BULLETIN NO. 209 (Revised)
Dec. 12, 2023

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

SUBJECT: Report of losses instructions and guidelines

EFFECTIVE: Jan. 1, 2024

This bulletin explains claim loss data reporting requirements under Oregon Administrative Rule (OAR) 436-050-0175(3), which requires self-insured employers to report claim loss data to the director by March 1 of each year for the purpose of calculating annual experience rating modification factors, security deposits, and retrospective rating plan adjustments. This bulletin replaces Bulletin 209 issued Dec. 15, 2022.

In 2024, self-insured employers' reporting threshold for individual claims will decrease to $9,500. This is established by the National Council on Compensation Insurance (NCCI) split point. This year's decrease is due to a change in methodology, per Item E-1409 (see NCCI's FAQs at https://www.ncci.com/Articles/Pages/II_ER-Methodology-FAQs.aspx).

Revisions to this bulletin and related forms include:

- Updating dates and coverage periods
- Format and language changes
- Updating Appendix 4: Period of Life Table to reflect the 2020 Social Security Administration Actuarial Life Table
- Other non-substantive changes

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 payable to 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 an annually adjusted 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

The preferred method for submitting claim loss data forms is using the Workers' Compensation Division's web portal, located at https://www4.cbs.state.or.us/exs/wcd/portal/. Alternatively, you may mail forms to the Workers' Compensation Division/Performance Section, PO Box 14480, Salem, OR 97309-0405. Instructions for managing your web portal account can be found in the upper right-hand corner of the portal webpage.

Submit claim loss data using Forms 2809 and 2810, or a similar format consistent with these forms. The submission must include a report of losses for each year in the experience rating period as well as for any non-experience claims. The claim loss data needs to reflect the total paid, outstanding reserves and total incurred losses net of any recovery through subrogation or the WBF program. **Blank forms will not be considered unless identified as "N/A" or "NONE TO REPORT."** Service companies approved by the division to process a self-insured employer's claims are considered an authorized representative who may assist the submission or submit on the employer's behalf.

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

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.

Submit claim loss data to the Performance Section, Self-insurance, Registration, and Reimbursements Unit, by **March 1, 2024**. Failure to submit the required report of losses timely and/or accurately may result in assessment of civil penalties or revocation of the employer's self-insurance certification, in accordance with OAR 436-050-0175(5).

Submit a signed statement certifying the report of losses as true and accurate. See **Appendix 1: Certification** of this bulletin for an example of what needs to be included in the certification statement. A signed statement is required even when the report of losses is submitted through the division's web portal. **The certification checkbox on the web portal is not sufficient to certify the report of losses at this time.**

III. EXPERIENCE RATING REPORTING PERIOD

A report of losses must be submitted for each experience rating reporting period. As established by NCCI, the experience rating reporting period includes claim loss data from the last three completed fiscal years beginning July 1 and ending June 30. Claims in each experience rating reporting period are separated by the NCCI split point of $9,500, effective Jan. 1, 2024.

Experience rating reporting period for claim loss data, valued as of Jan. 1, 2024:

Reporting Period 1	07/01/22 *through* 06/30/23
Reporting Period 2	07/01/21 *through* 06/30/22
Reporting Period 3	07/01/20 *through* 06/30/21

A report of losses must:

- Include all claims incurred in each reporting period with totals rounded to the nearest dollar.
- Include contract medical expenses, the total medical reimbursement amount, and the number of claims for which medical reimbursement is applied.
- Provide separate lists for total incurred claim loss data above and below the split point threshold. The lists must include:
    i. All claims in alphabetical order, by workers' last name (open, closed, accepted, deferred, denied, disabling or non-disabling)
    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.

Report the claims for each fiscal year on a separate Form 2809, "Self-Insured Employer Report of Losses Experience Rating Period."

IV. NON-EXPERIENCE RATING PERIOD

A report of losses must be submitted for the non-experience rating period. The non-experience rating period covers dates of injury from the effective date of the self-insurance certification and prior to the date identified in Reporting Period 3 (see Page 3). Report all applicable Oregon claims, whether disabling or non-disabling, that were open with outstanding reserves as of Jan. 1, 2024. Do not include data for any losses incurred before the effective date of self-insurance.

Non-experience rating reporting period for claim loss data, valued as of Jan. 1, 2024:
Effective date of self-insurance certification *through* 06/30/20

A report of losses must list all open non-experience claims with totals rounded to the nearest dollar. The list must include:

i. All open claims in alphabetical order, by workers' last name;
ii. The date of injury;
iii. The claim number;
iv. The total amount paid;
v. Outstanding reserves; and
vi. Total incurred losses.

Report the claims for the non-experience rating period on Form 2810, "Self-Insured Employer Report of Losses Non-Experience Rating Period."

V. IDENTIFICATION OF CLAIMS

A. Catastrophes (CAT)
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.

B. Workers with Disabilities Program (WDP)
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 the total incurred.

C. Permanent Total Disability (PTD) and Fatal Benefits (F)
Identify as PTD or F. Submit Form 2808, "Claim Reserve Worksheet,":

- With the first report of loss after the PTD or fatality status has been assigned; and
- When PTD benefits change to fatal benefits after an injured worker's death and one or more beneficiaries become entitled to fatal benefits.

D. Third party recoveries (subrogation)
Report net amount incurred and identify as a third-party claim.
Do not report recoveries associated with these two programs:
- Employer-at-Injury Program (EAIP)
- Supplemental disability benefits (SDB)

E. Self-Insurance Retention (SIR)
Identify claims as SIR when total incurred losses exceed, or are expected to exceed, the self-insured retention level of the employer's excess insurance policy. The division will make the necessary adjustments.

