

**MARIN SCHOOLS INSURANCE
AUTHORITY**

(MSIA)

**Workers' Compensation
& Employer's Liability
Memorandum of Coverage**

**For the 2022/23 Program Year
Effective July 1, 2022**

MARIN SCHOOLS INSURANCE AUTHORITY

Workers' Compensation & Employer's Liability Memorandum of Coverage

INTRODUCTION

In return for the payment of the premium and subject to all terms and conditions of this Memorandum of Coverage (Memorandum), Marin Schools Insurance Authority (Authority), agrees with the Member agencies named in the Declarations Page (Member or Members), as follows:

I - GENERAL PROVISIONS

A. THE MEMORANDUM

This Memorandum includes at its effective date the Declarations Page and all endorsements and schedules listed on the Declarations Page. This Memorandum is the coverage document for the Workers' Compensation and Employer's Liability coverages. Conditions, provisions, terms or understandings, oral or written, which are not stated in this Memorandum, will not affect any provision of this Memorandum. The terms of this Memorandum may not be changed or waived except by written endorsement issued to be part of this Memorandum. It is the responsibility of the Members to advise the Authority if the information contained in the Declarations Page is inaccurate and to provide the Authority with updated and/or accurate information.

B. COVERAGE PERIOD

This Memorandum, including the Declarations Page, endorsements, and schedules attached to it, constitutes the entire coverage Memorandum and is effective at 12:01 a.m. on the date stated in the Declarations Page. All provisions of this Memorandum apply commencing on the date shown in the Declarations Page until June 30 of that program year.

C. WHO IS COVERED

The Members named on the Declarations Page have elected to participate in the Authority's Workers' Compensation and Employer's Liability programs and are covered for liability to their employees as provided by this Memorandum. If a Member ceases to be a member of the Authority, the coverage provided under this Memorandum shall cease immediately upon such change in status, although claims incurred while the Member was covered under the Memorandum will be covered, subject to the terms, conditions, and limitations of that Memorandum.

D. QUALIFIED SELF-INSURER

Each Member covered under this Memorandum represents that it is a duly qualified self-insurer under the workers' compensation law of the State of California and shall continue to maintain such qualifications during the term of this Memorandum. If the Member fails to qualify or to maintain such qualifications, the coverage provided under this Memorandum shall automatically terminate as of the first date of such failure.

E. WORKERS' COMPENSATION LAW

Workers' Compensation Law means the workers' compensation laws of the State of California and any amendments to those laws in effect during the term of this Memorandum. It does not include any federal workers' or workmen's compensation law, any federal occupational disease law, or the provisions of any laws that provide non-occupational disability benefits including but not limited to any obligation imposed by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Section 8171-8173), the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331-1356), the Defense Base Act (42 U.S.C. Section 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. Sections 901-942), or any amendments thereto.

F. LOCATIONS

This Memorandum covers all of the Members' workplaces in California.

G. WHO IS ELIGIBLE FOR BENEFITS

The Members' employees (or their legally determined, financial dependents, in the event of their death) are eligible for benefits under this Memorandum. "Employee" shall mean any person performing work which renders the Member legally liable as an employer under the workers' compensation law as defined above. This Memorandum shall also apply to volunteer workers performing duties for or on behalf of the Member while acting within the course and scope of their duties on behalf of the Member, providing that the Member's Board of Directors has first adopted a resolution, prior to such bodily injury or illness, as provided in Section 3363.5 of the California Labor Code declaring such volunteer workers to be employees of the Member for purposes of workers' compensation law. Where a Member has not adopted such a resolution prior to such bodily injury or illness, the volunteer workers of said Member shall not be eligible for benefits under this Memorandum.

H. LIMIT OF COVERAGE BY AUTHORITY

The Authority agrees to pay on behalf of the Member the benefits required of the Member by the Workers' Compensation Laws of the State of California up to the Limit of Liability stated on the

Declarations Page for any one (1) loss. The Authority will pay on behalf of the Member for Employer's Liability losses up to the Limit of Liability stated on the Declarations Page for any one (1) loss. Except as provided otherwise by this Memorandum, the Authority will provide coverage for Workers' Compensation and Employer's Liability consistent with the terms, conditions, and limitations of the excess insurance coverage.

