to perform in accordance with the terms of the employer's contract with the service company.