



Department of Administrative Services

POLICY MANUAL

Issuing Division: Risk Management Division

Subject: Employee Dishonest Policy Manual

Number

125-7-203

Effective Date

November 1, 1996

Approval

I. PURPOSE

Under ORS Chapter 278, we may choose to self-insure all or part of the cost of officer, employee, and agent dishonesty losses. For the dishonesty losses covered by this policy, the state is self-insured. State self-insurance is intended to restore agency funds and to pursue recovery from malefactors, whether convicted or not. The services described in this policy are provided to state agencies by the Department of Administrative Services, Risk Management Division, with the assistance of the Secretary of State, Audits Division and the Department of Justice.

This policy only defines the state's dishonesty coverage for its agencies. It does not define, enlarge, or reduce the rights of anyone except state agencies. It does not limit or define the state's rights or defenses in any claim or action at law. We also purchase some surety bonds and insurance. This policy does not affect any bond or insurance policy we may have. Should any provision in this policy be contrary to law, the law prevails. Changes and exceptions to the terms of this policy are issued only by us through written Amendments, Endorsements, and Interpretations.

This edition applies to all state dishonesty losses reported to us on or after July 1, 1996.

See also: Policy 125-7-201, State Self-insurance Liability Policy for State Agencies;
Policy 125-7-202, State Self-insurance Liability Policy for Officers,
Employees, & Agents;
Policy 125-7-203, This policy;
Policy 125-7-101, State Self-insurance Property Policy;
Policy 125-7-301, Aircraft and Pilot Standards;
OAR 125-155, Vehicle Use and Access Rules;
ORS 297.120, Audits Division: Investigating loss of public funds
or property by state agency when public officer involved;
ORS 291.011, Blanket fidelity bonds for state officers and personnel.

II. PRIMARY ROLES

Various state agencies and personnel related to dishonesty losses have these roles:

You, your agency, and your managers at all levels: Design and implement systems and procedures to prevent losses. Discover losses. Report suspected losses to Risk Management Division and Audits Division before you respond to media requests. Take custody of, and protect the evidence. Take appropriate personnel actions. Talk to the Department of Justice before taking any action, other than actions immediately necessary to protect records and assets.

Note: Perform an investigation only under the direction of the Audits Division or Department of Justice. Oregon State Police and Department of Corrections have internal affairs units which perform certain criminal or personnel investigations directly. However, they too must comply with reporting requirements for suspected dishonesty losses.

Secretary of State, Audits Division: Perform or direct all financial audits of state funds and accounts. Verify and document the loss. Perform or direct financial loss investigations as needed. Notify Risk Management Division if you did not do so. Recommend practices to prevent losses.

We, the Department of Administrative Services, Risk Management Division: Give risk control advice. Purchase and manage the state's blanket bond and any agency-specific bonds. Notify Audits Division and Department of Justice if you did not do so. Set aside funds for self-insured losses. Verify and document the loss when delegated to do so by the Audits Division. Pay the agency. Determine and pursue appropriate recovery of the loss from the wrongdoer.

Department of Justice: Give legal advice to you. Notify Risk Management Division if you did not follow advice given. Prosecute civil actions for recovery of the loss at the request of Risk Management and with the assistance of all involved agencies. Investigate and coordinate any criminal prosecution. Give legal advice concerning employee discipline or discharge.

CAUTION !

Discovery and reporting are the key stages of a dishonesty claim. A wrong action or misstatement when you discover a suspected loss could mean:

1. Impairing the state's ability to prosecute a civil or criminal legal action.
2. Impairing the state's ability to seize the wrongdoer's assets.
3. You and your agency being sued by an employee for defamation.
4. You facing personal criminal charges for extortion if you threaten to report the employee to the police to coerce him or her to confess or repay the money.
5. You being charged as an accessory to the crime if you cover up the theft or agree to forgive or forget it.
6. You being personally responsible for the loss if you take willful action to prevent the state from finding the loss or recovering its funds. For example, offering to stop investigating if employee resigns.

The way to avoid all these risks is to get legal counsel at once. Do this before talking to the employee or conducting an investigation. Your cost in making that call is a few dollars in legal fees. Your risks in not doing so can be severe.

CRIMINAL PROSECUTION. To sustain a criminal prosecution, sufficient evidence is needed to obtain an indictment from a grand jury and then to prove "beyond a reasonable doubt" at a criminal trial. The local District Attorney (DA) decides how much evidence is sufficient. The state prosecutes employees, officers, and agents for fraud,

theft, embezzlement, and the like by the same standards under which it prosecutes anyone else. Department of Justice coordinates agencies' roles and decides what, when, and how to submit the criminal complaint to the DA. Risk Management Division coordinates with the DA for a restitution order.

