

# Workers' Compensation Policy



Making workers' comp work

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## **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE POLICY**

In exchange for the payment of premium and subject to all terms and conditions of this policy, Kentucky Employers' Mutual Insurance (KEMI) and the Policyholder (as named in Item 1 of the Information Page) agree as follows:

### **GENERAL SECTION**

#### **A. The Policy**

Throughout this policy "you" and "your" refer to the employer(s) named in Item 1 of the Information Page. "We", "us" and "our" refer to KEMI, the company providing this insurance. This policy is a contract of insurance between You (the Policyholder) and Us (KEMI). It includes the Information Page and all Endorsements and Schedules. Coverage is provided for the period as listed in Item 2 of the Information Page. The only agreements relating to this insurance are stated in this policy. The terms of the policy may not be changed or waived except by endorsement issued by KEMI.

#### **B. Who Is The Policyholder?**

You are the policyholder if you are an employer named in Item 1 of the Information Page.

#### **C. Workers' Compensation Law**

Workers' Compensation Law means the Workers' Compensation Law of the Commonwealth of Kentucky. It includes any amendments to that law which are in effect during the policy period. It does not include any federal workers' compensation law, any federal occupational disease law or the provisions of any law that provide non-occupational disability benefits, unless provided by specific endorsement.

#### **D. Locations**

This policy covers all of your workplaces in the Commonwealth of Kentucky unless you have other insurance or are self-insured for such workplaces as approved under the provisions of Kentucky Revised Statutes Chapter 342.

## **PART ONE – WORKERS’ COMPENSATION INSURANCE**

### **A. How This Policy Applies**

We will pay the benefits required of you by the Workers’ Compensation Law; except as noted under Item E below. Both the Policyholder and KEMI are subject to the provisions of the laws of the Commonwealth of Kentucky.

This workers’ compensation policy applies to bodily injury by accident or by occupational disease to one of your employees. Death resulting from bodily injury is also covered. Part One of the policy does not provide any insurance coverage for any liability on the part of the Policyholder arising from the Americans with Disabilities Act. In addition to any other conditions required and/or subject to any other exclusions, including but not limited to those as provided under Item E below and as provided by law, the following is required for this policy to apply:

1. Bodily injury by accident must occur during the policy period and arise out of and in the scope of employment.
2. Bodily injury by occupational disease must be caused or aggravated by the conditions of employment.

The employee’s last day of exposure to the conditions causing or aggravating such bodily injury by occupational disease must occur during the policy period.

### **B. KEMI Will Defend**

We have the right and duty to defend at our expense any claim, proceeding or suit against you for benefits covered by and payable by this policy. You agree that we have the right to investigate and settle these claims, proceedings or suits at our sole discretion, without any need for your authorization and without regard to any notice to you of our intention to do so. We have no duty to defend a claim, proceeding or suit that is not covered by this policy.

### **C. KEMI Will Pay**

In addition to other amounts payable under this policy, we will also pay the following costs as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred by you at our request, but not your loss of earnings;
2. Premiums for bonds to release attachments and for appeal bonds;

3. Litigation expenses incurred by us on your behalf or ordered by an adjudicator;
4. Interest on a judgment as required by law until we offer the amount due under this policy;
5. Expenses we incur.

#### **D. Other Insurance**

If you have more than one policy for which coverage for an injury or occupational disease is provided, we will pay our pro-rata share based upon the number of policies in effect.

#### **E. Payments You Must Make**

You are responsible for any payments in excess of the benefits regularly provided by the Workers' Compensation Law including, but not limited to those required because of:

1. your serious and willful misconduct;
2. you knowingly employ an employee in violation of law;
3. your failure to comply with a health or safety law or regulation, except as provided by Kentucky Revised Statutes 342.165 and the case law authority interpreting this statute;
4. you discharge, coerce or otherwise discriminate against any employee in violation of the workers' compensation law.

You will reimburse us immediately upon request for any payments made by us in excess of the benefits regularly provided by the Workers' Compensation Law on your behalf.

#### **F. Recovery From Others**

The law provides us certain rights of recovery from third parties who may be responsible for injuries to your employees. You agree that we have the option to assume your rights under the law to recover payments made or payable from anyone liable for injuries to your employees. You are obligated to assist us in the exercise of recoveries and you will do everything necessary to protect those rights for us and help us enforce them.

