

# WORKERS' COMPENSATION AND EMPLOYER'S LIABILITY INSURANCE POLICY

## INTRODUCTION

In return for the payment of ~~the~~ premium and subject to all terms and conditions of this policy, we (the State Compensation Insurance Fund) agree with you (the employer named in the Declarations) as follows:

## GENERAL SECTION

### A. The Policy

This policy, ~~includes including~~ the Declarations and all endorsements and schedules issued by us to be part of this policy, ~~and~~ constitutes the entire contract of insurance. It is a contract of insurance between you and us. It is non-transferable. The only agreements relating to this insurance are stated in this policy.

The terms of this policy may not be changed or waived except by endorsement issued by us to be part of this policy. ~~You are responsible for telling us at once when the information contained in this policy is no longer accurate for your operations.~~

No condition, provision, agreement or understanding not stated in this policy contract will affect any rights, duties or privileges in connection with this policy contract. This policy will begin at 12:01 a.m. on its effective date, as shown in the Declarations.

### B. Who Is Insured

You are insured ~~for your liability to your employees~~ if you are the employer named in the Declarations, ~~subject to the provisions of this policy.~~

If the employer is a partnership, and if you are one of its named partners, you are insured, but only in your capacity as an employer of the partnership's employees.

This policy does not insure the liability of any employer other than the employer named in the Declarations.

### C. Workers' Compensation Law

Workers' compensation law means the Workers' Compensation Laws of the State of California. It includes any amendments to that law which are in effect during the policy period. It does not include ~~the provisions of any law that provide non-occupational disability benefits. It does not include the provision of any federal workers' compensation law, any federal occupational disease law, or the provisions of~~

any law that provide nonoccupational disability benefits.

### D. Locations

This policy covers all of your California workplaces listed in the Declarations, ~~and endorsements~~, and it covers all of your other California workplaces unless ~~specifically excluded by endorsement you have other insurance or are self-insured for such California workplaces.~~

### E. Who Is Eligible To Receive Workers' Compensation Benefits

Your employees (or in the event of their death, their dependents) are eligible for benefits under this policy, ~~except that~~. Employees who are excluded under workers' compensation law are not eligible for benefits under this policy, unless they have been included by endorsement.

- ~~1. Employees who are covered for California workers' compensation benefits on a policy also affording comprehensive personal liability (CPL) insurance issued to you are not eligible for benefits under this policy.~~
- ~~2. Employees who are excluded under workers' compensation law are not eligible for benefits under this policy, unless they have been included in the Declarations or by endorsement.~~

If you are named in the Declarations as an Individual Employer or a Husband and Wife / Spouse and Spouse Employer, ~~either as individuals or a co-partnership~~, you are not eligible for benefits under this policy, unless included by endorsement.

## PART ONE: WORKERS' COMPENSATION INSURANCE

### A. How This Insurance Applies

This workers' compensation insurance applies to bodily injury by accident or bodily injury by disease, including ~~resulting~~ death ~~resulting therefrom~~, subject to the following conditions:

1. Bodily injury by accident must occur during the policy period.
2. Bodily injury by disease must be caused or aggravated by the conditions of your employment. Your employee's exposure to those conditions causing or aggravating such bodily injury by disease must occur during the policy period.

### B. We Will Pay

We will pay promptly when due, to those eligible under this

policy, the benefits required of you by the workers' compensation law.

### C. We Will Defend

We have the right and duty to defend at our expense any claim or proceeding instituted against you before the Workers' Compensation Appeals Board for benefits payable by this workers' compensation insurance. We have the right to, and may at our discretion, investigate and settle these claims or proceedings. We will use attorneys selected by us including, but not limited to, our internal legal staff.

We have no duty to defend any claim, proceeding or suit that is not covered by this workers' compensation insurance.

We have no duty to defend any claim against you for the discharge, coercion, or discrimination against any employee in violation of the law.

~~We may, at your request, defend you using our legal staff against a claim of serious and willful misconduct or for sanctions instituted before the Workers' Compensation Appeals Board.~~

Unless prohibited by law, we may, at your request, defend you using attorneys selected by us including, but not limited to, our internal legal staff against a claim of serious and willful misconduct instituted before California's Workers' Compensation Appeals Board.

If defense for a serious and willful misconduct claim is accepted by State Fund, such representation is limited to proceedings before California's Workers' Compensation Appeals Board only and does not extend to any other tribunal.

