
CITY COUNTY INSURANCE SERVICES TRUST WORKERS' COMPENSATION COVERAGE AGREEMENT

*Various provisions of this agreement restrict coverage. Read the entire coverage agreement carefully to determine rights, duties, and what is and what is not covered. Words or phrases that appear in **bold-faced** type have special meaning. Refer to Section 1B, Definitions.*

In accordance with and subject to the City County Insurance Services Agreement and Declaration of Trust (herein "**Trust Agreement**") and the Bylaws and Rules of the Trust, and in consideration of the contribution for which this coverage agreement is written, except where specifically provided otherwise within this agreement, the **Trust** will pay on behalf of the **Member** all sums for which the **Member** shall become legally obligated within the terms outlined in this agreement.

1. General Section

A. The Agreement.

This agreement includes at its effective date the City County Insurance Services Workers' Compensation Coverage Agreement, Notice of Election Form, and Payroll Display and Contribution Estimate Form. The terms of this agreement may not be changed or waived except by the **Trust**.

B. Definitions.

1. "**Trust Agreement**" means City County Insurance Services Agreement and Declaration of Administrative Trust.
2. "**Trust**" means the City County Insurance Trust, as further described in the **Trust Agreement**.
3. "**Member**" or "**Named Member**" means the entity named on the Coverage Declarations Page.
4. "**Workers' Compensation Law**" means the workers' or workmen's compensation law and occupational disease law of Oregon (ORS Chapter 656) or state/territory as identified in the Certificate of Membership and Coverage Agreement. It includes any amendments to that law in effect during the agreement 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 provide nonoccupational disability benefits.
5. "**State**" means the State of Oregon, unless specifically indicated in this Coverage Agreement.
6. "**Remuneration**" is defined by OAR 836-042-0055.

C. Locations.

This agreement covers all of the **Named Member's** workplaces identified on the Coverage Declarations Page and on file with the State of Oregon Workers' Compensation Division.

D. Who is Covered.

The **Named Member** in the Certificate of Membership and Coverage Declarations Page is covered.

2. Coverage A: Workers' Compensation Insurance

How This Coverage Applies.

This workers' compensation Coverage Agreement applies to bodily injury by accident or bodily injury by disease. Bodily injury includes bodily injury or disease resulting in death. Provided:

1. Bodily injury by accident occurs during the agreement period; and
2. Bodily injury by disease is caused or aggravated by the conditions of employment. The injured employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the agreement period.

The Trust Will Pay.

Except where specifically provided otherwise within this Coverage Agreement, the **Trust** will promptly pay on behalf of the **Member** all benefit sums which the **Member** shall be legally obligated to pay pursuant to ORS 656.001 to .807, ORS 654.305 to .335, and similar laws of other jurisdictions.

A. The Trust Will Defend.

The **Trust** has the right and duty to defend at the **Trust's** expense any claim, proceeding or suit against the **Member** for benefits payable by this coverage. The **Trust** has the right to investigate and settle these claims, proceedings or suits. The **Trust** has no duty to defend a claim, proceeding or suit that is not covered by this Coverage Agreement.

B. The Trust Will Also Pay.

The **Trust** will also pay these costs, in addition to other amounts payable under this Coverage Agreement, as part of any claim, proceeding or suit the **Trust** defends:

1. Reasonable expenses incurred at the **Trust's** request, including loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds in bond amounts up to the amount payable under this coverage;
3. Litigation costs awarded against the **Member**;
4. Interest on a judgment as required by law until the **Trust** offers the amount due under this insurance; and
5. Expenses the **Trust** incurs.

C. Other Coverage.

The **Trust** will not pay more than the share of benefits and costs covered by this Coverage Agreement 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.

D. Payments the Member Must Make.

The **Member** is responsible for any payments in excess of the benefits regularly provided by the **workers' compensation law** including those required because:

1. The **Member** engages in serious and willful misconduct;
2. The **Member** knowingly employs an employee in violation of law;
3. The **Member** fails to comply with a health or safety law or regulation; or
4. The **Member** discharges, coerces, or otherwise discriminates against any employee in violation of the **workers' compensation law**.

