

**NEW MEXICO SELF-INSURERS' FUND
WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY PLAN**

In return for the payment of the premium and subject to all terms of this Policy, we agree with you as follows.

GENERAL SECTION

A. The Policy

This Policy includes at its effective date the Information Page and all endorsements and items listed there. It is a contract of insurance between you - the Employer - and us, the New Mexico Self-insurers' Fund, hereinafter referred to as "Fund." The only agreements relating to this insurance are stated in this Policy and endorsements thereto, and the:

1. Joint Powers Agreement and Bylaws of the Fund, as amended from time to time; and
2. Resolutions, rules and actions of the Fund's board of trustees, which are incorporated herein by reference.

The terms of this Policy may not be changed or waived except by endorsement issued by us to be part of this Policy. By accepting this Policy you agree to be bound by the terms and conditions of this Policy and the Joint Powers Agreement and Bylaws of the Fund, as amended from time to time, and the resolutions and rules of the board of trustees.

B. Who Is Insured

You are insured as the Employer named in item 1 of the Information Page.

C. Definitions

1. Fund or New Mexico Self Insurers' Fund

Fund or New Mexico Self-insurers' Fund means the New Mexico Self Insurers' Fund, an organization established by joint powers agreement of its members, as authorized by Section 3-62-1 et seq., NMSA 1978.

2. Rating Period

The Rating Period, as used herein, means the period from the Policy Inception Date shown on the Information Page to the next succeeding Rating Anniversary Date. Each twelve-month period, thereafter, from Rating Anniversary Date to Rating Anniversary Date, is a separate Rating Period. Any extension after a rating anniversary date for an additional period of less than twelve (12) months shall be deemed a part of and not in addition to the immediately preceding rating period.

3. State

State means any state of the United States of America, and the District of Columbia.

4. Workers Compensation Law

Workers Compensation Law means the worker's or workmen's compensation law and occupational disease law of New Mexico and of each state or territory named in item 3.A. of the Information Page. It includes any amendments to that law which are in effect during the Rating period. It does not include the provisions of any law that provide non-occupational disability benefits.

D. Locations

This Policy covers all of your workplaces within your jurisdiction and listed in the Fund's Payroll Schedule Form WC103; and it covers all other workplaces in item 3.A. states unless

you have other insurance or are self insured for such workplaces.

PART ONE: WORKER'S COMPENSATION INSURANCE

A. How This Insurance Applies

This worker's compensation insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. Bodily injury by accident must occur during the Rating period.
2. Bodily injury by disease must be caused or aggravated by the conditions of employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the Rating period.

B. We Will Pay; No Coverage for Volunteers; No Coverage Where Claimant Selects Other Benefits

We will pay promptly when due the benefits required of you by the workers compensation law.

No Coverage for Volunteers

Coverage under this Part One is provided only for benefits required to be paid by you to a "public employee" and "workman" as defined by the workers compensation law, Sections 52-1-3 and 52-1-16 respectively. The term "public employee" does not include an independent contractor.

No Coverage Where Other Benefits Selected

Where any person entitled to benefits from you by the workers compensation law executes a written election waiving workers compensation benefits and electing or selecting some other benefit or source of benefits, our obligation to pay under this policy will not become effective, if at all, until such other benefit or source of benefits is exhausted or the person revokes the election. In consideration of the group self insured funding of this policy, the coverage provided herein shall be excess of any other applicable benefits until such benefit or source of benefit is exhausted or the election is revoked whenever such an election of benefits is executed.

C. We Will Defend

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits payable by this insurance. We have the right to investigate and settle these claims, proceedings or suits.

We have no duty to defend a claim, proceeding or suit that is not covered by this insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this insurance;
3. Litigation costs taxed against you;

4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

E. Other Insurance

We will not pay more than our share of benefits and costs covered by this 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 those required because:

1. Of your serious and willful misconduct;
2. You knowingly employ an employee in violation of law;
3. You fail to comply with a health or safety law or regulation; or
4. You discharge, coerce or otherwise discriminate against any employee in violation of the workers compensation law.

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 have your rights, and the rights of persons entitled to the benefits of this 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.