I. HOW THE LIMIT OF COVERAGE APPLIES

The Authority's Limit of Coverage stated on the Declarations Page applies to claims covered under the Workers' Compensation coverage or Employer's Liability coverage as follows:

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

The inclusion of more than one (1) Member in an incident under section I.1 herein shall not increase the Authority's Limit of Coverage.

II – PART ONE - WORKERS' COMPENSATION COVERAGE

A. HOW THIS COVERAGE APPLIES

This coverage applies to losses actually incurred by the Covered Member as a qualified self-insured under the Workers' Compensation Law for bodily injury by accident or bodily injury by disease, including resulting death and including claims expenses, provided:

1. Bodily injury by accident occurs during the period this Memorandum is in force; or
2. Bodily injury by disease is caused or aggravated by the conditions of employment by the Covered Member and the employee's last day of exposure to such conditions occurs during the period this Memorandum is in force.

B. THE AUTHORITY WILL PAY

The Authority will pay the liability of the Members listed on the Declarations Page for all compensation plus expenses required by Division 4 of the Labor Code of the State of California, up to the Authority's Limit of Liability stated on the Declarations Page.

C. THE AUTHORITY WILL DEFEND

The Authority has the right and duty to defend at its expense any claim, proceeding, or suit against a Member for compensation payable by this coverage, including the right to appoint and designate

defense counsel to represent the Member. The Authority has the right to investigate and settle these claims, proceedings, or suits in accordance with the Authority's Bylaws or other governing documents. The Member shall not make any payment or agree to any settlement or sum which would involve the limits of coverage to which this Memorandum applies without the approval of the Authority. The Authority has no duty to defend a claim, proceeding, or suit which is not covered by this Memorandum.

It is the Member's intent that this Memorandum shall provide indemnity only for claims for bodily injury by "accident" or by disease"; therefore, this Memorandum shall not be construed to provide indemnity to the Members for penalties, sanctions, serious and willful claims, and Labor Code Section 132a actions brought before the Workers' Compensation Appeals Board (WCAB). However, the Authority may, during the defense of the underlying claim for disability, provide a courtesy defense for the claims or actions set forth below:

1. Serious and willful misconduct by the Member against an employee involved in a claim for workers' compensation benefits. (Labor Code §4553.)
2. Discrimination by the Member against an employee involved in a claim for workers' compensation benefits. (Labor Code §132a.)

The Authority's defense of such claims shall cease upon the resolution of the underlying claim for disability. The Authority shall have the sole discretion to determine when and whether the underlying claim has "resolved". Such defense is provided as a courtesy to the Members, and the Authority may, at any time, exercise its right to withdraw from the defense of these claims and such decision shall be final.

D. EXCLUSIONS

Workers' Compensation Coverage under Section II of this Memorandum shall not apply to:

1. Bodily injury or disease intentionally caused or aggravated by the Member.
2. Bodily injury or disease to an employee while employed in violation of law with the actual knowledge of the Member.
3. Liability for additional compensation imposed on the Member under Labor Code Section 4557 by reason of injury or disease to an employee under (16) years of age and illegally employed at the time of the injury or disease.
4. Any claim covered under Part Two – Employer's Liability Coverage of this Memorandum.

Members are responsible for any payments not covered by this Memorandum, including, but not limited to, those required because:

1. The Member knowingly employs an employee in violation of law.
2. The Member fails to comply with a health or safety law or regulation.;
3. Fines or penalties are imposed for the violation of federal or state law, including increased benefits due to violations of Labor Code Sections 132(a) or 4553.

III – PART TWO - EMPLOYER’S LIABILITY COVERAGE

A. HOW THIS COVERAGE APPLIES

This coverage applies to amounts awarded against the Member, subject to the Limit of Liability set forth herein, for bodily injury, including resulting death, that arises out of and in the course of the injured employee's employment by the Member, and are claimed against the Member in a capacity other than as employer.

1. The bodily injury must arise out of and in the course of the injured employee's employment by the Member;
2. Bodily injury by accident must occur during the coverage period; and
3. Bodily injury by disease must be caused or aggravated by the conditions of employment by the Member. 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.

