

**CONTRA COSTA COUNTY SCHOOLS INSURANCE GROUP
WORKERS' COMPENSATION
MEMORANDUM OF COVERAGE
FOR
MEMBER DISTRICTS**

Throughout this Memorandum, words and phrases that appear in quotation marks have special meanings. They are defined in SECTION II, "DEFINITIONS."

In consideration of the payment of the contribution, the Contra Costa County Schools Insurance Group, hereafter referred to as the "Group" agrees with the member school district hereinafter referred to as "district" as follows:

SECTION I – COVERAGES

The "Group" agrees to provide the following coverage:

WORKERS' COMPENSATION COVERAGE

- A. To indemnify the "district" for loss as a "qualified" self-insurer under the Workers' Compensation Law of the State of California."
- B. Loss means amounts actually incurred by the "district" as a self-insurer under the "Workers' Compensation Law" for bodily injury by accident or bodily injury by disease including resulting death, provided:
 - 1. the bodily injury accident occurs during the period this "memorandum of coverage" is in force; or
 - 2. the bodily injury by disease is caused or aggravated by the conditions of employment by the "district." The employee's last day of last exposure to those conditions of that employment causing or aggravating such bodily injury; by disease must occur during the period this "memorandum of coverage" is in force.
- C. Loss includes "claims expenses" as defined in Section II. F.
- D. The "Group" will not indemnify the "district" for any obligations incurred by the "district" in excess of benefits regularly required by the "Workers' Compensation Law" if such excess payments are required because:
 - 1. of serious and willful misconduct of the "district";
 - 2. the "district" or an Executive official thereof knowingly employed an employee in violation of law;
 - 3. the "district" failed to comply with a health or safety law or regulation;
 - 4. in violation of the "Workers' Compensation Law," the "district" discharged, coerced, or otherwise discriminated against any employee; or
 - 5. the "district" violated or failed to comply with any "Workers' Compensation Law."

EMPLOYER'S LIABILITY COVERAGE

- A. The "Group" will indemnify the "district" as a qualified self-insurer of employers liability.
- B. Indemnity by the "Group" will be made only if the original suit and any related legal actions for damages for bodily injury by accident or disease was brought in the United States of America, its territories or possessions, or Canada.
- C. Loss means amounts which the "district" has legally incurred as damages, because of bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death. Loss also includes "claims expenses" as defined in Section II.F.
- D. This coverage applies to losses legally incurred by the "district" as a "qualified self-insurer" of employers liability for bodily injury which arises out of and in the course of the injured employee's employment by the "district," provided:
 - 1. the bodily injury by accident occurs during the period this coverage is in force; or
 - 2. the bodily injury by disease is caused or aggravated by the conditions of employment by the "district." The employee's last day of last exposure to those conditions of that employment causing or aggravating such bodily injury by disease must occur during the period this "memorandum of coverage" is in force; and
 - 3. the employment is necessary or incidental to work conducted by the "district."

E. DAMAGES INCLUDE:

- 1. damages for which the "district" is liable to, and which the covered party is actually obligated to pay to a third party by reason of a claim, suit or proceeding against the "district" to recover damages suffered by the third party;
- 2. damages for care and indemnity payments of an injured employee of the "district"; and
- 3. damages for care and indemnity payments of an injured student of the "district" when the student provides services exclusively for the "district" or when the "district" pays all or not less than one-half of the student's wages.
- 4. damages for consequential bodily injury as provided by "Workers' Compensation Law" to a spouse, child, parent, brother, or sister of the injured employee of the "district"; provides such damaged in 1,2, and 3 above are the direct consequence of bodily injury that arises out of and in the course of the injured employee's employment by the "district"; and
- 5. damages because of bodily injury as provided by "Workers' Compensation Law" to an employee of the "district" arising out of and in the course of employment, claimed against the "district" in a capacity other than as an employer.

F. EMPLOYERS' LIABILITY COVERAGE EXCLUDES:

- 1. liability assumed under a contract;
- 2. punitive or exemplary damages;

3. bodily injury to an employee while knowingly employed in violation of law;
4. bodily injury intentionally caused or aggravated by or at the direction of the “district”;
5. bodily injury occurring outside the United States of America, its territories or possessions, or 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 working outside these countries for the “district”;
6. damages arising out of the “district’s” violation of law in the discharge of, coercion of, or discrimination against any employee;
7. any obligation imposed by a workers’ compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law; or
8. damages arising out of operations for which the “district”:
 - (a) has violated or failed to comply with any workers’ compensation law, or
 - (b) has rejected any workers’ compensation law.

