Oregon
Kate Brown, Governor

Department of Consumer and Business Services
Workers' Compensation Division
350 Winter St. NE
P.O. Box 14480
Salem, OR 97309-0405
503-947-7810
Toll free: 800-452-0288
Fax: 503-947-7581
www.wcd.oregon.gov

BULLETIN NO. 209 (REV.)
Dec. 15, 2022

TO: Self-insured employers and self-insured employer groups

SUBJECT: Report of losses instructions and guidelines

EFFECTIVE: Jan. 1, 2023

This bulletin explains reporting requirements under Oregon Administrative Rule (OAR) 436-050-0175(3), which requires all self-insured employers to submit claim loss data to the department for calculation of annual experience rating modification factors, security deposits, and retrospective rating plan adjustments. This bulletin replaces Bulletin 209 issued Nov. 24, 2021.

In 2023, self-insured employers' reporting threshold for individual claims will remain the same as in 2022 at $18,500. This is established by the National Council on Compensation Insurance (NCCI) split point.

Revisions to this bulletin and related forms include:

- Where possible, replacing gender pronouns with gender-neutral terms
- Updating dates and coverage periods
- Other non-substantive changes

NOTICE: You can either submit the forms using the Workers' Compensation Division's Web portal, https://www4.cbs.state.or.us/exs/wcd/portal/, or mail the forms to the Workers' Compensation Division/Performance Section, PO Box 14480, Salem, OR 97309-0405. You can find instructions for managing your Web portal account in the upper right-hand corner of the portal webpage.

I. DEFINITIONS

A. "Closed claim" means a claim for which the employer expects no future indemnity or medical payment or litigation.

B. "Contract medical" means the costs of employer-furnished first aid and medical facilities, including personnel or retainer fees for nurses and physicians that are not allocated to individual claims. Report the same contract medical amount for the succeeding experience rating years.

C. "Denied claim" means a claim that is found non-compensable, either through:
- A denial not appealed by the worker; or
- An appealed denial that is now affirmed and final.

D. "Experience rating modification factor" (ERM) means a ratio based on payroll and loss records used to compare an employer's risk with the average risk in the same classification. The ERM is calculated by the division using methods prescribed by NCCI, and factors into the calculation for assessable net premium used in determining self-insured premium assessments due the division.

E. "Excess insurance liability limit" means the maximum amount an excess insurer will pay on a covered claim, as determined by the provisions of the excess insurance policy.

F. "Excess insurance self-insured retention (SIR) level" means the dollar amount specified in an excess insurance policy that must be paid by the employer before the excess insurer will respond to a loss.

G. "Medical reimbursement" means reimbursement by an employer for medical services on accepted, non-disabling claims up to certain amount. Reimbursements are restricted to the total medical costs on the claim, and may not exceed the maximum amount. Refer to Bulletin 345, OAR 436-060-0055(7), and ORS 656.262(5) for additional detail. **Medical reimbursement is optional and may not be applied retroactively.**

H. "Net losses" means the amount the employer incurs after receiving any recovery allowed by law or reimbursement from the Workers' Benefit Fund (WBF) program.

I. "Open claim" means a claim for which the employer expects future indemnity or medical payments or there is current litigation.

J. "Outstanding reserves" means estimated future payments for the life of the worker and any eligible beneficiaries.

K. "Recoveries" means monies recovered through subrogation. **See Appendix 2: Report of Losses Guidelines**.

L. "Reimbursements" means monies received from WBF programs. **See Appendix 2: Report of Losses Guidelines**.

M. "Total incurred losses" means paid losses minus the medical reimbursement amount on accepted non-disabling claims, where applicable, plus outstanding reserves. Total incurred losses must be reduced by any monies recovered through subrogation or from the WBF program. Round to the nearest dollar. Submissions should not include negative values. **See Appendix 2: Report of Losses Guidelines.**

N. "Total paid" means indemnity paid plus medical paid. This is the net amount paid after accounting for any recovery or reimbursed amounts.

II. HOW TO SUBMIT CLAIM LOSS DATA

Submit report of losses information on Forms 2809 and 2810, or in a format consistent with these forms. Service companies are expected to coordinate with the employer to reconcile data for claims, financial records, and excess information before final submission to the division. Provide loss figures for the total paid, outstanding reserves and total incurred losses. Loss figures should reflect net losses only.

