

Employer's Liability

Claims made wording

This Employer's Liability policy wording must be read in conjunction with the Business Insurance policy wording. The **schedule** shows under the 'Schedule Section' of the 'Business Liability Part' whether you have selected Employer's Liability.

What you are insured for

A. Civil liability – damages

You are insured for all sums that **you** become legally liable to pay (including punitive or exemplary damages) arising from an **employee** sustaining **injury**, provided that:

1. the **injury** is sustained:
 - 1.1 in New Zealand, and
 - 1.2 after the first inception date of this policy, and
 - 1.3 in connection with the **business**, and
2. **you** first become aware of the **claim** during the **period of insurance**, and
3. **you** have advised **us** of the **claim** as soon as possible, but no later than 30 days after the **period of insurance** ends.

We will insure **your** liability arising from that **claim**, both during and after the **period of insurance**, based on the policy terms that applied at the time **you** advised **us** of that **claim**.

B. Civil liability – defence costs

You are insured for all legal costs and legal expenses necessarily and reasonably incurred by **you** with **our** prior written consent, to defend any legal action (or threat of legal action) that if proven, would be insured under 'What you are insured for, Part A'.

We will meet these costs even if the legal action seems groundless.

Exclusions

A. ACC

You are not insured if compensation for the injury:

1. is available under the Accident Compensation Act 2001, or
2. would have been available under the Act, except for **your** status as an exempt employer under that Act.

B. Asbestos

You are not insured for legal liability in connection with asbestos.

C. Dishonesty or fraud

You are not insured for legal liability in connection with **your**:

1. wilful breach of duty or wilful breach of an Act of Parliament, or
2. dishonest, fraudulent or malicious act or omission, or
3. act or omission committed with a criminal intent.

D. Employment Contracts Act

You are not insured for sums that **you** become liable to pay under the Employment Relations Act 2000.

E. Existing Litigation

You are not insured for legal liability in connection with any litigation in existence or that **you** should have anticipated at the commencement of the **period of insurance**.

F. Fines

You are not insured for any fine or penalty imposed on **you** (whether under contract or statute).

G. Foreign courts

You are not insured for legal liability in connection with a claim:

1. first brought in a court outside New Zealand, or
2. brought in a court within New Zealand to enforce a judgement made by a court outside of New Zealand, or
3. where the claim is governed by or the liability arises under the proper law of a country other than New Zealand.

H. Known claim and circumstances

You are not insured for legal liability in connection with any claim or circumstance that may give rise to a claim that **you** first knew of, or ought to have known of, prior to the inception date of this policy.

I. Latent diseases

You are not insured for sums that **you** become legally liable to pay in connection with **injury** where:

1. the **injury** is caused by a disease, and
2. an **employee** is first exposed to the conditions leading up to the disease before the first inception date of this policy.

J. Notices under the Health and Safety in Employment Act

You are not insured if **you** fail to comply with any lawful notice that **you** receive from an appropriate authority under the Health and Safety in Employment Act 1992.

K. Nuclear

Please refer to the 'Nuclear' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

L. Terrorism

Please refer to the 'Terrorism' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

M. War

Please refer to the 'War' Exclusion in the General Exclusions of the 'Business Insurance' policy wording.

Basis of settlement

A. Maximum amount payable

1. Civil liability

The most **we** will pay for all **events**, including legal costs and legal expenses, in the aggregate, during an **annual period**, is the 'Limit of Indemnity' shown in the **schedule** under 'Business Liability Part' for 'Employer's Liability'.

B. Excess

The excess shown in the **schedule** applies to each **injury** sustained by an **employee**. The excess will be deducted from the amount of the **claim**.

The excess must also be paid when **we** only provide cover under 'What you are insured for – B. Defence costs'.

Managing your claim

Managing your claim

1. Allocation of defence costs

If a claim is covered only partly by this policy, then **we** will attempt to ensure fair and proper allocation of the legal costs and legal expenses for insured and uninsured portions. If all parties are unable to agree upon the allocation of the legal costs and legal expenses, then that allocation shall be referred to a lawyer that **we** and **you** agree to instruct, whose determination shall be binding upon all parties.

