

Insurance Guidance

Insurance provides financial cover for risks that cannot be reasonably eliminated or foreseen. Every insurance policy should be purchased using information gained from a risk assessment. This will ensure that all significant risks have been identified and controlled effectively, so that the policy will provide cost-effective cover for the residual risk. This guidance note is intended to cover the main points of workplace insurance needs, and is not exhaustive.

Insurance cover is complementary to the objectives of health-and-safety management, whose aim is to prevent work-related injury and ill health. Insurance aims to protect the financial interests of the employer, and insurance costs are largely driven by claims history of the sector in which you are operating.

It is important that all health-and-safety duties are fulfilled by an employer, for example, to ensure the health, safety and welfare of all those in and around the workplace by providing safe access and egress, adequate safety warnings, information and training, etc to ensure continued protection of the insurance policy. It should be noted that a breach of health-and-safety law is a criminal offence, and as a result, no insurance policy will cover the financial consequences of a criminal act. In such cases insurers may sue the business to reclaim monies paid out against a claim, if a prosecution is secured.

Employers' Liability Insurance

Employers' liability insurance is a requirement of the 'Employers Liability (Compulsory Insurance) Act 1969', and its subordinate regulations. The policy should be clearly displayed in for all employees to read, but since 1st October 2008 it can be displayed electronically. Those choosing this method must ensure their employees know how to access it.

Employers must provide cover against claims that may be made by an employee for accidents or ill health that may occur at, or because of, work. Casual and part-time workers are included in this, and in practice, it means that all limited liability companies must have employers' liability insurance, even where only one person works in the business. Regulations made in 1998 set out the details for compliance.

The insurance does not provide cover for the accident or ill-health – only claims made by employees as a result of these. As claims for some diseases and accidents can be made years after leaving work, expired policy documents should be kept and securely stored. It was a requirement for employers to keep their liability insurance policy documents for at least 40 years, but this law was changed on 1st October 2008. Although there is now no law requiring employers to keep out of date certificates, they are strongly advised to keep a complete record as far as possible. Even when a policy is in place, the cover is dependent on the employer making full disclosure to the insurance company as to the hazards and risks involved. The level of insurance premium involved will assume that all legal health and safety requirements are actively in place, and effectively recorded.

Under the law in Great Britain you do not need employers' liability insurance to cover any of your employees who are based abroad (e.g. if they are on secondment). However, you should check

whether the law in the country where they are based requires you to take out insurance or take any other measures to protect your employees.

If any of your employees are normally based abroad but spend more than 14 days continuously in Great Britain, or more than seven days on an offshore installation, under the law in Great Britain you will need employers' liability insurance for them.

You are only required by law to have employers' liability insurance for people who you employ under a contract. The contract can be spoken, written or implied, but what matters is the real nature of your relationship with the people who work for you and the nature and degree of control that you have over the work they do.

You may need employers' liability insurance for someone who works for you if:

- you deduct national insurance and income tax from their pay;
- you have the right to control where and when they work and how they do it;
- you supply their work materials and equipment;
- you have a right to any profit your workers make although you may choose to share this with them through commission, performance pay or shares in the company;
- you require that person only to deliver the service and they cannot employ a substitute if they are unable to do the work; or
- they're treated in the same way as other employees, for example, they do the same work under the same conditions as someone else you employ.

You may not need employers' liability insurance for people who work for you if:

- they do not work exclusively for you (for example, if they operate as an independent contractor);
- they supply most of the equipment and materials they need to do the job;
- they are clearly in business for their own personal benefit;
- they can employ a substitute when they are unable to do the work themselves;
- you do not deduct income tax or national insurance. However, even if someone is self-employed for tax purposes they may be classed as an employee for other reasons and you may still need employers' liability insurance to cover them.

Certain organisations are exempt from the employers' liability insurance requirement, these are:

- most public organisations: government departments, local authorities, police authorities and nationalised industries
- health services: NHS trusts, health authorities, family health services, etc
- organisations financed through public funds: passenger transport, magistrates courts, committees
- family businesses where all employees are closely-related (this does not apply if the business is incorporated as a limited company)
- incorporated businesses where the main shareholder (i.e., owner) is the sole employee.

A recent HSE-commissioned survey indicated that ~10,000 eligible employers do not have employers' liability insurance cover – a noticeable proportion of the total of 1.2 million employers who should have such insurance. Those organisations paying employees in cash are most likely not to have employers' liability insurance. The most usual reason for not having insurance was that cover had been refused, and increased difficulty in renewing cover was reported among all sectors of the UK economy. HSE Workplace Contact Officers are now empowered to enforce certain aspects of the 'Employers Liability (Compulsory Insurance) Act 1969'.

Amount of Cover

Since January 1999, there is a legal requirement to be insured for at least £5 million. As the cover includes *any* losses to the business as the result of a claim from an employee, it may be necessary to purchase extra cover above this minimum. Most insurers offer cover of up to £10m in their standard terms. The penalty for not being insured is a fine of £1,000 per day, if the lack of cover is due to the neglect of a company officer or director. Fines can be levied for not displaying the insurance certificate, not having a copy available for inspection by a regulator, or for obstructing an inspector attempting to examine the certificate.

An oddity about the 1969 Act is that failure to take out insurance, while a criminal offence, does not mean the employer's managers or directors can be sued to recover damages in the event of an accident or ill-health. There is no personal liability under the Act.

Public Liability Insurance

This insurance provides cover for accidental loss, injury or damage to people (individual persons or businesses) not directly employed by your business. It is often bundled with buildings and employers' liability insurance.

Public liability insurance is not compulsory, but it is strongly recommended and is often a condition of membership of trade associations or professional organisations. It is important that the policy provides sufficient cover against any likely claim, up to a fixed sum per incident. Many larger organisations will not tender work contracts to employers unless they have evidence of adequate (minimum, say £10m) public liability insurance.

Public liability insurance provides cover for:

- loss of production of another business, as a result of an accident by a member of your staff visiting their premises
- accidental damage to plant, machinery or property not belonging to the employer
- claims by members of the public injured on or about your premises
- legal fees, including representation at a Coroner's Court, fatal accident inquiry or other court hearing.

Contractors working on your premises should be effectively supervised, and it is wise to ensure that they are both competent, and have appropriate public liability insurance cover before appointing them (see: *Gwilliam v West Hertfordshire NHS Trust* and *Bottomley v Todmorden Cricket Club*).

Shop premises are especially prone to accidents involving members of the public, who subsequently (and frequently) lodge accident claims. Be careful to make accurate records of such accidents, whether or not it is in your favour. Appropriate disclaimer, warning notices or safety instructions should be clearly displayed, although you cannot disclaim against challenges made as a result of death due to gross negligence.

Professional Indemnity Insurance

People may choose to take out this type of insurance to cover them, in the event that they make a mistake whilst carrying out the service they have been contracted to do. This is not compulsory (except for certain regulated businesses such as solicitors), but firms providing a specialist service are often advised to invest in such a policy should there be an allegation of professional negligence. The amount of cover needed will vary according to the type of work involved.

References

Employers Liability (Compulsory Insurance) Act 1969 as amended