For specific information on reportable losses, see Part IV of the NCCI Workers' Compensation Statistical Plan. You can request copies through NCCI Products and Services by calling 800-622-4123 or online at http://www.ncci.com.

Any forms with no data to report should be clearly noted on the applicable forms as "N/A" or "NONE TO REPORT."

Include claim loss data for legal entities included in the self-insurance certification, and claim loss data for liabilities assumed under an Assumption Agreement for Corporate Merger and Guarantee.

Submit claim loss data to the Performance Section, Self-insurance, Registration, and Reimbursements Unit, by **March 1, 2023**. Under OAR 436-050-0175(5), if a self-insured employer does not comply with reporting requirements, the director may:

- Impose an increase to the self-insured's security deposit and premium assessments by 25 percent;
- Conduct an audit to obtain the necessary loss information at the self-insured employer's expense;
- Assess civil penalties; or
- Revoke the employer's self-insurance certification.

A statement certifying the claim loss data as true and accurate must accompany the report of losses. **Appendix 1: Certification**, found on Page 7 of this bulletin, provides the text that needs to be included in the certification statement. A signed statement is required even when the claim loss data is submitted through the Workers' Compensation Division's Web portal.

III. EXPERIENCE RATING PERIOD

As established by NCCI, the experience rating period consists of losses from the last three completed fiscal years (July 1 through June 30). The reporting threshold for Oregon claims that occurred during the experience period is $18,500, effective Jan. 1, 2023. Report the claims for each fiscal year on a separate Form 2809, "Self-Insured Employer Report of Losses Experience Rating Period."

Experience rating period for claim loss data, valued as of Jan. 1, 2023:

Valuation Period 1	07/01/21 *through* 06/30/22
Valuation Period 2	07/01/20 *through* 06/30/21
Valuation Period 3	07/01/19 *through* 06/30/20

IV. NON-EXPERIENCE RATING PERIOD

The non-experience rating period consists of losses with dates of injury from the effective date of the self-insurance certification to the beginning of the experience rating valuation period 3 (listed above). Report all applicable Oregon claims, whether disabling or non-disabling, that were open with outstanding reserves as of Jan. 1, 2023, on Form 2810, "Self-Insured Employer Report of Losses Non-Experience Rating Period." Do not include data for any losses incurred before the effective date of self-insurance.

Non-experience rating period for claim loss data, valued as of Jan. 1, 2023:
Self-insured employer effective date *through* 06/30/19

V. DIRECTIONS FOR THE REPORT OF LOSSES

A. The report must list **all claims, (open, closed, accepted, deferred, denied, disabling, or non-disabling)** for all valuation periods. Round totals to the nearest dollar. Claims must be valued as of Jan. 1, 2023, and must include:
   i. All claims listed in **alphabetical** order by worker last name;
   ii. The date of injury;
   iii. The claim number;
   iv. The total amount paid;
   v. Medical reimbursements;
   vi. Outstanding reserves; and
   vii. Total incurred losses.

Identification of claims involving:

i. Catastrophes (CAT);
ii. The Workers with Disabilities Program (WDP);
iii. Permanent total disability (PTD);
iv. Fatal benefits (F);
v. Third-party recoveries
Do not report recoveries associated with these two programs:
- Employer-at-Injury Program (EAIP)
- Supplemental disability benefits (SDB); and

vi. Self-insured retention.

B. Claims with third-party recovery (subrogation): Report net amount incurred and identify as a third-party claim.

C. Catastrophes: If any one accident results in two or more claims where the combined incurred losses exceed $20,000, identify each claim as CAT 1. Identify claims resulting from a second catastrophe as CAT 2, etc.

D. Permanent total disability and fatality: Identify as PTD or F, respectively. Submit Form 2808, "Claim Reserve Worksheet," if any of the following are true:
i. With the first report of loss (experience rating period or non-experience rating period) submitted after the PTD or fatality status has been assigned.
ii. When PTD benefits change to fatal benefits, i.e., when a PTD worker dies and the beneficiary becomes entitled to fatal benefits.
iii. Upon request by the division.

If the beneficiary of fatal benefits remarries, note this on the report of losses submitted after the remarriage occurs. Report statutory amounts paid and reserved.