### D. We Will Also Pay

We will also pay these costs ~~enumerated below~~, in addition to other amounts payable under this workers' compensation insurance, as part of any claim or proceeding we defend before the Workers' Compensation Appeals Board:

- ~~r~~Reasonable expenses incurred at our request, but not loss of earnings;
- ~~p~~Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this workers' compensation insurance;
- ~~l~~litigation costs for which we are responsible;
- ~~i~~Interest on an award, as required by law; and,
- ~~e~~Expenses we incur.

### E. Other Insurance

We will not pay more than our share of benefits and costs covered by this workers' compensation insurance and other insurance or self-insurance. Subject to any limits of liability that may apply, All shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance will be equal until the loss is paid.

### F. Payments You Must Make

You are responsible for any payments in excess of the benefits regularly provided by the workers' compensation law including, but not limited to, those required because:

- of your serious and willful misconduct;
- you knowingly employ an employee in violation of law;
- you fail to comply with a health or safety law or regulation;
- you discharge, coerce or discriminate against any employee in violation of the law;
- of injury to an employee under the minimum age specified in the workers' compensation law and illegally employed at the time of injury;
- of an increase in indemnity payments due to your failure to provide us with timely and proper notice required by law. We may seek reimbursement for any of these amounts paid on your behalf; or
- of sanctions imposed on you by the Workers' Compensation Appeals Board.

If we make any payments in excess of the benefits regularly provided by the workers' compensation law on your behalf, you will reimburse us promptly.

### G. Recovery From Others

We may enforce your rights, and the rights of persons entitled to the benefits of this workers' compensation insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

### H. Statutory Provisions

These statements apply where they are required by law.:

- As between an injured worker and us, we have notice of the injury when you have notice.
- Your default or the bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance for an injury occurring while this policy is in force.
- We are directly and primarily liable to any person entitled to the benefits payable by this insurance, subject to the provisions, conditions, and limitations of this policy.
- Jurisdiction over you is jurisdiction over us for purposes of the workers' compensation law. We are bound by decisions against you under that law, subject to the provisions of this policy that are not in conflict with that law.
- ~~Terms of this insurance that conflict with the workers' compensation insurance law in effect during the policy period are changed by this statement to conform to that law.~~
- This insurance conforms to the workers' compensation law that applies to:

- a. benefits payable by this insurance;
  - b. special taxes, assessments, and payments into security or other special funds, and assessments payable by us under that law.
6. Your employee has a first lien upon any amount which becomes owing to you by us on account of this policy, and in the case of your legal incapacity or inability to receive the money and pay it to the claimant, we will pay it directly to the claimant.
7. Terms of this insurance that conflict with the workers' compensation insurance law in effect during the policy period are changed by this statement to conform to that law.

Nothing in these paragraphs relieves you of your duties under this policy.

## PART TWO: EMPLOYERS LIABILITY INSURANCE

### A. How This Insurance Applies

This employer's liability insurance applies to bodily injury by accident or bodily injury by disease of an employee. Bodily injury means physical or mental injury, including emotional distress, anxiety, discomfort, inconvenience, depression, dissatisfaction or shock to the nervous system, unless caused by either a manifest physical injury or a disease with a physical dysfunction or condition resulting in treatment by a licensed physician or surgeon. Accident is defined as an event that is neither expected nor intended from the standpoint of the insured.

1. The bodily injury must arise out of and in the course of the injured employee's employment by you.
2. The employment must be necessary or incidental to your work in California.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.
5. If you are sued, the suit and any related legal actions for damages for bodily injury by accident or by disease must be brought under the laws of the State of California.

### B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees eligible for benefits under this policy, provided the bodily injury is covered by this employer's liability insurance.

The damages we will pay, where recovery is permitted by California law, include damages:

1. for which you are liable to a third party by reason of a claim or suit against you by that third party to recover the damages claimed against such third party as a result of injury to your employee;
2. for care and loss of services; and
3. for the consequential bodily injury that is covered by this employer's liability insurance to a spouse, child, parent, brother or sister of the injured employee; provided that these damages are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by you; and
4. because of bodily injury to your employee that arises out of and in the course of employment claimed against you in a capacity other than as employer.