#### **G. Statutory Provisions**

These statements only apply where they are required by law.

1. As between the injured worker and us, we have notice of the injury when you have notice.
2. Jurisdiction over you is jurisdiction over us for purposes of applying the Workers' Compensation Law to your claim. 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.
3. Your default or the bankruptcy or insolvency of your estate will not relieve us of our duties under this insurance after an injury occurs so long as the policy was active and in effect at the time the injury occurred.
4. 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.

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

## **PART TWO – EMPLOYERS' LIABILITY INSURANCE**

### **A. How This Policy Applies**

This Employers' Liability policy applies to specific events as described below involving bodily injury, and/or death resulting from bodily injury by accident or by occupational disease to one of your employees. Part Two of this policy does not provide any insurance for any liability on the part of the Policyholder arising from the Americans with Disabilities Act. In addition to any other conditions required and/or subject to any other exclusions as provided in this policy and as provided by law, the following is required for this policy to apply:

1. The bodily injury must arise out of and in the course of the injured employee's employment.
2. The employment must be necessary or incidental to your work in Kentucky.
3. Bodily injury by accident must occur during the policy period.
4. Bodily injury by disease must be caused or aggravated by the employment conditions. The employee's last day of 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. KEMI Will Pay**

We will pay all sums you are legally required to pay as damages to a third party because of bodily injury to your employees, provided the bodily injury is covered by this Employers' Liability policy. This policy does not provide coverage under Part Two for any claim, suit or legal action for damages brought by or on behalf of an injured employee(s) against you whatsoever, in any capacity, even if that employee has excluded himself from recovery under Workers' Compensation Law.

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, subject to the limitations provided by law and the provisions of this policy.
2. 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.

## **C. Exclusions**

This policy does not cover:

1. Liability assumed under a contract;
2. Punitive or exemplary damages;
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 for which you may be held liable, imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law;
5. Bodily injury intentionally caused and/or aggravated by you;
6. Bodily injury occurring outside the United States, 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 practice, manuals, contracts, benefits, policies, acts or omissions. This exclusion applies whether or not the enumerated damages arise from a violation of any statute, ordinance or regulation. This exclusion also applies even where

a physical injury occurs arising out of the same event or events from which damages excluded by this section are sought;

8. Bodily injury to any person in work subject to the Longshore and Harbor Workers' Compensation Act (33 U.S.C. Sections 901 et seq), the Non-appropriated Fund Instrumentalities Act (5 U.S.C. Sections 8171 et seq), the Outer Continental Shelf Lands Act (43 U.S.C. Sections 1331 et seq), the Defense Base Act (42 U.S.C. Sections 1651-1654), the Federal Mine Safety and Health Act (30 U.S.C. Sections 801 et seq and 901-944), any other Federal workers' or workers' compensation law or other Federal occupational disease law, or any amendments to these laws;
9. Bodily injury to a master or member of the crew of any vessel, and does not cover punitive damages related to your duty or obligation to provide transportation, wages, maintenance, and cure under any applicable maritime law;
10. Fines or penalties imposed for violation of federal or state law;
11. Damages payable under the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. Sections 1801 et seq) and under any federal law awarding damages for violation of those laws or regulations issued thereunder and any amendments to those laws;
12. Damages for care (regardless of who performs the care), loss of services, loss of consortium, and loss of companionship;
13. Damages for 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.

#### **D. KEMI Will Defend**

We have the right to defend at our expense any claim, proceeding or suit against you for benefits covered by and payable by this policy. You agree that we have the right to investigate and settle these claims, proceedings or suits at our sole discretion, without any need for your authorization and without regard to any notice to you of our intention to do so. We have no duty to defend a claim, proceeding or suit that is not covered by this policy. We also have no duty to defend or continue defending after we have paid our applicable limit of liability under this policy.

#### **E. KEMI Will Pay**

In addition to other amounts payable under this policy, we will also pay the following costs as part of any claim, proceeding or suit we defend:

1. Reasonable expenses incurred by you at our request, but not your 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 incurred by us on your behalf or ordered by an adjudicator;
4. Interest on a judgment as required by law;
5. Expenses we incur.