OTHER STATES’ COVERAGES

- A. The “memorandum of coverage” applies to states other than California if an employee of the “district” is injured in such a state and if the work of such injured employee of the “district” was within the scope of such employee’s employment, at the direction of the “district”, and was temporary and transitory in such other state provided the “district” is not insured or self-insured in such other state, and
 1. such injured employee was regularly employed in California;
 2. the work in the other state was incidental to work in California; and
 3. the work of such injured employee was not a permanent or fixed location of the “district” subject to the “Workers’ Compensation Law” in such other state.
- B. For any workers’ compensation benefits awarded under the law of any other state, the “Group” will indemnify the “district” only to the extent that the other state benefits do not exceed benefits which would have been paid to such injured employee under the Workers’ Compensation Law of the State of California.
- C. For any workers’ compensation benefits awarded under the U.S. Longshoremen’s and Harbor Workers’ Compensation Act, the “Group” will indemnify the “district” only to the extent that those benefits do not exceed benefits which would have been paid to such injured employee under the “Workers’ Compensation Law” of the State of California.

SECTION II – DEFINITIONS

A. THE “MEMORANDUM OF COVERAGE”

This “memorandum of coverage” includes the Declarations Page. It is a contract of coverages between the “Group” and the “district.” The only agreements relating to this coverage are stated in the “memorandum of coverage.” The terms of this “memorandum of coverage” may not be changed or waived except by an endorsement made as part of this “memorandum of coverage.”

B. CONTINUOUS COVERAGE

This "memorandum of coverage" is effective at 12:01 a.m. on the effective date stated in the Declarations and will remain in full force and effect until cancelled. All of the provisions of this "memorandum of coverage" apply separately to each consecutive coverage period beginning with the date shown in the Declarations in the same manner as if a separate "memorandum of coverage" had been written for each such consecutive period.

C. "DISTRICT"

The "district" is named in the Declarations and must meet the eligibility requirements as described in the Joint Powers Agreement.

D. "QUALIFIED SELF-INSURER"

The "district" represents that it is a duly qualified self-insurer under the "Workers' Compensation Law" of California and will continue to maintain such qualifications during the term this "memorandum of coverage" is in effect. If the "district" should terminate such qualifications or if qualification of the "district" as a self-insurer is cancelled or revoked while this "memorandum of coverage" is in force, the amounts payable under this "memorandum of coverage" will not exceed the amounts which would have been payable if such qualifications had been maintained in full force and effect.

E. "WORKERS' COMPENSATION LAW"

"Workers' Compensation Law" means the workers' compensation and law and occupational disease law of the State of California. It includes any amendments to that law which are in effect during the term of this "memorandum of coverage." It does not include provisions of any law that provides non-occupational disability benefits.

F. "CLAIMS EXPENSES"

Claim expenses of the "covered party" mean its litigation costs, any excess insurance purchased by the "Group," interest as required by law on awards or judgments and its claim investigation or legal expenses which can be directly allocated to a specific claim. Claim expenses exclude: salaries and travel expenses of employees of the "district," annual retainers, and overhead.

**SECTION III – "DISTRICT'S" RETENTION AND
"GROUP'S" LIMIT OF INDEMNITY**

A. Retention by "DISTRICT":

There shall be no self-insured retention required of the "district" unless otherwise stated in the JPA Agreement.

B. Limit of Indemnity by "Group"

The "Group" will indemnify the "district" for loss over the amount stated as "district's" retained limit in the Declarations. The limit of indemnity for Employers Liability coverage will not exceed the limit stated in the Declarations. The total indemnity for Workers' Compensation and Employers' Liability Coverage combined will not exceed in any event the maximum limit stated in the Declarations.

C. How Retention and Limit of Indemnity Apply:

The "district's" retention and "Group's" Limit of Indemnity stated in the Declarations apply to losses paid by the "district" as a "qualified self-insurer" of Workers' Compensation and Employers' Liability as follows:

1. To one or more employees because of bodily injury or death in any one accident.
2. To any one employee for bodily injury or death by disease.

The inclusion of more than one legal entity as "district" in the Declarations will not increase the "district's" retention nor the "Group's" Limit of Indemnity.

D. Accident:

1. Accident means each accident or occurrence or series of accidents or occurrences arising out of any one event.
2. An accident is deemed to end 72 hours after the event commences. Each subsequent 72 hours is deemed to be a separate accident period.

E. Disease:

Disease is an accident only if it results directly from bodily injury by accident.

SECTION IV – CONTRIBUTIONS

Contributions will be determined by applying the rate determined by the "Group's" Board of Directors to the "district's" gross payroll as established in the "Group's" Agreement.

SECTION V – CONDITIONS

A. Notice of Accident:

1. The "district" shall give prompt written notice to the "Group" for all claims in which an injury or disease occurs.
2. The "district" shall also give prompt written notice to the "Group" if an injury of the following type occurs, regardless of the incurred value:
 - a. Injuries to spinal cord, paraplegia, or quadriplegia;
 - b. a fatality;
 - c. amputation of a major extremity;
 - d. second or third degree burns of 25% or more of the body;
 - e. serious head or brain injuries (including skull fracture or loss of sight);
 - f. any occurrence which causes serious injury or death to two or more employees;
 - g. any occurrence which results in disability exceeding one (1) year.
3. Notice of accident given to the "Group" shall contain complete details on the injury, disease or death. If a suit, claim or other proceeding is commenced because of an injury listed in above section 2 or on any injury which appears to involve indemnity by the "district", the "district" shall give the "Group":

- a. all notices and legal papers related to the claim, proceeding or suit, or copies of these notices and legal papers; and
- b. copies of reports on investigations made by the "district" on such claims, proceeding, or suits.

