

Chapter Ins 21

WORKER'S COMPENSATION INSURANCE

Ins 21.01 Termination of worker's compensation insurance policies.

Note: Chapter Ins 21 was created as an emergency rule effective October 1, 1986.

Ins 21.01 Termination of worker's compensation insurance policies. (1) **PURPOSE.** In accordance with s. 631.36 (1) (c), Stats., this rule exempts worker's compensation insurance, as defined in s. Ins 6.75 (2) (k), from the requirements of s. 631.36, Stats., and establishes specific requirements concerning termination of worker's compensation insurance contracts.

(2) **SCOPE.** This section applies to all worker's compensation insurance policies issued in Wisconsin. Worker's compensation insurance policies may provide terms more favorable to policyholders than are required by this rule.

(3) **EXEMPTION.** Worker's compensation insurance policies are exempt from the requirements of s. 631.36, Stats.

(4) **MIDTERM CANCELLATIONS.** (a) *Permissible grounds.* Except as provided by par. (c), no worker's compensation insurance policy may be cancelled by the insurer prior to the expiration of the agreed term except for failure to pay a premium due or on grounds stated in the policy, which must be comprehended within one of the following classes:

1. Material misrepresentation;
2. Substantial change in the risk assumed, except to the extent that the insurer should reasonably have foreseen the change or contemplated the risk in writing the contract; or
3. Substantial breaches of contractual duties, conditions or warranties.

(b) *Notice.* No cancellation under par. (a) is effective until at least 30 days after the 1st class mailing or delivery of a written notice to the policyholder. The cancellation is effective whether or not the notice has been given to the policyholder upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2), Stats.

(c) *New policies.* Paragraphs (a) and (b) do not apply to any worker's compensation insurance policy that has not been previously renewed if the policy has been in effect less than 60 days at the time the notice of cancellation is mailed or delivered. No cancellation under this paragraph is effective until at least 30 days after the 1st class mailing or delivery of a written notice to the policyholder. The cancellation is effective whether or not the notice has been given to the policyholder upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2), Stats.

(5) **ANNIVERSARY CANCELLATION.** A worker's compensation policy may be issued for a term longer than one year or for an indefinite term with a clause providing for cancellation by the insurer in the manner provided in sub. (6) (a) for nonrenewals, except the notice must be given at least 60 days prior to any anniversary date and an insurer may not cancel a policy solely because of the termination of an insurance marketing intermediary's contract with the insurer unless the insurer complies with sub (7).

(6) **NONRENEWAL.** (a) *Notice required.* Subject to subs. (4) and (5), a policyholder has a right to have the worker's compensation policy renewed, on the terms then being applied by the insurer to similar risks, for an additional period of time equivalent to the expiring term if the agreed term is one year or less, or for

one year if the term is longer than one year, unless at least 60 days prior to the date of expiration provided in the policy a notice of intention not to renew the policy beyond the agreed expiration date is mailed or delivered to the policyholder, or with respect to failure timely to pay a renewal premium a notice is given, not more than 75 days nor less than 30 days prior to the due date of the premium, which states clearly the effect of nonpayment of premium by the due date.

(b) *Prohibited nonrenewal.* Notwithstanding par. (a), an insurer may not refuse to renew a worker's compensation policy solely because of the termination of an insurance marketing intermediary's contract with the insurer unless the insurer complies with sub. (7).

(c) *Exceptions.* A nonrenewal of a worker's compensation policy is effective whether or not the notice has been given to the policyholder upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2), Stats.

(7) **POLICY CANCELLATION.** An insurer may refuse to renew or may cancel a worker's compensation policy under sub. (5) or (6) solely because of the termination of an insurance marketing intermediary's contract with the insurer only if the notice of nonrenewal or cancellation contains an offer to continue or renew the policy with the insurer if the insurer receives a written request from the policyholder prior to the cancellation or renewal date. The insurer shall continue or renew the policy if a timely request is received unless the policyholder does not meet normal underwriting criteria. However, the cancellation or nonrenewal is effective whether or not the notice contains an offer to continue or renew the policy upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2), Stats.

(8) **INFORMATION ABOUT GROUNDS.** A notice of cancellation or nonrenewal under sub. (4), (5) or (6) shall state with reasonable precision the facts on which the insurer's decision is based. No such notice is effective unless it so states the facts. However, the cancellation or nonrenewal is effective whether or not the notice states with reasonable precision the facts [on] which the insurer's decision is based, upon the effective date of replacement insurance coverage obtained by the employer or of an order exempting the employer from carrying insurance under s. 102.28 (2), Stats.

(9) **CANCELLATION OR NONRENEWAL NOTICE.** Notice of cancellation or nonrenewal under sub. (4) (b) or (6) is not effective unless the notice contains adequate instructions to the policyholder for obtaining insurance through the Wisconsin worker's compensation insurance pool. This paragraph does not apply to worker's compensation policies cancelled or nonrenewed on behalf of the Wisconsin worker's compensation insurance pool or if the ground for cancellation or nonrenewal is nonpayment of premium and the notice of cancellation or nonrenewal so states.

(10) **CANCELLATION FOR NONPAYMENT OF PREMIUM.** Subsections (8) and (9) do not apply if the ground for cancellation or nonrenewal is nonpayment of the premium and if the notice so states. No termination of worker's compensation insurance is effective unless such termination complies with s. 102.31 (2), Stats., including the entity designated by the department of industry, labor and human relations receiving proper notice at least 60 days

prior to any nonrenewal under sub. (5) or (6) and at least 30 days prior to any cancellation under sub. (4).

(11) INSURER'S LIABILITY. There is no liability on the part of and no cause of action of any nature arises against any insurer, its authorized representatives, its agents, its employees, or any firm, person or corporation furnishing to the insurer information relating to the reasons for cancellation or nonrenewal, for any statement made by them in complying or enabling the insurer to com-

ply with this section, or for the provision of information pertaining thereto.

(12) RETURN PREMIUMS. If an insurer cancels a worker's compensation policy, the insurer shall return to the insured the pro rata unearned premium less any audit premiums which are due.

History: Cr. Register, January, 1987, No. 373, eff. 2-1-87; cr. (4) (i), Register, April, 1992, No. 436, eff. 5-1-92; am. (4) (a) (intro.), renum. (4) (b), (c), (d), (f) to (i) to be (4) (c), (5), (6) (c), (9) to (12) and am., cr. (4) (b), (6) (a) and (b), (7) and (8), r. (4) (e), Register, August, 1995, No. 476, eff. 9-1-95.