1. As between an injured worker and us, we have notice of the injury when you have notice.
2. Your default or any bankruptcy or insolvency of you or your estate will not relieve us of our duties under this insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this insurance. Those persons may enforce our duties; so may an agency authorized by law. Enforcement may be against us or against you and us.
4. Jurisdiction over you is jurisdiction over us for purposes of the worker's 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.
5. This insurance conforms to the parts of the workers compensation law that apply to:
 - a) benefits payable by this insurance;
 - b) special taxes, payments into security or other special funds, and assessments payable by us under that law.

6. Terms of this insurance that conflict with the workers compensation law are changed by this statement to conform to that law.

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

I. Exclusions

This insurance does not cover:

1. Punitive or exemplary damages assessed against an Employer on account of bodily injury or occupational disease sustained by any employee or because of any conduct of the Employer or any of its agents;
2. Any fine or penalty imposed upon the Employer on account of violation or any statute or regulation; or
3. Any other governmental, civil or criminal tax, fine or penalty.

PART TWO: EMPLOYERS LIABILITY INSURANCE

A. How This Insurance Applies

This Employers Liability Insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

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 a state or territory listed in item 3.A, of the Information Page.
3. Bodily injury by accident must occur during the Rating Period.
4. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last date of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the Rating Period.
5. If you are sued, the original suit and any related legal actions for damages for bodily injury by accident or by disease must be brought in the United States of America, its territories or possessions, or Canada.

B. We Will Pay

We will pay all sums you legally must pay as damages because of bodily injury to your employees, provided the bodily injury is covered by this Employers Liability Insurance.

The damages we will pay, where recovery is permitted by 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 consequential bodily injury 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. This exclusion does not apply to a warranty that your work will be done in a workmanlike manner;
2. Punitive or exemplary damages because of bodily injury to an employee employed in violation of law;
3. 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. Any obligation imposed by a workers compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused or aggravated by you;
6. Bodily injury occurring outside the United States of America, its territories or possessions, and Canada. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America or Canada who is temporarily outside these countries;
7. Damages arising out of the discharge of, coercion of, or discrimination against any employee in violation of law.

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 insurance. We have the right to investigate and settle these claims, proceedings and suits.

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

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this insurance, as part of any claim, proceeding, or suit we defend:

1. Reasonable expenses incurred at our request, but not loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the limit of our liability under this insurance;
3. Litigation costs taxed against you;
4. Interest on a judgment as required by law until we offer the amount due under this insurance; and
5. Expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this 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. Limits of Liability

Our liability to pay for damages is limited. Our limits of liability are show in item 3.B. of the Information Page. They apply as explained below.

1. Bodily Injury by Accident. The limit shown for "bodily injury by accident - each accident" is the most we will pay for all damages covered by this insurance because of bodily injury to one or more employees in any one accident. A disease is not bodily injury by accident unless it results directly from bodily injury by accident.

2. Bodily Injury by Disease. The limit shown for "bodily injury by disease-policy limit" is the most we will pay for all damages covered by this insurance and arising out of bodily injury by disease, regardless of the number of employees who sustain bodily injury by disease. The limit shown for "bodily injury by disease-each employee" is the most we will pay for all damages because of bodily injury by disease to any one employee.

Bodily injury by disease does not include disease that results directly from a bodily injury by accident.

3. We will not pay any claims for damages after we have paid the applicable limit of our liability under this insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this 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 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 insurance does not give anyone the right to add us as a defendant in an action against you to determine your liability.

PART THREE: OTHER STATES INSURANCE

A. How This Insurance Applies

1. This other states insurance applies when one or more states are shown in item 3.C. of the Information Page.
2. If you begin work in any one of those states and are not insured or are not self insured for such work, the Policy will apply as though that state were listed in item 3.A. of the Information Page.
3. We will reimburse you for the benefits required by the workers compensation law of that state if we are not permitted to pay the benefits directly to persons entitled to them.

B. Notice

Tell us at once if you begin work in any state listed in item 3.C. of the Information Page.

PART FOUR: YOUR DUTIES IF INJURY OCCURS

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

1. Provide for immediate medical and other services required by the workers compensation law.

2. Give us the names and addresses of the injured persons and of witnesses, and other information we may need.
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.
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 the Fund's board of trustees.