B. EXCLUSIONS

Employer’s Liability Coverage under Section III of this Memorandum shall not apply to:

1. Liability assumed under a contract.
2. Punitive or exemplary damages.
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 executive officers.
4. Bodily injury intentionally caused or aggravated by the Member.
5. Bodily injury occurring outside the United States of America. This exclusion does not apply to bodily injury to a citizen or resident of the United States of America who is temporarily outside the United States of America while in the course and scope of employment by the Member.

6. Claims and/or 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.
7. Any claim covered under Part One - Workers' Compensation Coverage of this Memorandum, and any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law.
8. Any obligation imposed by the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901-950), the Nonappropriated Fund Instrumentalities Act (5 U.S.C. Section 8171-8173), the Outer Continental Shelf Lands Act (43 U.S.C. Section 1331-1356), the Defense Base Act (42 U.S.C. Section 1651-1654), the Federal Coal Mine Health and Safety Act of 1969 (30 U.S.C. Sections 901-942), or any other federal workers' or workmen's compensation law or other federal occupational disease law, or any amendments to these laws.
9. Fines or penalties imposed for violation of federal or state law.
10. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Section 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.
11. Damages arising out of operations for which the Member has violated or failed to comply with any workers' compensation law.
12. Damages arising out of operations for which the Member has rejected any workers' compensation law.
13. Any obligation under federal or state wage and hour laws.

IV - COVERAGE OUTSIDE OF CALIFORNIA

Section II (Workers' Compensation Coverage) of this Memorandum applies to a Member's employees who are hired in California and are eligible for benefits under the workers' compensation laws of the State of California while in the course and scope of their employment by that Member anywhere outside of California.

V - MEMBERS' DUTIES IF INJURY OCCURS

In addition to the obligation to timely report claims to the Authority as set forth herein, the Members shall also:

1. Provide for immediate medical and other services required by the workers' compensation law;
2. Give the Authority or the Authority's representative the names and addresses of the injured persons and of witnesses, and other information the Authority may need;
3. Promptly give the Authority all notices, demands, and legal papers related to the injury, claim, proceeding, and/or suit;
4. Cooperate with and assist the Authority, at its request, in the investigation, settlement, or defense of any claim, proceeding, and/or suit;
5. Do nothing after an injury occurs which would interfere with the Authority's right to recover from others; and
6. Not voluntarily make payments, assume obligations, or incur expenses, except at the Member's own expense.

VI - PREMIUM

A. PREMIUM

1. All premiums for the coverage provided under this Memorandum shall be determined by the Board of Directors of the Authority.
2. The premium basis includes payroll and all other remuneration paid or payable during the coverage period for the services of:
 - a. All the Members' employees eligible for benefits under this Memorandum while engaged in work covered by this Memorandum; and
 - b. All other persons engaged in work for the Members which could result in liability under Section II (Worker's Compensation Coverage) of this Memorandum. If the Member does not have the payroll records for these persons, the contract price for the services and materials may be used as the premium basis. This paragraph will not apply if the Members provide to the Authority proof that these persons' employers lawfully secured workers' compensation obligations.

B. PREMIUM PAYMENTS

Members shall pay all premium deposits when due.

VII - CONDITIONS

A. THE AUTHORITY’S NOTICE TO THE MEMBERS

Documents which relate to this Memorandum may be provided to the Members electronically, personally, or by any other form of delivery, and notice of such delivery shall be deemed sufficient to prove notice to the Members of those documents.

B. CANCELLATION

A Member may withdraw from the coverage provided by this Memorandum as set forth in the Authority’s Joint Powers Agreement, Bylaws, or other governing documents.

C. MEMORANDUM CONFORMS TO LAW

If any term of this Memorandum is in conflict with the statutes of the State of California, the Joint Powers Agreement, Bylaws, Policies and Procedures Manual or Resolutions adopted by the Board, this provision hereby amends this Memorandum to conform to such law or document.