CIVIL ACTION. Usually, Risk Management Division asks the DA to seek a restitution order as part of the criminal prosecution. Sometimes the DA finds too little evidence to support a criminal prosecution. The evidence may still support a civil action. Under its subrogation rights, Risk Management Division pursues collection through voluntary payment or civil action by the Department of Justice.

III. DEFINITIONS

Throughout this policy, *you* and *your* refer to the state and its agencies. *Staff* refers to your officers, employees and agents unless otherwise specified. *We, us, and our* refer to the Department of Administrative Services, Risk Management Division. Other terms used in this policy have the following meanings:

- A. **Agency:** A board, commission, department, division, institution, or branch of the State of Oregon.
- B. **Agent:** One who, under your authority, performs a duty or function on your behalf, subject to your direction and control. Direction and control include the method, manner, means, location, and timing of the duty or function. Any person or organization with legal capacity to contract could be your agent. Volunteers can be your agents. Saying one is or is not an agent does not make it so. Agent status can be a key issue in dispute. A court will look at all relevant facts and circumstances to decide whether someone really was your agent.
- C. **Losses:** Our costs related to the claim paid to you or on your behalf. If a loss occurs to multiple agencies, we will determine to whom losses will be assigned for allocating risk assessments.
- D. **Outside Agent:** Business entities under contract with you to sell licenses, permits, etc.
- E. **Mysterious Disappearance:** Property is gone but no one knows for sure when it disappeared or what happened to it. In an office or work space that is usually occupied, this means the item was not in a known place near the time of its loss. In a vehicle or an area usually unoccupied, it means there is no physical evidence of theft or forced entry.
- F. **Occurrence:** Dishonest acts by, or unfaithful performance of your employees which are discovered after the effective date of this policy manual. Losses arising from the same event, scheme, project, employee, or group of employees are considered one occurrence.
- G. **Reporting Period:** You must report any suspected loss or situation which may result in a loss immediately but not later than **90 days** after you discover it.

H. **State Assets:** Tangible real and personal property owned by the state. It's also property lawfully held in trust by the state in its custody and control.

IV. COVERAGES

A. **Employee Dishonesty Loss.** We will reimburse you for state assets lost through any verifiable fraudulent or dishonest act by your officers, employees, and agents up to the self-insurance limit of \$250,000 subject to the deductible. We may purchase excess surety insurance for this risk. When we do, we will also pay any amount over \$250,000 after we recover it from any applicable surety insurance.

B. **Employee Unfaithful Performance Coverage.** We provide no self-insurance for unfaithful performance caused by an employee's failure to faithfully perform certain duties prescribed by law. Under the terms of the current \$1 million blanket bond, your agency is responsible for the first \$250,000 of an unfaithful performance loss. We will file a claim on your behalf with the surety for losses over that amount up to the \$1 million limit. This blanket bond coverage may end or change at any renewal date.

We purchase lower limit bonds for specific key positions in certain agencies when required by law. We notify those agencies in writing when we purchase this coverage and pass the cost of that coverage on to the agency.

C. **Outside Agents.** No coverage is provided unless an agency requests we purchase insurance for their outside agents. We notify those agencies in writing of the coverage we purchase and pass the cost of that coverage on to the agency.

V. EXCLUSIONS

Except as expressly provided in this policy or in any applicable commercial or excess bond, we do not pay for:

A. **Mysterious disappearance.** We do not pay for loss due to mysterious disappearance as defined in our Property Self-Insurance Policy Manual unless there is clear and convincing evidence that the officer's, employee's, or agent's fraud or dishonesty caused the disappearance.

B. **Errors or omissions.** We do not pay for loss caused by accounting, inventory, or other record-keeping errors, omissions, or simple mistakes made in good faith. This exclusion does not apply if there is clear and convincing evidence that the officer's, employee's, or agent's fraud or dishonesty caused the loss.

C. **Released, forgiven, and concealed prior losses.** We do not pay for any loss for which you released from liability any staff member known or suspected of having caused it by dishonesty, fraud, or unfaithful performance.

Important Note: You and your staff do not have statutory authority to forgive or waive loss due to acts of dishonesty or fraud against the state. Trying to *forgive and forget* or deliberately not reporting a state loss caused by employee dishonesty or

fraud can forfeit any commercial coverage and may expose you or your staff to personal, civil, or criminal liability.