B. Duties of "district" and "Group":

1. The "Group" has the duty to handle, settle or defend any claims, suits, or proceedings against the "district". The "Group" shall have the authority to investigate any and all claims.
2. The "Group" has the discretionary right, and shall be given the opportunity by the "district" to associate with the "district" in the defense, investigation, or settlement of any claim, suit or proceeding which appears to involve indemnity by the "Group". In such association, the "district" and "Group" shall cooperate in all aspects of defense, investigation, or settlement.

C. Payment of Loss to "district"

The "Group" will indemnify the "district" for any loss under the coverages provided herein as follows:

1. For-Section 1 Workers' Compensation Coverage and Other States' Coverage-the "district" will pay all benefits required of the "district" by the "Workers' Compensation Law."
2. For Section I-Employers' Liability Coverage-if damages are awarded which the "district" legally must pay and does pay, the "Group" shall pay such damages. The indemnity will be made within 30 days after the "Group" has received proof of actual payment, in cash, by the "district."

D. Subrogation-Recovery From Others:

1. The "Group" has the right to recover all payments which the "Group" has made to the "district" from anyone liable for such loss. If the "Group" recovers from anyone liable for such loss, the "Group" shall first be reimbursed from such recovery to the extent of its payments to the "district."
2. If the "district" does not commence an action or proceeding to recover damages from anyone liable for a loss paid by the "Group", the "Group" has the rights of the "district" to recover damages for anyone liable for such loss. The "district" will do everything necessary to protect those rights and help the "Group" enforce them. Any such recovery by the "Group" will be allocated as follows:
 - a. the "Group" will be reimbursed for all its payment under this "memorandum of coverage";
 - b. any balance of the recovery which remained after the "Group" has been reimbursed will be paid to the "district."
3. Expenses of all proceedings to recover from anyone liable for injury covered by this policy will be allocated between the "district" and "Group" in the ratio represented by the allocation of any damages which have been recovered.
4. If such an action or proceeding undertaken solely by the "Group" results in no recovery, all related expenses will be paid by the "Group."

5. If there is insurance coverage in excess of the "Group's" limit of indemnity under this policy and if subrogation recovery is obtained from anyone liable for loss, any such excess carrier will be reimbursed for any loss paid in excess of the "Group's" limit of indemnity before any reimbursement of the "Group" and "district" under the provisions of this Section E.
6. If there is no insurance coverage in excess of the "Group's" limit of indemnity and if there is a subrogation recovery in excess of the "Group's" limit of indemnity, the "district" will be reimbursed to the extent of any loss paid by the "district" in excess of the "Group's" limit of indemnity, before the "Group" is reimbursed under the provision of this Section E.

E. Actions Against "Group":

There will be no right of action against the "Group" unless the "district" has complied with all the terms and conditions of this "memorandum of coverage."

F. Other Insurance:

If the "district" has other insurance, reinsurance, indemnity, or reimbursement agreement applicable to a loss for which the "district" would be indemnified under this "memorandum of coverage", the indemnity under this "memorandum of coverage" will apply in excess of such other insurance, reinsurance, indemnity or reimbursement which the "district" has procured to apply in excess of the sum of the "district's" retention and the "Group's" limit of indemnity under this policy.

G. Inspection:

The "Group" has the right at any time, but is not obliged, to inspect the "district's" operation and work places. Such inspections are not safety inspections. They relate only to the compliance of the work places with the rules of the "Group". The "Group" may give reports to the "district" on the conditions found upon inspection. The "Group" does not undertake to perform the duty of any person to provide for the health or safety of the "district's" employees or the public. The "Group" does not warrant that the "district's" work places are safe or healthful, nor that they comply with laws, regulations, codes, or standards.

H. Audit:

The "district" will keep records needed to compute the contribution in accordance with Section V-Contributions, and will send copies of those records when the "Group" asks for such records. The "Group" has the right to examine and audit all records of the "district" which relate to this program, including ledgers, journals, registers, vouchers, contracts, disbursement records, and programs for storing and retrieving data. Information developed by the audit will be used to determine contributions. The "Group" has the right to conduct audits during regular business hours while this "memorandum of coverage" is in force and within three years after the final settlement of all claims or payments made on account of bodily injury to employees throughout the term of this "memorandum of coverage."

I. Assignment:

An assignment of interest under this "memorandum of coverage" will not bind the "Group" unless an endorsement assigning interest is issued by the "Group" to be part of this "memorandum of coverage."

J. Sole Representative:

If more than one "district" is named in the Declarations, the "district" first named will act on behalf of all the "covered parties" to give or receive notification of cancellation, receive return contributions, or request changes in this coverage program.

K. "Memorandum of Coverage" Conforms to Law:

If terms of this "memorandum of coverage" are in conflict with any law applicable to this program, this statement amends this policy to conform to such law.

L. Captions:

The headings or captions used in this "memorandum of coverage" are for the purpose of reference only and shall not otherwise affect the meaning of this "memorandum of coverage."

G23:7/92