#### **F. Other Insurance**

We will not pay more than our share of benefits and costs covered by this policy 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.

#### **G. Limit Of Liability**

Our liability to pay for damages is limited. Our limits of liability are shown in Item 3.B of the Information Page. Limits of liability 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 policy because of bodily injury to one or more employees in any one accident.  
  
“Bodily injury by accident” may include a disease if the disease results directly from a 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 policy because 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 policy.

#### **H. Recovery From Others**

The law provides us certain rights of recovery from third parties who may be responsible for injuries to your employees. You agree that we have the option to assume your rights under the

law to recover payments made or payable from anyone liable for injuries to your employees. You are obligated to cooperate and assist us in the exercise of recoveries and you will do everything necessary to protect those rights for us and help us enforce them. Your failure to cooperate and assist us in our recovery from others and/or taking action in direct conflict with us in our attempt(s) to recover from others will render your coverage null and void and thus relieve us of any obligations under this policy whatsoever.

### **PART THREE – EXTRATERRITORIAL COVERAGE**

- A.** This policy provides coverage for benefits as provided by the extraterritorial provisions of the Workers' Compensation Law, including KRS 342.670. This policy provides no coverage for benefits sought or obtained by your employee under the workers' compensation laws of any state other than Kentucky.
- B.** You shall notify KEMI immediately if your employees begin work in any state other than the Commonwealth of Kentucky.

### **PART FOUR – YOUR DUTIES IF INJURY, OCCUPATIONAL DISEASE OR DEATH OCCURS**

In addition to the conditions precedent to coverage included throughout this policy, including those in Part Six – Conditions, your duties to us in the event of an injury, occupational disease or death require you to do the following:

- A.** Notify KEMI immediately if an injury occurs that may be covered by this policy.
- B.** Provide for immediate medical and other services required by the Workers' Compensation Law.
- C.** Give us or our representative the names and addresses of the injured persons and of any witnesses, and any and all other information required by us, including but not limited to, any and all documents in your possession we request.
- D.** Provide prompt notice of any claim or suit against you by immediately sending copies of any notices of any claims, suits or legal actions arising out of or connected to an injury or loss covered by this policy.
- E.** Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
- F.** Do nothing after an injury occurs that would interfere with our right to recover from others.
- G.** Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

- H. Allow us access to your property or premises or the property or premises that you have use of for purposes of investigating an injury or damages covered by this policy.
- I. When requested, voluntarily attend or appoint a designated representative(s) to attend any proceedings including hearings or trial.
- J. Submit to an examination under oath and subscribing same if requested by us.

Your violation of any of these duties, including but not limited to, your failure to cooperate and assist us in the investigation and defense and/or taking action in direct conflict with us in our attempt(s) to defend, investigate and/or settle these claims, proceedings or suits, will render your coverage null and void and thus relieve us of any obligations under this policy whatsoever.

## **PART FIVE – PREMIUM**

### **A. Our Manuals**

All premiums 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 or rates if authorized by law or a governmental agency regulating this policy.

### **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, we will assign proper classification, rates and premium basis by endorsement to this policy. Proper classification, rates and premium may also be determined by an 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:

1. All of your officers and employees engaged in work covered by this policy; and
2. All the employees of your subcontractors if these subcontractors do not secure workers' compensation coverage. If they do secure coverage and you can provide us with proof of that coverage, you will not be charged. If you have no such proof, you will be charged based on the payroll records of those employees. If you do not have payroll records, the contract price for their services and materials may be used as the premium basis.

#### **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. Unless specifically provided for by endorsement, the due date for all premiums, including, but not limited to, installment premiums and audit generated premiums is the due date as specified by invoice unless otherwise provided for by law. If you do not pay your premium, you agree that KEMI may, at its sole discretion, institute legal proceedings in the state courts of the Commonwealth of Kentucky in Fayette County, or in the county in which the primary location of your business covered by this policy is located. All individuals and entities named in Item 1 of the Information Page shall be jointly and severally liable for all premiums due under this policy. You further agree to pay any and all attorneys' fees, expenses and costs incurred by us as a result of any legal proceedings we may commence or engage in to collect unpaid premiums due.