B. Classifications

Item 4 of the Information Page indicates the rate and premium basis for certain business or work classifications. The classifications on our Payroll Schedule Form WC103 were assigned based on an estimate of the exposures you would have during a Rating Period. If your actual exposures are not properly described by those classifications, we may assign proper classifications, rates and premium basis by endorsement to this Policy or upon audit.

C. Remuneration

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 Rating Period for the services of all your officers and employees engaged in work covered by this Policy.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part of all of a workers compensation law is not valid.

E. Final Premium

The premium shown on the Estimated Premium Billing Invoice, Payroll Schedule Form WC103 or Other Premium Billing from the Fund and endorsements is an estimate. The final premium will be determined after each Rating Period by using the audited premium basis and the proper classifications and rates that lawfully apply to the business and work covered by this Policy. If the final premium is more than the premium you paid to us, you must pay us the balance. If it is less, we will apply the balance as credit on your next Rating Period or other refund method approved by the Fund board of trustees. 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:

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 pro rate share of the minimum premium.
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 our short rate cancellation table and procedure, subject to a minimum premium

as set by the Fund board of trustees due for the Rating Period. Final premium will not be less than the minimum premium.

F. Records

You will keep records of information needed to 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 this Policy. These records include ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. We may conduct the audits during regular business hours during the Rating Period and within three (3) years after the Policy ends. Information developed by audit will be used to determine final premium. Insurance rate service organizations have the same rights we have under this provision.

PART SIX: CONDITIONS

A. Inspection

We have the right, but are not obliged to inspect your workplaces at any time. Our inspections are not safety inspections. They relate only 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 and healthful or that they comply with laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

B. Transfer of Your Rights and Duties

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

C. Cancellation

1. You may cancel this Policy. You must mail or deliver at least sixty (60) days advance written notice to us stating when the cancellation is to take effect.
2. We may cancel this Policy. We must mail or deliver to you not less than ten (~ 0) days advance written notice stating when the cancellation is to take effect for nonpayment of premium. We must mail or deliver to you not less than sixty (60) days advance written notice stating when cancellation is to take effect for any other reason. Mailing that notice to you at your mailing address shown in our records will be sufficient to prove notice.
3. The Rating Period will end on the day and hour stated in the cancellation notice.
4. 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.

D. Sole Representative

You, the Employer first named in item 1 of the Information Page, will act on behalf of all insureds to change this Policy, receive return premium, and give or receive notice of cancellation.

E. Representations and Agreements

By accepting this policy, you agree:

1. The statements in the Information Page and all endorsements and items listed there are accurate and complete;
2. Those statements are based upon representations you made to use; and
3. We have issued this Policy in reliance upon your representations.

You agree that this Policy, the Bylaws and Agreements of the Fund, and terms, conditions or rules issued as provided in those documents by the Fund's board of trustees, contain all the agreements between you and us or any of our agents concerning the insurance afforded. You are not authorized to make changes in the terms of this Policy without our written consent. This Policy's terms can be amended or waived only by endorsement issued by us and made a part of this Policy.

F. Deductible

We may pay any part or all of any deductible amount listed in the Information Page or Endorsements to effect settlement of the benefits provided herein, and upon notification of the action taken, you shall promptly reimburse us for the part of the deductible amount we paid. The deductible amount applies to the medical portion of the benefit, and does not apply to: 1) the indemnity or compensation portion of the benefit or 2) the allocated loss adjustment expenses incurred by us, unless otherwise agreed and shown in the Information Page or applicable Endorsements.

G. Arbitration

If we and you disagree as to benefits payable under this Policy, either party may make a written demand for arbitration. In this event, each party will select an arbitrator. The two (2) arbitrators will select a competent and disinterested third arbitrator. If two (2) arbitrators cannot agree within thirty (30) days on a third arbitrator, either may require the selection be made by a judge of a court having jurisdiction. We and you will pay the expenses of the chosen arbitrator and shall bear equally the other expenses of arbitration and expenses of the third arbitrator. Unless both parties agree otherwise, arbitration will take place in the county where the situs of the Fund is located. State rules of law as to arbitration procedure and evidence will apply unless waived by you and us. A decision agreed to in writing by any two (2) of the arbitrators will be binding.