E. Workers with Disabilities Program: Identify as WDP and indicate the percentage of relief. Report the net amount incurred based on percentage relief. When a claim has 100 percent relief, report only the $1,000 deductible as paid, $0 as the outstanding reserve, and $1,000 as total incurred.

F. Self-Insurance Retention (SIR) when applicable. Report all paid costs and outstanding reserves:

1. **When the paid costs have exceeded the SIR level, but remain within the liability limit.** *For example, a claim with a SIR level of $100,000 and a statutory liability limit, paid costs $175,000, and outstanding reserve $250,000:* Report total paid $175,000, outstanding reserve $250,000, and total incurred $425,000. Identify as SIR and the amount of the SIR level. The division will make the necessary adjustment for deposit purposes.

2. **When the paid costs have not exceeded the SIR level, but are expected to.** *For example, a claim with an SIR level of $100,000 and a statutory liability limit, paid costs $75,000, and outstanding reserve $350,000*: Report total paid $75,000, outstanding reserve $350,000, and total incurred $425,000. Identify as SIR and the amount of the SIR level. The division will make the necessary adjustment for deposit purposes.

VI. EXCESS INSURANCE REPORTING RESPONSIBILITIES

Under the terms and conditions of most excess insurance policies, the excess insurer requires the self-insured employer to promptly and sufficiently report claims that exceed or are likely to exceed the SIR level. In most cases, failure to meet the terms and conditions of an excess insurance policy can result in the denial of coverage.

Claim costs that meet or exceed the SIR level and have not been previously reported on Form 2937, "Excess Insurance Reporting and Reimbursement," should be accompanied by proof of the self-insured's notification to the excess insurer. Claim costs subject to reimbursement by the excess insurer should be accompanied by evidence of ongoing reporting and reimbursement records:

- The SIR level and liability limit for relevant claims will be applied by the division, when provided with all relevant notifications and reported paid costs with outstanding reserves data on a complete Form 2937.

- Failure to complete Form 2937, if applicable, will affect the security deposit as calculated by the division.

Excess insurance policies issued for self-insured municipalities may have separate SIR levels for particular NCCI classification codes (e.g., police and firefighters). When a separate SIR level applies to a claim identified on Form 2937 for this reason, ensure that the appropriate SIR level is used.

VII. COVID-19 CLAIM REPORTING

In 2020, NCCI filed Item E-1407 which allows for the exclusion of claims attributable to COVID-19 from the ERM factor calculation. The division continues to allow the exclusion of claims attributable to COVID-19 when calculating a self-insured employer's ERM factor for premium assessment purposes.

Report COVID-19 claims on the Report of Losses as would be done normally. Identify claims that are eligible for exclusion using Form 5512, "COVID-19 Claim Reporting for Experience Rating Exclusion." The division will then make the necessary adjustments. Report eligible claims annually while they are still in the experience rating period (see **Section III**). Once a claim reaches the non-experience rating period (see **Section IV**), it no longer is included in the ERM calculation and reporting on Form 5512 can end.

VIII. DENIED CLAIM REPORTING

According to NCCI's Experience Rating Plan Manual, denied claims which are deemed non-compensable should be excluded from the ERM factor calculation. As such, the division will exclude claims that are either denied without appeal or have been appealed and finally affirmed as denied when they are reported through the annual report of losses process.

Continue to report denied claims on the Report of Losses as would be done normally. Identify claims that are eligible for exclusion through the use of Form 5626, "Denied Claim Reporting for Experience Rating Exclusion." The division will then make the necessary adjustments. Report eligible claims annually while they are still in the experience rating period (see **Section III**). Once a claim reaches the non-experience rating period (see **Section IV**), it no longer is included in the ERM calculation and reporting on Form 5626 can end.

Refer to **Appendix 2: Report of Losses Guidelines. Claims should be reserved for the ultimate, probable cost for the life of the claim.** Factors that may affect the ultimate probable cost are detailed under **Appendix 3: Factors to Consider When Estimating Outstanding Reserves** on Page 9 of this bulletin.

If you have questions about this bulletin or related forms, email WCD.SelfInsurance@dcbs.oregon.gov or call 503-947-7057.