If the **Trust** makes any payments in excess of the benefits regularly provided by the **workers' compensation law** on the **Member's** behalf, the **Member** will reimburse the **Trust** promptly.

E. Recovery From Others.

The **Trust** has the **Member's** rights, and the rights of persons entitled to the benefits of this coverage, to recover the **Trust's** payments from anyone liable for the injury. The **Member** will do everything necessary to protect those rights for the **Trust** and to help the **Trust** enforce them.

The **Trust** may prosecute any and all claims the **Trust** may have against any person, firm, or corporation growing out of any occurrence resulting in the payment of loss and all recoveries therefrom shall be applied to reduction of that loss.

F. Statutory Provisions.

These statements apply where required by law:

1. As between an injured worker and the **Trust**, the **Trust** has notice of the injury when the **Member** has notice.
2. The **Member's** default or the bankruptcy or insolvency will not relieve the **Trust** of the duties under this coverage after an injury occurs.
3. The **Trust** is directly and primarily liable to any person entitled to the benefits payable by this coverage. Those persons may enforce the **Trust's** duties; so may an agency authorized by law. Enforcement may be against the **Trust** and the **Member**.
4. Jurisdiction over the **Member** is jurisdiction over the **Trust** for purposes of the **workers' compensation law**. The **Trust** is bound by decisions against the **Member** under that law, subject to the provisions of this Coverage Agreement that are not in conflict with that law.
5. This coverage conforms to the parts of the **workers' compensation law** that apply to:
 - a) Benefits payable by this coverage
 - b) Special taxes, payments into security or other special funds, and assessments payable by the **Trust** under that law.
6. Terms of this Coverage Agreement that conflict with the **workers' compensation law** are changed by this statement to conform to that law.

Nothing in these paragraphs relieves the **Member** of duties under this Coverage Agreement.

3. Coverage B: Employer's Liability Coverage

A. How This Coverage Applies.

This workers' compensation Coverage Agreement applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must arise out of or in the course of the injured employee's employment by the **Member**.
2. The employment must be necessary or incidental to the **Member's** work and in workplaces identified by the coverage documents.
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 the **Member's** employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the coverage period.
5. If the **Member** is 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. The Trust Will Pay.

Subject to the applicable limits of liability (as stated on the Coverage Declarations Page), the **Trust** will pay all sums the **Member** legally must pay as damages because of bodily injury to the **Member's** employees, provided the bodily injury is covered by this Employer's Liability Coverage Agreement.

The damages the **Trust** will pay, where recovery is permitted by law, include damages:

1. For which the **Member** is liable to a third party by reason of a claim or suit against the **Member** by that third party to recover the damages claimed against such third party as a result of injury to the **Member's** 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 the **Member**; and
4. Because of bodily injury to the **Member's** employee that arises out of and in the course of employment, claimed against the **Member** in a capacity other than as employer.

C. Exclusions.

This coverage does not cover:

1. Liability assumed under a contract. This exclusion does not apply to a warranty that the **Member's** 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 the **Member's** actual knowledge or the actual knowledge of any of the **Member's** administrators, managers, boards, commissions, or public officials;

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 the **Member**;
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 USE 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), and 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.

D. The Trust Will Defend.

The **Trust** has the right and duty to defend, at the **Trust's** expense, any claim, proceeding or suit against the **Member** for damages payable by this coverage. The **Trust** has the right to investigate and settle these claims, proceedings and suits.

The **Trust** has no duty to defend a claim, proceeding or suit that is not covered by this Coverage Agreement. The **Trust** has no duty to defend or continue defending after the **Trust** has paid the applicable limit of liability under this Coverage Agreement.

