

EMPLOYEE BENEFITS LIABILITY COVERAGE

Words and phrases in quotation marks have special meaning as defined in Section E.

Whenever the following words are used in this Coverage Form, they will be specifically defined as follows:

You and **your** means the **Named Insured**.

We, us and **our** means **The Wawanesa Mutual Insurance Company**.

A. COVERAGE

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as "compensatory damages" because of any act of negligence, error, mistake or omission committed by the insured or by any other person for whom the insured is legally liable, in the "administration" of your "employee benefits program". We will have the right and duty to defend the insured against any "action" seeking those "compensatory damages". However, we will have no duty to defend the insured against any "action" seeking "compensatory damages" because of an act of negligence, error, mistake or omission to which this insurance does not apply. We may at our discretion investigate any act of negligence, error, mistake or omission and settle any claim or "action" that may result. But:

- (1) The amount we pay for "compensatory damages" is limited as described in **C. AMOUNTS OF INSURANCE**; and
(2) Our right and duty to defend ends when we have used up the applicable Amount of Insurance in the payment of judgments or settlements.

We will have no other obligation or liability to pay sums or perform acts or services unless explicitly provided for under

A.3. SUPPLEMENTARY PAYMENTS.

- b. We will only pay for "compensatory damages" that you are legally obligated to pay to your "employees" or former "employees", or the heirs, beneficiaries or legal representatives of either.
- c. This insurance only applies if the act of negligence, error, mistake or omission:
- (1) Takes place in the "coverage territory";
(2) Takes place during the policy period; and
(3) Was committed by the insured or by any other person for whom the insured is legally liable, in the "administration" of your "employee benefits program".

2. Exclusions

This insurance does not apply to:

- a. Any dishonest, fraudulent, criminal or malicious act or omission; discrimination or humiliation;
b. "Bodily injury", "property damage" or "personal and advertising injury";
c. Failure of performance of contract by any insurer, or any other party including yourself, who is obligated to afford benefits;
d. Any claim arising out of an insufficiency of funds to meet any obligation under any plan included in the "employee benefits program";
e. Any claim arising out of your failure to comply with the mandatory provisions of any law concerning workers' compensation, employment insurance, social security or disability benefits;
f. Any claim arising out of:
(1) The failure of stocks, bonds or other securities to perform as represented by an insured, including the failure of such stocks, bonds or other securities to produce financial gain, profit or growth;
(2) Any advice given to any person to participate or not participate in any plan included in the "employee benefits program".

3. Supplementary Payments

We will pay, with respect to any claim we investigate, any claim or "action" we settle, or any "action" against an insured we defend:

- a. All expenses we incur.
b. The cost of bonds to release attachments, but only for bond amounts within the applicable amount of insurance. We do not have to furnish these bonds.
c. All reasonable expenses you incur at our request to assist us in the investigation or defence of the claim or "action", including actual loss of earnings up to \$250 a day because of time off from work.
d. All costs assessed or awarded against you in the "action".
e. Any interest accruing after entry of judgment upon that part of the judgment which is within the applicable amount of insurance and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable amount of insurance.

These payments will not reduce the amounts of insurance.

B. WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.

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- b. A partnership, limited liability partnership or joint venture, you are an insured. Your members or partners, and their spouses, are also insureds, but only with respect to the conduct of your business.
 - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
 - d. An organization other than a partnership, limited liability partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your "executive officers" or directors. Your shareholders are also insureds, but only with respect to their liability as your shareholders.
 - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as your trustees.
2. Each of the following is also an insured:
- a. Each of your "employees" who is authorized to administer your "employee benefits program";
 - b. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this insurance;
 - c. Any organization you newly acquire or form, other than a partnership, limited liability partnership or joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
 - (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - (2) Coverage under this provision does not apply to any act of negligence, error, mistake or omission that occurred before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, limited liability partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

C. AMOUNTS OF INSURANCE

The Amounts of Insurance shown in the and the rules below establish the most we will pay regardless of the number of:

- (a) Insureds;
 - (b) Claims made or "actions" brought;
 - (c) Persons or organizations making claims or bringing "actions";
 - (d) Acts of negligence, errors, mistakes or omissions; or
 - (e) Plans included in your "employee benefits program".
1. The Amount of Insurance shown in the Declarations is the most we will pay for all "compensatory damages" because of an act of negligence, error, mistake or omission committed in the "administration" of your "employee benefits program". Such amount is also the most we will pay in the policy period for all "compensatory damages" because of all acts of negligence, errors, mistakes or omissions committed in the "administration" of your "employee benefits program".
2. The amount of insurance apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the amounts of insurance.
3. **Deductible**
Our obligation to pay "compensatory damages" applies only to the amount of "compensatory damages" in excess of \$500 unless a higher amount is shown in the Declarations for Deductible: Employee Benefits Liability Coverage.