D. SUBROGATION – RECOVERY FROM OTHERS

The Authority has the rights of the Members, and the rights of those persons entitled to compensation benefits from the Member, to recover the Authority’s loss from any third party liable for the injury or disease. The Member shall execute and deliver all instruments and papers and do everything necessary to protect those rights for the Authority and to assist in enforcing them. Any recovery, after deducting the Authority’s recovery expenses, shall first be used to reduce the Authority’s loss. The balance, if any, shall be returned to the Member.

If the Member waives its rights to subrogation on a claim covered under, or that may be covered under, this Memorandum of Coverage, and the claim exceeds the Authority’s primary layer of coverage, then the Authority’s excess coverage shall not apply to the claim and the Authority shall not be liable for any indemnity, reimbursement, payment, or costs on the claim, unless the Authority also approves the waiver of subrogation in writing.

The exclusion of coverage for waiver of subrogation shall apply only to a waiver of subrogation made or approved by a Member after the date of the injury or illness that resulted in the claim, and shall not apply to a waiver of subrogation contained in an agreement or contract approved by the Member prior to the date of the injury or illness that resulted in the claim.

E. NOTICE REQUIREMENTS

1. The Member shall give written notice to the Authority within five (5) days of its knowledge of a claim for an injury or disease which appears to involve coverage by the Authority;

2. Notice of accident given to the Authority shall contain complete details on the injury, disease, or death. If a suit, claim, or other proceeding is commenced which appears to involve coverage by the Authority, the Member shall give the Authority:
 - a. All notices and legal papers related to the claim, proceeding, or suit, or copies of these notices and legal papers;
 - b. Copies of narrative medical reports;
 - c. Copies of DWC Form 1 (Employee Claim Form), Form 5020 (Employer's Report of Injury), and any report completed by a supervisor investigating or reporting the claim; and
 - d. Copies of reports on investigations made by the Member on such claims, proceedings, or suits.
3. If written notice is not provided by the Member to the Authority within thirty (30) days of knowledge of such claim or suit, coverage may not be provided under this Memorandum. This requirement is a condition precedent to coverage under this Memorandum;
4. In addition, the following categories of claims shall be reported to the Authority immediately, regardless of any question of potential involvement of coverage by the Authority:
 - a. Any claim involving a fatality;
 - b. Any claim involving an infectious disease
 - c. Any serious head injury (including skull fracture or loss of sight of either or both eyes);
 - d. Any claim believed to be fraudulent and \$20,000 or more has been paid in allocated expenses;
 - e. Any claim likely to result in a permanent disability of 50% or more;
 - f. Any disability of more than one year or when it appears reasonably likely that there will be a disability of more than one year;
 - g. Any paraplegics and quadriplegics;
 - h. Any serious burns, defined as 2nd or 3rd degree burns involving 25% or more of the body;
 - i. A brain injury;
 - j. A spinal cord injury;
 - k. An amputation of a major extremity; or
 - l. Any occurrence which results in serious injury to two or more employees of a Member.

F. ARBITRATION

Final decisions by the Authority concerning a claim (including, but not limited to, decisions regarding claim resolution, negotiation, investigation, defense, appeal or settlement, and decisions about whether coverage exists for a particular claim or part of a claim) shall be made by the Board of Directors of the Authority or its designee. The Authority and Members may agree to submit any dispute arising from such decisions to binding arbitration if mutually agreeable by all disputing parties.

Arbitration shall be conducted pursuant to the California Code of Civil Procedure, Title 9 (commencing with Section 1280). The parties may agree upon a single arbitrator, in which case arbitration shall be conducted by that single arbitrator. If the parties cannot agree upon a single arbitrator, arbitration shall be conducted by a three-person panel. The Member or Parties shall select one (1) arbitrator and the Authority shall select one (1) arbitrator, and the two (2) arbitrators shall select a third (3rd) arbitrator upon mutual agreement. No arbitrator shall be employed or affiliated with the Authority or the Member.

The selection of arbitrators shall take place within twenty (20) calendar days from the receipt of the request for arbitration.

If a single arbitrator is used, each party shall bear one-half (1/2) of the cost of the arbitrator. In three (3) arbitrator cases, each party shall bear the cost of its selected arbitrator and one-half (1/2) of the third (3rd) selected arbitrator. In addition, each party shall be responsible for its own costs and expenses of arbitration.