### C. Exclusions

This insurance does not cover:

1. ~~Liability~~ assumed under a contract;
2. ~~p~~Punitive or exemplary damages because of bodily injury to an employee employed in violation of the law, or where insurance for liability is prohibited by law or contrary to public policy;
3. ~~d~~Damages or bodily injury to an employee while employed in violation of law with your actual knowledge or the actual knowledge of any of your executive officers;
4. ~~a~~Any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, ~~the provisions of any federal law unless endorsed on this policy~~ or any similar law;
5. ~~d~~Damages or bodily injury intentionally caused or aggravated by you;
6. ~~damages or bodily injury arising out of termination of employment;~~ Bodily injury occurring outside of the State of California. This exclusion does not apply to bodily injury to an employee covered under this policy, who is temporarily outside of the State on a specific assignment;
7. ~~d~~Damages or bodily injury arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, ~~or~~ humiliation ~~of, or~~ discrimination against, or termination of any employee, or from any personnel practices, policies, acts or omissions; ~~or~~
8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 USC Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 USC Sections 8171-

8173), the Outer Continental Shelf Lands Act (42 USC Sections 1331-1356a.), the Defense Base Act (42 USC Sections 1651-1654), the Federal Mine Safety and Health Act (30 USC Sections 801-945), and other federal workers' compensation law or other federal occupational disease law, or any amendments to these laws;

9. Bodily injury to any person in work subject to the Federal Employers' Liability Act (45 USC Sections 51-60), any other federal laws obligating an employer to pay damages to an employee due to bodily injury arising out of or in the course of employment or any amendments to those laws;
10. Bodily injury to a master or member of the crew of any vessel, and does not cover punitive damages related to your duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law;
11. ~~8.~~ Fines or penalties imposed for violation of any law; or.
12. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 USC Sections 1801-1872) and under any other federal law awarding damages for violation of those laws or regulations issued thereunder, and any amendments to those laws.

#### D. We Will Defend

We have the right and duty to defend, at our expense, any claim, proceeding or suit against you for damages payable by this employer's liability insurance. ~~We have the right to, and may at our discretion, investigate any claims.~~ We have the right to ~~investigate and~~ settle these claims, proceedings, and suits. We may use counsel of our choice.

We have no duty to defend a claim, proceeding or suit that is not covered by this employer's liability insurance. We have no duty to defend or continue defending after we have paid our limit of liability under this employer's liability insurance.

#### E. We Will Also Pay

We will also pay these costs ~~enumerated below~~, in addition to other amounts payable under this employer's liability insurance, as part of any claim, proceeding or suit we defend:

1. ~~r~~Reasonable expenses incurred at our request, but not loss of earnings;
2. ~~p~~Premiums for bonds to release attachments and for appeal bonds in bond amounts up to ~~twice~~ the limit of our liability under this employer's liability insurance;
3. ~~l~~itigation costs taxed against you;
4. ~~i~~nterest on a judgment as required by law, until we offer the amount due under this employer's liability insurance; and,

5. ~~e~~xpenses we incur.

#### F. Other Insurance

We will not pay more than our share of damages and costs covered by this employer's liability insurance and other insurance or self-insurance. Subject to any limits of liability that apply, all shares will be equal until the loss is paid. If any insurance or self-insurance is exhausted, the shares of all remaining insurance and self-insurance will be equal until the loss is paid.

#### G. Limit Of Liability

Our liability to pay for damages, including defense costs, is limited. Our limit of liability, including defense costs, is shown in the Declarations or endorsements. It is the most we will pay for all damages covered by this employer's liability insurance because of bodily injury to one or more employees in any one accident or occurrence, or series of accidents or occurrences, arising out of any one event.

We will not pay any claims for damages after we have paid the limit of our liability, including defense costs, under this employer's liability insurance ~~as explained above~~.

#### H. Recovery From Others

We may enforce your rights to recover our payment from anyone liable for an injury covered by this employer's liability insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

#### I. Actions Against Us

There will be no right of action against us under this employer's liability insurance unless:

1. you have complied with all the terms of this policy; and
2. the amount you owe has been determined with our consent or by actual trial and final judgment.

This employer's liability insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability. The bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Part.

### PART THREE: COVERAGE OF CALIFORNIA EMPLOYEES OUTSIDE OF CALIFORNIA

This coverage is identical to Part One of this policy. It applies to your California employees ~~who are hired in California and~~ who are eligible for benefits under this policy while they are temporarily working anywhere outside of California on a specific assignment.

### PART FOUR: YOUR DUTIES IF INJURY OCCURS

Tell us at once if an injury occurs that may be covered by this policy. Your other duties are listed here.:

1. Provide for immediate medical treatment and other

services required by the workers' compensation law.