Sally Coen, Administrator
Workers' Compensation Division

Distribution: WCD-LY, electronic mailing lists

Attachments: Form 2808, "Claim Reserve Worksheet" (Rev. 1/23)
Form 2809, "Self-Insured Employer Report of Losses Experience Rating Period" (Rev. 1/23)
Form 2810, "Self-Insured Employer Report of Losses Non-Experience Rating Period" (Rev. 1/23)
Form 2937, "Excess Insurance Reporting and Reimbursement" (Rev. 1/23)
Form 5512, "COVID-19 Claim Reporting for Experience Rating Exclusion" (Rev. 1/23)
Form 5626, "Denied Claim Reporting for Experience Rating Exclusion" (1/23)

Appendix 1: Certification

Include the following statement with each self-insured employer's report of losses, signed by an authorized representative of the self-insured employer:

I certify this is a true and accurate statement of all claims occurring during the experience rating period, and includes all open claims occurring before the experience rating period with outstanding reserves as of Jan. 1, 2023.

Self-insured employer: _____
(Organization)

_____ _____
(Signature) (Date)

_____ _____
(Printed name) (Title)

_____ _____
(Name of contact person) (Phone number of contact person)

_____
(Email address of contact person)

Failure to provide a signed certification page will be considered an incomplete submission and may result in sanctions under OAR 436-050-0175(5). Electronic signatures are accepted.

Appendix 2: Report of Losses Guidelines

	Include in Losses	Reduce from Losses
	• Statutory benefits: Any benefits payable to or on behalf of the worker under the law in effect at the time of the injury	• Recoveries (after subtracting recovery expenses, such as legal costs for pursuing subrogation)
Indemnity costs:	• Time loss compensation* • Awards • Remarriage allowance • Burial benefits • Stipulation amounts and fees, settlement amounts and fees (Claims Disposition Agreement and Disputed Claims Settlement) • Penalties, if the reason for the penalty was within the self-insured employer's control	Amounts reimbursed or reimbursable from the Workers Benefit Fund (WBF): • Retroactive Program (PTD and fatal) • Social Security offset (SSO) • Reopened Claims Program/Own Motion (RCP)
Medical costs:	• Scheduled exams for closure/rating, e.g., independent medical exams, worker requested medical exams, arbiter exams • Physical therapy, work hardening • Prosthetic appliance purchase/replacement • Prescriptions • Surgeries • Transportation • All other medical care as provided under ORS 656.245	• Medical costs to determine compensability of the injury or condition • Nurse case management fees • Bill audit fees • Independent medical exam for compensability or management
Legal costs:	• Fees paid to worker attorneys	• Defense attorney costs • Legal costs to determine compensability of the injury or condition • Settlement costs for termination/release agreements • Legal costs for pursuing subrogation
Vocational assistance costs:	• Include if the date of injury was on or after Jan. 1, 1986. Also include if the injury was before Jan. 1, 1986 and reimbursement was not approved by WCD	• Preferred Worker Program qualifying for claims cost reimbursement

Note:** **If, under ORS 656.262(4)(b) and OAR 436-060-0025(2), the self-insured employer continues to pay the same wage at the same pay interval that the worker received at the time of injury, in lieu of issuing separate time-loss payments (also known as salary continuation), the employer must include indemnity costs in the paid and outstanding reserve amount. Report the indemnity costs in the same amounts as would otherwise be due if temporary total disability or temporary partial disability were paid.

Appendix 3: Factors to Consider When Estimating Outstanding Reserves

A. Pre-existing medical conditions that may extend disability or length of treatment.

B. Age of worker.

C. Level of education/training.

D. Prior claims history.

E. If a hearing request has been filed or there is a likelihood of litigation (the worker is represented by an attorney or has had an attorney in prior claims), reserves should reflect the potential for additional claims costs. Refer to file notes, attorney correspondence, investigative reports, etc.

F. Refer to Claim Reserve Worksheet, Form 2808, which may be used for establishing outstanding reserves for those self-insured employers that may not have an existing claims reserving procedure or reserve worksheet. All self-insured employers are to use the Claim Reserve Worksheet, Form 2808, for reporting PTD and fatal claims, as indicated on Page 4 of this bulletin.

G. If a claim file indicates the worker will be granted PTD, or PTD has been granted, reserves should include:
   1. Statutory benefits to the worker for the worker's remaining life expectancy, based on the attached period life table. If the worker has received a Social Security offset (SSO), reduce future PTD benefits by the amount of future SSOs, ending at the worker's full retirement age.