E. The Trust Will Also Pay.

The **Trust** will also pay the following costs, in addition to other amounts payable under this coverage, as part of any claim, proceeding or suit the **Trust** defends:

1. Reasonable expenses incurred at the **Trust's** 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 the **Trust's** liability under this coverage;
3. Litigation costs awarded against the **Member**;
4. Interest on the covered portion of any judgment as required by law until the **Trust** offers the amount due under this coverage; and
5. Expenses the **Trust** incurs.

F. Other Insurance.

The **Trust** will not pay more than the **Trust's** share of damages and costs covered by this coverage 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.

The **Trust's** liability to pay for damages is limited. The **Trust** limits of liability are shown on the Coverage Declarations Page.

The **Trust** will not pay any claims for damages after the **Trust** has paid the applicable limit of the **Trust's** liability under this Coverage Agreement.

H. Recovery From Others.

The **Trust** has the **Member's** rights to recover the **Trust's** payment from anyone liable for an injury covered by this coverage. The **Member** will do everything necessary to protect those rights for the **Trust** and to help the **Trust** enforce them.

The **Trust** will prosecute any and all claims the **Trust** may have against any person, firm or corporation growing out of any occurrence resulting in the payment of loss and all recoveries therefrom shall be applied to reduction of that loss.

I. Actions Against The Trust.

There will be no right to action against the **Trust** under this Coverage Agreement unless:

1. The **Member** has complied with all the terms of this Coverage Agreement; and
2. The amount the **Member** owes has been determined with the **Trust's** consent or by actual trial and final judgment.

This Coverage Agreement does not give anyone the right to add the **Trust** as a defendant in an action against the **Member** to determine the **Member's** liability. The **Member's** bankruptcy or insolvency will not relieve the **Trust** of obligation under this Part.

4. Other States Coverage

Coverage afforded by this Coverage Agreement is extended to cover employees who are employed and regularly engaged in the **Member's** operations in Oregon or who may be temporarily outside Oregon in connection with Oregon operations. With regard to such employment, if the **Member** or any injured employee is deemed subject to the law for damages or the **workers' compensation law** of a state or country other than Oregon not named in this Coverage Agreement, the laws of such a state or country will apply and any loss, compensation, or other benefits will be payable under this Coverage Agreement in accordance with such laws.

5. The Member's Duties if an Injury Occurs

- A. Tell the **Trust** if injury occurs that may be covered by this Coverage Agreement.
- B. Provide for immediate medical and other services required by the workers' compensation law.
- C. Give the **Trust** the names and addresses of the injured persons and of witnesses, and other information the **Trust** may need.
- D. Promptly give the **Trust** all notices, demands and legal paper related to the injury, claim, proceeding or suit.
- E. Cooperate with the **Trust** and assist the **Trust**, as may be requested, in the investigation, settlement or defense of any claim, proceeding or suit.
- F. Do nothing after an injury occurs that would interfere with the **Trust's** right to recover from others.
- G. Do not voluntarily make payments, assume obligations or incur expense, except at the **Member's** own cost.

6. Contributions

A. Final Contribution.

The final contribution will be determined after this coverage ends by using the actual, not the estimated, contribution basis and the proper classifications and rates that lawfully apply to the work covered by this Coverage Agreement. If the final contribution is more than the contribution paid to the **Trust**, the **Member** must pay the **Trust** the balance. If it is less, the **Trust** will refund the balance to the **Member** upon written request. The final contribution will not be less than the highest minimum contribution for the classification covered by this agreement.

If this agreement is cancelled, final contribution will be determined in the following way unless the **Trust's** manual or Bylaws and Rules provide otherwise:

- 1. If the **Trust** cancels, final contribution will be calculated pro rata based on the time this agreement was in force. Final contribution will not be less than the pro rata share of the minimum contribution.
- 2. If the **Member** cancels, final contribution will be more than pro rata; it will be based on the time this agreement was in force, and increased by the **Trust's** short rate cancellation table and procedure. Final contribution will not be less than the minimum contribution.