D. EMPLOYEE BENEFITS LIABILITY CONDITIONS

The following conditions apply in addition to the Common Policy and Property Conditions:

1. **Bankruptcy**
Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.
2. **Duties In The Event Of Occurrence, Offence, Claim or Action**
- a. You must see to it that we are notified as soon as practicable of an act of negligence, error, mistake or omission which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the act of negligence, error, mistake or omission was committed;
 - (2) The names and addresses of any "employees" sustaining covered loss; and
 - (3) The nature and location of any loss arising out of the act of negligence, error, mistake or omission.
 - b. If a claim is made or "action" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "action" and the date received; and
 - (2) Notify us as soon as practicable.You must see to it that we receive written notice of the claim or "action" as soon as practicable.
 - c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "action";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or the defence against the "action"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

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- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this insurance to:

- a. Join us as a party or otherwise bring us into an "action" asking for "compensatory damages" from an insured; or
- b. Sue us on this insurance unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for "compensatory damages" that are not payable under the terms of this insurance or that are in excess of the applicable amount of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

Every action or proceeding against an insurer for the recovery of insurance money payable under contract is absolutely barred unless commenced within the time set out in the Insurance Act or other applicable legislation.

4. Other Insurance

a. Primary Insurance

This insurance is primary. If other valid and collectible insurance is available to the insured for a loss we cover under this insurance, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph b. below.

b. Method of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach, each insurer contributes equal amounts until it has paid its applicable amount of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable amount of insurance to the total applicable amounts of insurance of all insurers.

5. Premium Audit

- a. We will compute all premiums for this insurance in accordance with our rules and rates.
- b. Premium shown in this insurance as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period. Audit premiums are due and payable on notice to the first Named Insured. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured subject to the retention of the minimum retained premium shown in the Declarations of this policy.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Separation Of Insureds, Cross Liability

Except with respect to the amounts of insurance, and any rights or duties specifically assigned to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "action" is brought.

7. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this insurance, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "action" or transfer those rights to us and help us enforce them.

E. DEFINITIONS

- 1. **"Action"** means a civil proceeding in which "compensatory damages" because of acts of negligence, error, mistake or omission to which this insurance applies are alleged. "Action" includes:
 - a. An arbitration proceeding in which such "compensatory damages" are claimed and to which the insured must submit or does submit with our consent; and
 - b. Any other alternative dispute resolution proceeding in which such "compensatory damages" are claimed and to which the insured submits with our consent.
- 2. **"Administration"** means performance of the following administrative functions for an "employee benefits program":
 - a. Application of rules determining eligibility for participation of benefits;
 - b. Calculation of service and compensation credits for benefits;
 - c. Preparation of "employee" communications material;
 - d. Maintenance of participants' service and employment records;
 - e. Preparation of reports required by government agencies;
 - f. Calculation of benefits;
 - g. Orientation of new participants and advising participants of their rights and options under the plan;
 - h. Preparation of reports concerning participants' benefits; and
 - i. Processing of claims.
- 3. **"Advertisement"** means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and

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- b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
- 4. **"Bodily injury"** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
- 5. **"Compensatory damages"** does not include punitive or exemplary damages or the multiple portion of any multiplied damage award.
- 6. **"Coverage territory"** means Canada.
- 7. **"Employee"** includes a "leased worker" and a "temporary worker".
- 8. **"Employee benefits program"** means one or more of the following types of insurance or plans you maintain solely for the benefit of your "employees":
 - a. Group life insurance, group accident or health insurance, profit sharing plans, pension plans and stock subscription plans, employment insurance, social security benefits, workers compensation and disability benefits; or
 - b. Any other similar employee benefits program sponsored by you.
- 9. **"Executive officer"** means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
- 10. **"Leased worker"** means a person leased to you by a labour leasing firm under an agreement between you and the labour leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
- 11. **"Personal and advertising injury"** means injury, including consequential "bodily injury", arising out of one or more of the following offences:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of the owner, landlord or lessor of that room, dwelling or premises;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".
- 12. **"Property damage"** means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured.
- 13. **"Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.