2. Give us or our representative the names and addresses of the injured persons and of witnesses, and other information we may need, as required by California Workers' Compensation Law.
3. Promptly give us all notices, demands and legal papers related to the injury, claim, proceeding or suit.
4. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit. **In the event of an accident wherein a third party may be at fault, preserve evidence of the accident.**
5. Do nothing after an injury occurs that would interfere with our right to recover from others.
6. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

## PART FIVE: PREMIUM

### A. Our Manuals

All premium for this policy will be determined by our manuals of rules, rates, rating plans, and classifications. We may change our manuals and apply the changes to this policy if authorized by law or a governmental agency regulating this workers' compensation insurance.

### B. Classifications

The Declarations show the rate and premium basis for certain business or work classifications. These classifications were assigned based on an estimate of the exposures you would have during the policy period. If your actual exposures are not properly described by those classifications, we will assign proper classifications, rates, and premium basis by endorsement to this policy. You are responsible for telling us at once of any change in classification.

### C. Premium Calculation

Premium for each work classification is determined by multiplying a rate times a premium basis. Remuneration is the most common premium basis. This premium basis includes payroll and all other remuneration paid or payable during the policy period for the services of:

1. all your **officers and** employees eligible for benefits under this policy while engaged in work covered by this policy; and,
2. all other persons engaged in work that could make us liable under Part One of this policy. If you do not have payroll records for these persons, the contract price for their services **and materials and/or other records** may be used **as to determine** the premium basis. This paragraph will not apply if you give us proof that the employers of these persons lawfully secured

their workers' compensation obligations.

### D. Payroll Reports And Premium Payments

You will submit all payroll reports and pay all premium when due.

### E. Final Premium

The premium shown on the Declarations, schedules, and endorsements is an estimate. The final premium will be determined after this policy ends by using the actual premium basis and the proper classifications, rates, and rating plans that lawfully apply to the business and work covered by this policy. If you do not provide us with the information necessary to determine the actual premium basis, ~~the~~ **an** estimated premium **basis** will be used. If the final premium is more than the premium you paid to us, you must pay us the balance. ~~If # the final premium for all policy years is less than the premium you paid to us,~~ we will refund the balance to you. The final premium will not be less than the **highest** minimum premium **for the classifications covered by this policy.**

If this policy is cancelled, final premium will be determined in the following way unless our manuals **and/or rating plans** provide otherwise.:

1. If we cancel, final premium will be calculated pro rata based on the time this policy was in force. Final premium will not be less than the minimum premium ~~if we cancel because you fail to comply with the terms and conditions of this policy in regard to payroll records or premium payments.~~
2. If you cancel, final premium will be more than pro - rata; it will be based on the time this policy was in force, and increased by any short-rate cancellation table and procedure in our manuals **and/or rating plans.** Final premium will not be less than the minimum premium.

### F. Records

You will keep **all** records of information needed to **conduct audits and** compute premium. You will provide us with copies of those records when we ask for them.

### G. Audit

You will let us examine and audit all your records ~~that relate to~~ **for this policy.** These records include, **but are not limited to,** ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, **documented and undocumented financial transactions, financial records,** and programs for storing and retrieving data. We may conduct the audits during regular business hours during the policy period and within three years after the policy period ends. Information developed by audit will be used to determine final premium. The rating organization designated by the Insurance Commissioner has the same rights we have under this provision.

## H. Rate Changes

Premium may be subject to midterm adjustment, for the unexpired term of the policy, pursuant to the Insurance Commissioner's power to disapprove rates.

### PART SIX: CONDITIONS

## A. Inspection

We have the right, but are not obliged, to inspect your workplaces at any reasonable time. Our inspections relate to the insurability of the workplaces and the premiums to be charged. We may give you reports on the conditions we find. We may also recommend changes. While they may help reduce losses, we do not undertake to perform the duty of any person to provide for the health or safety of your employees or the public. We do not warrant that your workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. The rating organization designated by the Insurance Commissioner has the same rights we have under this provision.

## B. Long Term Policy

If this policy is written for a period longer than one year, all the provisions of this policy shall apply separately to each consecutive twelve-month period or, if the first or last consecutive period is less than twelve months, to such period of less than twelve months, in the same manner as if a separate policy had been written for each consecutive period. ~~Until your policy terminates, your deposit premium will be transferred to each consecutive policy period to act as a deposit as if a separate policy had been written.~~

## C. Transfer Of Your Rights And Duties

Your rights or duties under this policy may not be transferred without our written consent.

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured.