   2. Maximum potential benefits to the spouse, based on the attached **Appendix 4: Period Life Table 2019** on Page 10 of this bulletin. This includes surviving spouse benefits if the spouse's life expectancy exceeds the worker's life expectancy. For example, if a worker's remaining life expectancy is 30 years and the spouse's remaining life expectancy is 40 years, reserves should include PTD for the worker for 30 years and surviving spouse benefits for 10 years.

   3. Burial allowance should be included under the law in effect at the date of injury.

   4. Upon the death of a worker, reserve for future benefits as a fatal claim.

H. Fatal claim reserves should include:
   1. Benefits to a surviving spouse for their remaining life expectancy, based on the attached period life table. Do not estimate for remarriage.

   2. Maximum potential benefits to other beneficiaries. For example, for dates of injury on or after July 1, 1973, if a child/dependent is currently in a post-secondary education or training program, benefits should be reserved for up to 48 months through age 26.

Note: ***Benefits for a dependent adult will remain in effect for the life of that individual.*** **See the claims reserve tab at** http://wcd.oregon.gov/worker/Pages/death-benefits.aspx.

Appendix 4: Period Life Table 2019

Exact Age	Male	Female	Exact Age	Male	Female	Exact Age	Male	Female
0	76.23	81.28	50	29.88	33.51	100	2.16	2.49
1	75.69	80.69	51	29.03	32.61	101	2.05	2.35
2	74.73	79.72	52	28.18	31.71	102	1.94	2.21
3	73.75	78.74	53	27.34	30.82	103	1.83	2.07
4	72.76	77.75	54	26.51	29.94	104	1.73	1.94
5	71.77	76.76	55	25.70	29.06	105	1.64	1.82
6	70.78	75.77	56	24.89	28.20	106	1.54	1.70
7	69.79	74.78	57	24.10	27.34	107	1.45	1.59
8	68.8	73.79	58	23.31	26.48	108	1.37	1.48
9	67.81	72.79	59	22.54	25.64	109	1.29	1.38
10	66.81	71.80	60	21.77	24.80	110	1.21	1.28
11	65.82	70.81	61	21.02	23.96	111	1.13	1.19
12	64.83	69.81	62	20.28	23.14	112	1.06	1.10
13	63.84	68.82	63	19.54	22.32	113	0.99	1.02
14	62.85	67.83	64	18.81	21.51	114	0.92	0.94
15	61.87	66.84	65	18.09	20.70	115	0.86	0.87
16	60.90	65.86	66	17.38	19.90	116	0.80	0.80
17	59.93	64.87	67	16.67	19.10	117	0.74	0.74
18	58.97	63.89	68	15.97	18.31	118	0.68	0.68
19	58.02	62.91	69	15.28	17.53	119	0.63	0.63
20	57.07	61.93	70	14.60	16.76			
21	56.13	60.96	71	13.92	16.00			
22	55.20	59.99	72	13.25	15.26			
23	54.27	59.02	73	12.59	14.52			
24	53.35	58.05	74	11.95	13.81			
25	52.43	57.08	75	11.32	13.10			
26	51.51	56.11	76	10.71	12.41			
27	50.58	55.14	77	10.12	11.74			
28	49.67	54.18	78	9.54	11.09			
29	48.75	53.22	79	8.98	10.45			
30	47.83	52.26	80	8.43	9.83			
31	46.92	51.30	81	7.91	9.23			
32	46.00	50.34	82	7.40	8.65			
33	45.09	49.39	83	6.91	8.09			
34	44.18	48.44	84	6.44	7.56			
35	43.27	47.49	85	6.00	7.05			
36	42.36	46.54	86	5.58	6.56			
37	41.46	45.59	87	5.18	6.10			
38	40.55	44.65	88	4.80	5.67			
39	39.65	43.71	89	4.45	5.26			
40	38.75	42.76	90	4.12	4.88			
41	37.84	41.83	91	3.82	4.53			
42	36.95	40.89	92	3.54	4.20			
43	36.05	39.95	93	3.29	3.90			
44	35.16	39.02	94	3.06	3.63			
45	34.26	38.09	95	2.87	3.39			
46	33.38	37.17	96	2.69	3.18			
47	32.50	36.24	97	2.54	2.98			
48	31.62	35.33	98	2.40	2.81			
49	30.75	34.42	99	2.28	2.65			

Social Security Actuarial Publications Statistical Tables
Period Life Table, 2019