VI. EXCESS INSURANCE REPORTING RESPONSIBILITIES

Under the terms and conditions of excess insurance policies, the employer can receive reimbursement on claim costs by promptly reporting claims to the excess insurance carrier once claim costs exceed or are likely to exceed the SIR level of the policy. In most cases, failure to meet the terms and conditions of an excess insurance policy can result in the denial of claim cost reimbursement.

Report claims subject to excess reimbursement on Form 2937, "Excess Insurance Reporting and Reimbursement." This should be accompanied by proof of excess claim reporting to the excess carrier, as well as any supporting reimbursement records. 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.

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. In 2023, Item E-1410 added an expiration date of June 30, 2023 for the special treatment of COVID-19 claims.

Report COVID-19 claims on the Report of Losses as would be done normally. Claims with dates of injury between July 1, 2020 and June 30, 2023 are eligible for exclusion when identified on Form 5512, "COVID-19 Claim Reporting for Experience Rating Exclusion." The division will then make the necessary adjustments.

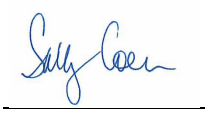
VIII. DENIED CLAIM REPORTING

According to NCCI's Experience Rating Plan Manual, denied claims which are deemed non-compensable are excludable from the ERM factor calculation. The division will exclude claims that are either denied without appeal or have been appealed and affirmed as denied.

Report denied claims on the Report of Losses as would be done normally. Claims with dates of injury between July 1, 2020 and June 30, 2023 are eligible for exclusion when identified on Form 5626, "Denied Claim Reporting for Experience Rating Exclusion." The division will then make the necessary adjustments.

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.



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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. 1/24)
Form 2810, "Self-Insured Employer Report of Losses Non-Experience Rating Period" (Rev. 1/23)
Form 2937, "Excess Insurance Reporting and Reimbursement" (Rev. 1/24)
Form 5512, "COVID-19 Claim Reporting for Experience Rating Exclusion" (Rev. 1/24)
Form 5626, "Denied Claim Reporting for Experience Rating Exclusion" (Rev. 1/24)

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, 2024.

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 claims 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 5 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 2020** 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 2020

Exact Age	Male	Female	Exact Age	Male	Female	Exact Age	Male	Female
0	74.12	79.78	50	28.33	32.24	100	1.93	2.23
1	73.55	79.17	51	27.50	31.35	101	1.83	2.09
2	72.58	78.19	52	26.67	30.47	102	1.73	1.96
3	71.60	77.21	53	25.86	29.59	103	1.63	1.84
4	70.62	76.22	54	25.06	28.72	104	1.54	1.72
5	69.63	75.23	55	24.27	27.86	105	1.45	1.61
6	68.64	74.24	56	23.48	27.01	106	1.36	1.50
7	67.65	73.25	57	22.71	26.16	107	1.28	1.40
8	66.65	72.25	58	21.95	25.32	108	1.20	1.30
9	65.66	71.26	59	21.21	24.49	109	1.13	1.21
10	64.67	70.27	60	20.47	23.67	110	1.05	1.12
11	63.68	69.27	61	19.74	22.85	111	0.98	1.03
12	62.69	68.28	62	19.03	22.04	112	0.92	0.95
13	61.70	67.29	63	18.32	21.24	113	0.85	0.88
14	60.71	66.30	64	17.63	20.45	114	0.79	0.80
15	59.73	65.31	65	16.94	19.66	115	0.74	0.74
16	58.76	64.32	66	16.26	18.88	116	0.68	0.68
17	57.79	63.34	67	15.58	18.10	117	0.63	0.63
18	56.84	62.36	68	14.91	17.34	118	0.58	0.58
19	55.90	61.38	69	14.24	16.58	119	0.53	0.53
20	54.97	60.41	70	13.59	15.82			
21	54.04	59.44	71	12.94	15.08			
22	53.12	58.47	72	12.30	14.36			
23	52.21	57.50	73	11.67	13.64			
24	51.30	56.54	74	11.05	12.94			
25	50.39	55.58	75	10.46	12.26			
26	49.48	54.61	76	9.88	11.60			
27	48.57	53.66	77	9.32	10.95			
28	47.66	52.70	78	8.77	10.31			
29	46.76	51.74	79	8.25	9.70			
30	45.86	50.79	80	7.74	9.10			
31	44.97	49.84	81	7.25	8.53			
32	44.07	48.89	82	6.77	7.98			
33	43.18	47.94	83	6.31	7.44			
34	42.29	47.00	84	5.88	6.93			
35	41.39	46.06	85	5.47	6.44			
36	40.50	45.12	86	5.07	5.99			
37	39.62	44.18	87	4.70	5.55			
38	38.73	43.24	88	4.35	5.15			
39	37.85	42.31	89	4.02	4.76			
40	36.97	41.38	90	3.72	4.41			
41	36.09	40.45	91	3.44	4.08			
42	35.21	39.52	92	3.18	3.78			
43	34.34	38.60	93	2.96	3.51			
44	33.46	37.68	94	2.75	3.27			
45	32.59	36.76	95	2.57	3.05			
46	31.73	35.85	96	2.42	2.85			
47	30.87	34.94	97	2.28	2.68			
48	30.01	34.04	98	2.15	2.52			
49	29.17	33.14	99	2.04	2.37			

Social Security Actuarial Publications Statistical Tables
Period Life Table, 2020