## D. Cancellation

~~1. You may cancel this policy. You must provide mail or deliver advance written notice to us stating when the cancellation is to take effect. If certificates of insurance issued by us are in effect, your advance notice to us must be no less than the maximum number of days notice we have agreed to give any one certificate holder when the policy is cancelled.~~

2. We may cancel this policy for one or more of the following reasons:

- a. ~~1.~~ Non-payment of premium;
- b. ~~2.~~ Failure to report payroll;
- c. ~~3.~~ Failure to permit us to audit payroll as required by the terms of this policy or of a

previous policy issued by us;

- d. ~~4.~~ Failure to pay any additional premium resulting from an audit of payroll required by the terms of this policy or any previous policy issued by us;
  - e. ~~5.~~ Material misrepresentation made by you or your agent;
  - f. ~~6.~~ Failure to cooperate with us in the investigation of a claim;
  - g. ~~7.~~ Material failure to comply with federal or state safety orders or written recommendations of our designated loss control representatives;
  - h. ~~8.~~ Failure to comply with written recommendations of our designated loss control representatives;
  - i. ~~9.~~ The occurrence of a material change in the ownership of your business;
  - j. ~~10.~~ The occurrence of any change in your business or operations that materially increases the hazard for frequency or severity of loss;
  - k. ~~11.~~ The occurrence of any change in your business or operations that requires additional or different classifications for premium calculation;
  - l. ~~12.~~ The occurrence of any change in your business or operations which contemplates an activity excluded by our reinsurance treaties.
3. If we cancel your policy for any of the reasons listed in Items (a) through (f), we will give you 10 days advance written notice, stating when the cancellation is to take effect. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice.
  4. If we cancel your policy for any of the reasons listed in Items (g) through (k), we will give you 30 days advance written notice. Mailing that notice to you at your mailing address shown in the Declarations will be sufficient to prove notice. In the event of cancellation and reissuance of a policy effective upon a material change in ownership or operations, the notice will not be provided.
  5. If we mail the notice to you, the stated periods of notice and your right to remedy the condition will be extended by 5 days if the place of mailing and your mailing address is within California, 10 days if the place of mailing or your mailing address is outside of California, and 20 days if the place of mailing or your mailing address is outside of the United States.
  - 6-5. The policy period will end on the date day and hour stated in the cancellation notice.

~~7.6.~~ Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy is changed by this statement to comply with that law.

E. ~~Our Notice To You~~

~~Mailing~~ Providing policy related documents to you by mail that ~~relate to this policy~~ at the mailing address shown in the Declarations or endorsements will be sufficient to prove notice.

Notice may be sent by other means, as the law allows, and proof of such notice will be in accordance thereof.

You are responsible for providing written notice to us at once when the information contained in the Declarations or endorsements is no longer accurate or does not represent your operations. You must tell us at once of any changes in classification of your employees.

F. Participating Provision – Dividends

Our Board of Directors has sole authority concerning whether or not to declare a dividend, and for determining the criteria for participating in any dividend plans. You will be ~~entitled~~ eligible to participate in ~~any~~ dividend plans applicable to this policy which may be approved ~~for distribution~~ by our Board of Directors, ~~with the following exceptions~~ if, and only if:

~~You will not be allowed to participate if:~~

- ~~1. you fail to pay any part of the premium for this policy after we request payment in writing, or allow it to remain unpaid for 90 days after we mail a statement of premium to you at the mailing address shown in the Declarations;~~
- ~~2. you do not keep adequate records of information needed to compute premium, or do not provide them to us when we ask for them; or~~
- ~~3. we must bring suit against you to obtain the records necessary for us to compute premium or to enforce the collection of all or any part of the premium for this policy.~~

~~Your participation will be according to the rules adopted by our Board of Directors.~~

1. You are in full compliance with this policy;
2. You meet all of the criteria established by our Board of Directors in its resolution declaring the dividend; and,
3. You meet and fully comply with all of the procedures established by us to implement the dividend, as authorized by our Board of Directors.

Under California law, it is unlawful for an insurer [us] to promise the future payment of dividends under an unexpired workers' compensation policy or to misrepresent the conditions for dividend payment. Dividends are payable only pursuant to conditions determined by the [our] Board of Directors or other governing board [of the Company] following policy expiration. Forfeiture of right to, reduction in the amount of, or delay in payment of a policyholder's dividend due to the policyholder's failure to accept renewal of the policy or subsequent policies, issued by the same

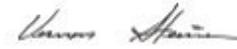
insurer, is illegal and constitutes an unfair practice.

~~To be valid this policy must be signed by our President or Executive Vice President and countersigned by our authorized representative.~~

Countersigned and Issued at San Francisco Pleasanton, California.

~~~~

~~Kenneth R. Van Laar  
Authorized Representative~~

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~~Vernon Steiner  
President & CEO~~



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