B. Records.

The **Member** will keep records of information needed to compute contribution. The **Member** will provide the **Trust** with copies of those records when the **Trust** asks for them.

C. Audit.

The **Member** will let the **Trust** examine and audit all the **Member's** records that relate to this agreement. These records include ledgers, journals, registers,

vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. The **Trust** may conduct the audits during regular business hours during the agreement period and within three years after the agreement period ends. Information developed by audit will be used to determine final contribution. Insurance rate service organizations have the same rights the **Trust** has under this provision.

7. Conditions

A. Inspection.

The **Trust** has the right, but is not obligated to inspect the **Member's** workplaces at any time. These inspections are not safety inspections. They relate only to the insurability of the workplaces and the contributions to be charged. The **Trust** may give the **Member** reports on the conditions found. The **Trust** may also recommend changes. While the recommended changes may help reduce losses, the **Trust** does not undertake to perform the duty of any person to provide for the health or safety of the **Member's** employees or the public. The **Trust** does not warrant that the **Member's** workplaces are safe or healthful or that they comply with laws, regulations, codes or standards. Insurance rates service organizations have the same rights as the **Trust** has under this provision.

B. Long-Term Agreement.

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

C. Transfer of the Member's Rights and Duties.

The **Member's** rights or duties under this Coverage Agreement may not be transferred.

D. Cancellation.

1. The **Member** may cancel this agreement. The **Member** must mail or deliver advance written notice to the **Trust** when the cancellation is to take effect. When coverage is placed with another carrier as of the coverage expiration date, a rejected renewal agreement will be withdrawn without charge, providing notice of nonrenewal is mailed and postmarked on or before the expiration date and is received from the **Member** by the **Trust** no later than 10 calendar days after said expiration date.
2. The **Trust** may cancel this agreement as prescribed in the **Trust's** Rules and Bylaws. If the **Trust** cancels, the **Trust** will mail to the **Member** and to the Director of the Department of Consumer and Business Services advance written notice stating when the cancellation is to take effect. If such action is taken, the **Trust** will mail the notice of cancellation at least 30 days before the cancellation is to take effect.
3. Mailing that notice to the **Member** at the mailing address as shown on the Coverage Declarations Page will be sufficient to prove notice.
4. The coverage period will end on the day and hour stated in the cancellation notice.

5. Any of these provisions that conflict with a law that controls the cancellation of the coverage in this Coverage Agreement are changed by this statement to comply with that law.

E. Sole Representative.

The named **Member** is the only entity recognized by the **Trust** to change this agreement, receive return contributions, and give or receive notice of cancellation.

F. Liberalization.

If the **Trust** adopts a change in this form that would broaden the coverage of this form without extra charge, the broader coverage will apply to this Coverage Agreement. Such liberalization will apply when the change becomes effective.

8. Voluntary Compensation Coverage

Coverage is provided for volunteers if the Payroll Display and Contribution Estimate Form includes the appropriate volunteer classifications and if the provisions of ORS 656.031, 656.041, and 656.046 are complied with. These provisions include:

- A. Passage of a resolution by the governing body declaring its intent to cover volunteer personnel as provided in ORS 656.031, 656.041, and 656.046 and designating the categories of volunteers to be covered;
- B. Completion of a Volunteer Election Form that
 - 1. Describes the work duties to be performed,
 - 2. Estimates the number of volunteers to be covered in each category, and
 - 3. Identifies an assumed wage to be the basis for benefits and billing;
- C. Maintenance of rosters of active volunteers in each designated volunteer category. A certified copy of the official membership roster shall be furnished the **Trust** or Director upon request.
- D. Persons covered under ORS 656.031, 656.041, and 656.046 are entitled to the benefits of these chapters, and they are entitled to such benefits if injured as provided in ORS 656.202 while performing any duties arising out of and in the course of their employment as volunteer personnel, if the duties being performed are among those covered by this Coverage Agreement.
- E. The filing of claims for benefits under these sections is the exclusive remedy of a volunteer or a beneficiary of the volunteer for injuries compensable under these chapters against the State, its political subdivisions, their officers, employees, or any employer, regardless of negligence.