- D. Loss caused by a repeat malefactor.** Once anyone causes the state a loss through dishonesty, theft, or unfaithful performance, he or she is not, and cannot, be covered for any subsequent dishonesty or unfaithful performance loss. This exclusion applies even if he or she repaid the prior loss. It applies if you forgave or did not report the prior loss. It may apply if the prior loss was at another state agency where your employee used to work and you did not know about it. If you acted reasonably and in good faith, we *will* cover losses that occurred before, but were discovered after, the state discovered and verified a loss.
- E. Unreturned money or property at separation from employment.** We do not cover unreturned money or property that you assigned to a staff member's exclusive possession and control. We will waive this exclusion if you show you made timely and reasonable efforts to recover it prior to the end of employment.
- F. Loss of the money or private property of your staff, visitors, guests, or clients.** This policy covers only the loss of state assets. It does not cover loss of money or property of any employee, volunteer, visitor, guest, or client of the state. If the state is liable, our liability self insurance applies, not this employee dishonesty coverage. This exclusion does not apply to money or private property held in the custody and control of the state, acting as a lawful trustee or bailee.
- G. Loss covered by other bond.** If any commercial surety bond applies to a loss that this self-insurance would pay, the surety bond is the primary coverage.
- H. Mismanagement or unfaithful performance.** We cover only dishonest acts of your staff. However, from time to time, we may hold an applicable surety bond that provides assurance of faithful performance of some or all of your staff.

WARNING!

Most commercial or excess bonds contain similar exclusions. Take care that you do not forfeit any commercial coverage through your action or inaction upon learning of a suspected loss.

In the event of any large, excluded loss, please discuss coverage with us promptly and before finally concluding that the loss is not covered.

VI. LIMITS

- A.** Property losses will be valued in accord with our Property Self-Insurance Policy Manual.
- B.** Payments will be made under the terms of this Employee Dishonesty Policy Manual for losses up to \$250,000.
- C.** Payments will be made under the terms of any commercial excess, blanket fidelity, or faithful performance bond we may carry for losses in the amount we recover from the

surety. Amounts of coverage vary and are subject to change at any time without notice to you.

VII. CONDITIONS OF COVERAGE

- A. You must immediately report any and all losses you discover from apparent fraudulent or dishonest acts by your officers, employees, or agents to us and the Secretary of State Audits Division. Immediately report any situation that may result in loss. Do not wait until the full extent of the loss is verified. We will report all covered losses to our surety. Talk to us before responding to media requests.
- B. You must report any and all losses within 90 days after you discover it. Late reporting may forfeit any commercial bond coverage as well as this self-insurance coverage.
- C. You may not forgive, release, or promise not to prosecute any staff alleged to have caused a loss.
- D. You must preserve and furnish to us and the Audits Division all evidence of loss and of fraud or dishonesty.
- E. For cash and securities losses to be covered, you must meet the conditions for our optional coverage of money and securities in our Property Self-Insurance Policy Manual.

Note: Failure to comply with the above conditions may expose a state officer, employee, or agent to personal liability.

VIII. DEDUCTIBLES

One deductible applies to each loss as follows:

- A. \$5,000 for employee dishonesty. If you had a loss control or fiscal management program in place prior to the loss which, if followed, would have minimized the loss, we will reduce the deductible to \$500.
- B. \$250,000 for unfaithful performance. This may change without notice if the terms of our surety insurance for this peril changes.

IX. RIGHT OF RECOVERY

When a loss is paid by or through us, we become the owner of any rights you may have for recovery of the loss or costs from any party. We will determine and administer any recovery actions, including any civil actions against the wrongdoer. We may assign these rights to any commercial bond surety. Any actual recovery will reduce losses used in fixing your future billings for coverage.

X. PREMIUMS

Your losses, paid directly out of the Insurance Fund under this policy manual, are part of the property losses used to fix your property risk assessments. Losses paid by an excess or blanket bond surety indirectly affect the total state cost of insurance by impacting the excess premiums we must pay.

XI. REPORTING A SUSPECTED OR POSSIBLE LOSS

Timely reporting is critical. See the conditions for coverage. Do not delay.

Phone: (503) 373-RISK. Voice mail after hours.

FAX: (503) 373-7337

State E-mail: Risk Management.

Internet: risk.management@state.or.us.

If you report a claim to us by voice mail, FAX, or computer mail, we *will* reply. If you do not receive a reply, we did not receive your report. We will notify Audits Division and Department of Justice if you have not already done so.

XII. DISTRIBUTION

This policy manual and any revisions are sent to Risk Coordinators. You should make this policy available to all managers and employees whose work involves the risk of dishonesty losses. Feel free to make copies and distribute them. However, be sure to also distribute any revisions or amendments.

History: Replaces policy dated April 8, 1991.

Amended November 1, 1996.

Effective on claims filed on or after July 1, 1996.

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