#### **E. Final Premium / Audit**

The premium shown on the Information Page, Schedules and Endorsements is an estimate. The final premium may be determined after this policy ends, by cancellation or otherwise, 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. This will be done via an audit of your records. You will keep records of information needed to compute final premium. These records include, but are not limited to, ledgers, journals, registers, vouchers, contracts, tax reports, payroll and disbursement records, and programs for storing and retrieving data. You will provide us with copies of those records when we ask for them. We retain the option to require copies of any documents we may deem necessary to be delivered or mailed to the KEMI headquarters.

You will let us examine and audit all of your records that relate to this policy. We may conduct the audits during regular business hours during the policy period and within three years after the policy ends, by cancellation or otherwise. Information developed by audit may be used to determine final premium.

If the final premium is more than the premium you paid 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.

In the event the policy is cancelled and we do not require you to comply with an audit to determine final premium, final premium will be determined in the following way unless our manuals, as referenced in Part Five, Section A, provide otherwise:

1. If we cancel the policy, 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 the policy, 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. If we require you to comply with an audit to determine final premium, the final premium will be increased by our short-rate cancellation table and procedure. Final premium will not be less than the minimum premium

#### **F. Dividends / Assessments**

KEMI is a domestic mutual insurance company and as such, on an annual basis, its Board of Directors may declare a dividend for its policyholders in accordance with the provisions of KRS Chapter 304 applicable to domestic mutual insurers. KEMI may, at its sole discretion, apply any declared dividend to any indebtedness owed to it by you.

KEMI's Board of Directors may levy an assessment against its policyholders under the circumstances and in the manner provided for in KRS Chapter 304 applicable to domestic mutual insurers. As a member of a domestic mutual insurance company, KEMI's policyholders have a contingent liability, pro rata, and not one for another, for the discharge of its obligations.

## **PART SIX – CONDITIONS**

#### **A. Cooperation And Assistance**

You will assist us in the investigation and defense of any claim, proceeding or suit against you for benefits payable by this policy. This includes, but is not limited to, taking the following actions:

1. Notify KEMI immediately if an injury occurs that may be covered by this policy.
2. Provide for immediate medical and other services required by the Workers' Compensation Law.
3. Give us or our representative the names and addresses of the injured persons and of any witnesses, and any and all other information required by us, including, but not limited to, any and all documents in your possession we request.
4. Provide prompt notice of any claim or suit against you by immediately sending copies of any notices of any claims, suits or legal actions arising out of or connected to an injury or loss covered by this policy,
5. Cooperate with us and assist us, as we may request, in the investigation, settlement or defense of any claim, proceeding or suit.
6. Do nothing after an injury occurs that would interfere with our right to recover from others.
7. Do not voluntarily make payments, assume obligations or incur expenses, except at your own cost.

8. Allow us access to your property or premises or the property or premises that you have use of for purposes of investigating an injury or damages covered by this policy.
9. When requested, voluntarily attend or appoint a designated representative(s) to attend any proceedings including hearings or trial.
10. Submit to an examination under oath and subscribing same if requested by us.

Your failure to cooperate and assist us in the investigation or defense and/or taking action in direct conflict with us in our attempt(s) to defend, investigate and/or settle these claims, proceedings or suits will render your coverage null and void and thus relieve us of any obligations under this policy whatsoever.

#### **B. 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 any laws, regulations, codes or standards. Insurance rate service organizations have the same rights we have under this provision.

#### **C. Transfer Of Your Rights And Duties**

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

If you die and we receive notice within thirty days after your death, we will cover your legal representative as insured, however coverage under this provision shall only be provided until the end of the policy period.

#### **D. Sole Representative**

The Insured first named in Item 1 of the Information Page will act on behalf of any subsequent Insured named in Item 1 of the Information Page and all other Insureds of this policy to change this policy, receive return premium and give or receive notice of cancellation.

#### **E. Loss Education**

Our Loss Education Services acts as a workplace safety program for all employers to utilize.