Lynn McNamara
Executive Director, CityCounty Insurance Services

ENDORSEMENTS

The following endorsements are attached to and form a part of the **Trust Agreement**:

- A. Jones Act Coverage Endorsement
- B. Terrorism Risk Insurance Act Endorsement

A. JONES ACT COVERAGE ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

It is hereby understood and agreed:

All references to Employer Liability Coverage shall include employees engaged in incidental operations in the state of Oregon subject to liability under the Merchant Marine Act of 1920, known as the Jones Act, (46 U.S. Code, Section 688, 1970) and any amendment to that Act that is in effect during the period this Policy is in force.

Any coverage provided under such Act shall be subject to a maximum limit of \$1,000,000 each occurrence.

All other terms and conditions of this Policy remain unchanged.

B. TERRORISM RISK INSURANCE EXTENSION ACT ENDORSEMENT

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

This endorsement addresses the requirements of the Terrorism Risk Insurance Act of 2002 as amended and extended by the Terrorism Risk Insurance Extension Act of 2005.

Definitions

The definitions provided in this endorsement are based on the definitions in the Act and are intended to have the same meaning. If words or phrases not defined in this endorsement are defined in the Act, the definitions in the Act will apply.

“Act” means the Terrorism Risk Insurance Act of 2002, which took effect on November 26, 2002, and any amendments resulting from the Terrorism Risk Insurance Extension Act of 2005.

“Act of terrorism” means any act that is certified by the Secretary of the Treasury, in concurrence with the Secretary of State, and the Attorney General of the United States as meeting all of the following requirements:

- a. The act is an act of terrorism.
- b. The act is violent or dangerous to human life, property or infrastructure.
- c. The act resulted in damage within the United States, or outside of the United States in the case of United States missions or certain air carriers or vessels.
- d. The act has been committed by an individual or individuals acting on behalf of any foreign person or foreign interest, as part of an effort to coerce the civilian

population of the United States or to influence the policy or affect the conduct of the United States Government by coercion.

“Insured terrorism or war loss” means any loss resulting from an act of terrorism (including an act of war, in the case of workers compensation) that is covered by primary or excess property and casualty insurance issued by an insurer if the loss occurs in the United States or at United States missions or to certain air carriers or vessels.

“Insurer deductible” means:

- a. For the period beginning on November 26, 2002 and ending on December 31, 2002, an amount equal to 1% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding November 26, 2002.
- b. For the period beginning on January 1, 2003 and ending on December 31, 2003, an amount equal to 7% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2003.
- c. For the period beginning on January 1, 2004 and ending on December 31, 2004, an amount equal to 10% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2004.
- d. For the period beginning on January 1, 2005 and ending on December 31, 2005, an amount equal to 15% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2005.
- e. For the period beginning on January 1, 2006 and ending on December 31, 2006, an amount equal to 17.5% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2006.
- f. For the period beginning on January 1, 2007 and ending on December 31, 2007, an amount equal to 20% of our direct earned premiums, as provided in the Act, over the calendar year immediately preceding January 1, 2007.

Limitation of Liability

The Act may limit the **Trust’s** liability to **members** under this policy. If annual aggregate insured terrorism or war losses of all insurers exceed \$100,000,000,000 during the applicable period provided in the Act, and if the **Trust’s** reinsurer/insurer has met their “insurer deductible”, the amount **Members** will receive for insured terrorism or war losses under this policy will be limited by the Act, as determined by the Secretary of the Treasury.

Member Disclosure Notice

Insured terrorism or war losses would be partially reimbursed by the United States Government under a formula established by the Act. Under this formula, the United States Government would pay 90% for Program Year 4 and 85% for Program Year 5 of our insured terrorism or war losses exceeding our insurer deductible.

All other terms and conditions of this Policy remain unchanged.