

KESA, The Kentucky Workers' Compensation Fund

Workers' Compensation and Employers Liability Group Self-Insurance Policy

In return for the payment of the premium and subject to all terms of this group self-insurance policy, we agree with you as follows:

GENERAL SECTION

A. The Policy

This group self-insurance policy includes at its effective date the attached Information Page and all endorsements and schedules listed there and attached to this document (collectively, this "Policy"). This Policy is a contract of group self-insurance between you (the employer named in Item 1 of the Information Page) and us (KESA, The Kentucky Workers' Compensation Fund). The only agreements relating to this Policy are stated in this Policy, and in the Information Memorandum including its Exhibits - the KESA Operating Agreement and Bylaws (Exhibit A), the KESA Indemnity Agreement (Exhibit B), and the Association's Articles of Incorporation and Bylaws (Exhibit C), all of which you have acknowledged receiving, reviewing, and being bound by your signature on the "Acknowledgement and Signature by Employer/Member" endorsement attached to the policy, and all of which are incorporated herein by this reference. The terms of this Policy may not be changed or waived except by endorsement issued by us to be part of this Policy.

B. Who is Insured

You are insured under this group self insurers' Policy if you are an employer named in Item 1 of the Information Page. If that employer is a partnership, and if you are one of its partners, you are self-insured, but only in your capacity as an employer of the partnership's employees.

C. Workers Compensation Law

"Workers Compensation Law" means the workers or workmen's compensation law and occupational disease law 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 policy period. It does not include any federal workers or workmen's compensation law, any federal occupational disease law or the provisions of any law that provides nonoccupational disability benefits.

D. State

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

E. Locations

This policy covers all of your workplaces listed in Items 1 or 4 of the Information Page; 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

WORKERS COMPENSATION GROUP SELF-INSURANCE

A. How This Insurance Applies

The workers compensation group self-insurance provided under this Policy 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 policy period.

2. 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.

B. We Will Pay

We will pay promptly when due 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, proceeding or suit against you for benefits payable by this group self-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 group self-insurance.

D. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this group self-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 group self-insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this group self-insurance; and
5. expenses we incur.

E. Other Insurance or Self-Insurance

We will not pay more than our share of benefits and costs covered by this group self-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 group self-insurance, to recover our payments from anyone.

KESA, The Kentucky Workers' Compensation Fund

Workers' Compensation and Employers Liability Group Self-Insurance Policy

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 the bankruptcy or insolvency of you and your estate will not relieve us of our duties under this group self-insurance after an injury occurs.
3. We are directly and primarily liable to any person entitled to the benefits payable by this group self-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 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.
5. This group self-insurance is intended to conform to the parts of the Workers Compensation Law that apply to:
 - a. benefits payable by this group self-insurance;
 - b. special taxes, payments into security or other special funds, and assessments payable by us under that law.
6. Terms of this group self-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.

PART TWO EMPLOYERS LIABILITY GROUP SELF-INSURANCE

A. How This Insurance Applies

The employers liability group self-insurance furnished by this Policy 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 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 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 group self-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 group self-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 coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;
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 (43 USC Sections 1331-1356), the Defense Base Act (42 USC Sections 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 USC Sections 901-942), any other federal workers or workmen's 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;
11. fines or penalties imposed for violation of federal or state law; and
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.

KESA, The Kentucky Workers' Compensation Fund

Workers' Compensation and Employers Liability Group Self-Insurance Policy

D. 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 group self-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 group self-insurance. We have no duty to defend or continue defending after we have paid our applicable limit of liability under this group self-insurance.

E. We Will Also Pay

We will also pay these costs, in addition to other amounts payable under this group self-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 group self-insurance;
3. litigation costs taxed against you;
4. interest on a judgment as required by law until we offer the amount due under this group self-insurance; and
5. expenses we incur.

F. Other Insurance

We will not pay more than our share of damages and costs covered by this group self-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 shown 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 group self-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 group self-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 group self-insurance.

H. Recovery From Others

We have your rights to recover our payment from anyone liable for an injury covered by this group self-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 group self-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 group self-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 legal successor will not relieve us of our obligations under this Part.

PART THREE 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 or our agent 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 FOUR 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 insurance.

B. Classifications

Item 4 of the Information Page shows 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, contact the KESA office for correct classifications and rates. Final classification assignments will be determined by final 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 policy period for the services of:

KESA, The Kentucky Workers' Compensation Fund
Workers' Compensation and Employers Liability Group Self-Insurance Policy

1. all your officers and employees engaged in work covered by this Policy; and
2. all other persons engaged in work that you have subcontracted, work for you involving removal, excavation or drilling of soil, rock or mineral, or cutting or removal of timber from land, or work for you performed of a kind which is a regular and recurrent part of the work of your trade, business, occupation or profession. This includes but is not limited to sole proprietorships, partnerships, subcontractors, independent contractors and contract/casual laborers with NO employees and or NO certificates of workers compensation insurance. If you do not have payroll records for these persons, the contract price for their services and materials may be used as the premium basis. This paragraph 2 will not apply if you give us proof that the employers of these persons lawfully secured their workers compensation obligations.

D. Premium Payments

You will pay all premium when due. You will pay the premium even if part or all of a Workers Compensation Law is not valid.

E. Final Premium

The premium shown on the Information Page, schedules, and endorsements is an estimate. The final premium will be determined after this Policy ends by using the actual, not the estimated, 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 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 canceled, final premium will be determined in the following way unless our manuals 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 pro rata 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. 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 policy period and within three years after the policy period 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 FIVE
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 or 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. Long Term Policy

If the policy period is longer than one year and sixteen days, all provisions of this Policy will apply as though a new policy were issued on each annual anniversary that this Policy is in force.

C. Transfer of Your Rights and Duties

Your rights or duties under this policy may not be transferred without our written consent. If you cease to exist as a legal entity (or die if you are an individual) and we receive notice within thirty days after that cessation (your death, as the case may be) we will cover your legal representative as insured.

D. Cancellation

1. KESA Trustees may suspend or expel any Member from the Fund for reasons including but not limited to adverse claims experience, lack of cooperation with safety and loss prevention policies, or failure to report payroll in accordance with KESA's rules and rating plan by giving the Member and the Executive Director thirty (30) days advance written notice.
2. The failure by any Member to pay the Premium due prior to the due date may result in immediate suspension or expulsion from the Fund upon ten (10) days advance written notice to the Member and the Executive Director.
3. A Member may withdraw from the Fund only upon written notice to the Trustees and the Executive Director to be received by each at least sixty (60) days prior to the effective date of the withdrawal.
4. Any of these provisions that conflict with a law that controls the cancellation of the group self-insurance in this Policy is changed by this statement to comply with the law.

E. Sole Representative

The insured 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.

IN WITNESS WHEREOF, KESA, The Kentucky Workers' Compensation Fund has caused this Policy to be signed by its Executive Director, but this Policy shall not be binding unless the Information page is also signed by the Executive Director.

KESA, The Kentucky Workers' Compensation Fund



Executive Director