## **F. Legal Actions Against KEMI**

1. There will be no right of action against KEMI under this policy unless you have fully complied with all the terms of this policy. Also, under Part Two – Employers' Liability Insurance, no legal action may be brought against us until the amount you owe has been determined with our written consent or by actual trial and final judgment.
2. Any action against KEMI must be properly filed within one (1) year from the date of the circumstances giving rise to the cause of action, either real or alleged.
3. This policy does not give anyone the right to add KEMI as a defendant in an action against you to determine your liability.
4. The bankruptcy or insolvency of you or your estate will not relieve KEMI of our obligations under this policy.
5. You agree that the venue of any legal action filed by you against KEMI lies in Fayette County, Kentucky. You also agree to submit to the venue of Fayette County, Kentucky for any legal action filed by KEMI against you, at the sole discretion of KEMI, and agree not to commence any action against KEMI in any other jurisdiction or venue.

## **G. Cancellation**

1. You may cancel this policy. You must mail or deliver advance written notice to us stating when the cancellation is to take effect.
2. We shall cancel the policy if you refuse to permit on-site examinations or disregard or fail to comply with workplace safety goals and objectives required by us as conditions for obtaining and maintaining coverage.
3. We may cancel this policy. At least 75 days in advance we will deliver or mail to you written notice stating when the cancellation is to take effect and our reason or reasons for cancellation. If we cancel for nonpayment of premium or within 60 days of the date of issuance of the policy, we will deliver or mail this notice at least 14 days prior to the effective date of cancellation. Proof of mailing of this notice to you at your last known address will be sufficient to prove notice.
4. After coverage has been in effect more than 60 days or after the effective date of a renewal policy, we may not cancel the policy unless cancellation is based on one or more of the following reasons:
  - a. nonpayment of premium;
  - b. discovery of fraud or material misrepresentation made by you or with your knowledge in obtaining the policy, continuing the policy, or presenting a claim under the policy;
  - c. discovery of willful or reckless acts or omissions on your part increasing any insured hazard;

- d. changes in conditions after the effective date of the policy or any renewal substantially increasing any insured hazard;
  - e. a violation of any local fire, health, safety, building, or construction regulation or ordinance at any of your covered workplaces substantially increasing any insured hazard;
  - f. our involuntary loss of reinsurance for the policy;
  - g. a determination by the commissioner that the continuation of the policy would place us in violation of Kentucky insurance laws.
5. The policy period will end on the day and hour stated in the cancellation notice.
  6. Any of these provisions that conflict with a law that controls the cancellation of the insurance in this policy are changed by this statement to comply with the law.

#### **H. Nonrenewal**

1. We may elect not to renew the policy. We will deliver or mail to you 75 days advance written notice stating our intention not to renew and our reason or reasons for nonrenewal. Proof of mailing of this notice to you at your last known address will be sufficient to prove notice.
2. If we fail to provide the notice of nonrenewal as required, the policy will be deemed to be renewed for the ensuing policy period upon payment of the appropriate premium, and coverage will continue until you have accepted replacement coverage with another insurer, until you have agreed to the nonrenewal, or until the policy is cancelled.
3. If we have delivered or mailed to you a renewal notice, bill, certificate, or policy at least 30 days before the end of the current policy period clearly stating the amount and due date of the renewal premium charge, then the policy will terminate on the due date without further notice unless the renewal premium is received by us or our agent on or before the due date. If the policy terminates in this manner, we will deliver or mail to you within 15 days of termination at your last known address a notice that the policy was not renewed and the date on which coverage ceased to exist. Proof of mailing of renewal premium to us on or before the due date will constitute a presumption of receipt on or before the due date.
4. If we offer to renew the policy for a premium amount more than 25% greater than the premium amount for the current policy term for like coverage and like risks, at least 75 days in advance we will deliver or mail to you and to your agent written notice of the renewal premium amount. We may at our option, in order to comply with this requirement, extend the period of coverage of the current policy at the expiring premium.



## **PART SEVEN – ANNUAL MEETING**

As a domestic mutual insurance company, KEMI is required by Kentucky insurance statutes to conduct an annual Policyholder meeting. The meeting will be held on the third Wednesday of June at 11:00 a.m. in the KEMI office located at the address shown on page 1 of the Information Page. This will be the only announcement you will receive regarding this meeting.

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