The cost of the lawyer's determination is to be taken as part of 'What you are insured for A., Item 3'.

If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

2. Apportionment

If **we** incur costs and/or expenses above the maximum amount payable, then:

2.1 **you** must pay this amount when **we** ask for it, or

2.2 **we** can offset that payment against what **we** must pay to **you** under this policy.

3. Your defence (Queens Counsel Clause)

3.1 **We** are not required to defend a **claim** against **you** unless a lawyer that **we** and **you** agree to instruct, advises that the **claim** should be defended. If the parties cannot agree on a lawyer, then a lawyer will be appointed by the President of the New Zealand Law Society.

3.2 In formulating his or her advice, the lawyer must be instructed to consider the:

- a. economics of the matter, and
- b. damages and costs likely to be recovered, and
- c. likely costs of defence, and
- d. prospects of successfully defending the **claim**.

3.3 The costs of the lawyer's opinion is to be taken as part of defence costs covered by this policy.

3.4 If the lawyer advises that the **claim** should be settled and if the terms of settlement that **we** recommend are within limits that are reasonable (in the lawyer's opinion and in the light of the matters he/she is required to consider), then:

- a. **you** cannot object to the settlement, and
- b. **you** must immediately pay the excess shown in the **schedule**.

4. Defence of liability claims

After **you** have made a claim, **we** have the sole right to:

4.1 act in **your** name and on **your** behalf to defend, negotiate or settle the claim as **we** see fit (this will be done at **our** expense).

We may appoint **our** own lawyers to represent **you**. They will report directly to **us**.

5. Discharge of liability claims

We may elect at any time to pay **you**:

- 5.1 the 'Limit of Indemnity' for Employer's Liability, or
- 5.2 any lesser sum that the claim against **you** can be settled for.

Once **we** have paid this (including any defence costs already incurred) **our** responsibility to **you** under Employer's Liability is met in full.

6. Waiver of professional privilege

The solicitors **we** instruct to act on behalf of **you** are at liberty to disclose to **us** any information they receive from **you**.

You authorise the solicitors to disclose this information to **us**.

General conditions

A. How we administer the policy

1. Premium adjustments

If the premium for Employer's Liability has been calculated based on estimated figures, then the premium is only a provisional premium for an **annual period**.

Within 3 months of the expiry of an **annual period**, **you** must tell **us** what the actual figures are. **We** will re-calculate **your** actual premium based on the actual figures.

The difference between the actual and the provisional premiums will either be payable to **us** or refunded to **you** depending on the outcome of the adjustment, but any refund will be limited to a maximum of 50% of the provisional premium.

B. Your obligations

1. Notices under the Health and Safety in Employment Act

You must comply with any lawful notice **you** receive from an appropriate authority under the Health and Safety in Employment Act 1992. **You** must do this within the timeframe specified on the notice. If no timeframe is given, then **you** must comply within a reasonable time.

Definitions

The definitions apply to the plural and any derivatives of the bolded words.

For example, the definition of 'accidental' also applies to the words 'accidentally', 'accident' and 'accidents'.

accidental

Unexpected and unintended by **you**.

annual period

The **period of insurance**. However, if:

- a. **you** have chosen a monthly renewable contract, or
- b. the **period of insurance** is for more than 12 months,

the annual period is each 12-month period calculated from the date this policy first started, and consecutively thereafter.

business

The business described in the **schedule**.

claim

Any of the following:

- a. any claim made against **you**,
- b. any notice **you** receive from any other person that they intend to make a claim against **you**,
- c. any situation where **you** become aware that there is likely to be a claim made against **you**, in connection with an **injury**.

employee

An employee directly employed by **you** in the **business**.

event

Any one event (including continuous or repeated exposure to conditions) or series of events arising from one source or original cause.

injury

The **accidental** death of, or the **accidental** bodily injury to any person, including sickness, disease, disability, shock, fright, mental anguish or mental injury.

you

The person(s) or entity named in the **schedule** as 'The Insured'.

We may also use the word 'insured' to describe you.