

Employers' liability insurance

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A brief introduction to employers' liability insurance.

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Overview

All businesses have a legal duty to protect the safety of their employees at work. Those who fail to do so will be legally obliged to pay compensation if an employee is injured, or becomes ill, as a result of their negligence. This could happen, for example, if an employee injures their hand whilst using a piece of unguarded machinery. Businesses are responsible not only for their own acts of negligence, but also for those of their employees. This is termed vicarious liability.

Compensation could include financial recompense for any expenses incurred, loss of earnings, possible loss of future earnings, pain and suffering, and perhaps other items. In addition, even if the business owner was not the cause of alleged injury or illness, the costs and expenses incurred in taking legal advice and defending an action in court can be substantial.

Employers' liability insurance is there to make sure the money will be available to deal with such claims. It is one of the few types of insurance which is compulsory by law in the UK.

Compulsory insurance requirements were first laid down in the Employers' Liability (Compulsory Insurance) Act 1969 and have since been updated by the Employers' Liability (Compulsory Insurance) Regulations 1998. All employers, with certain limited exceptions, must be insured against liability for bodily injury or disease sustained by their employees arising out of and in the course of their employment in the business. This must be under an approved policy with an authorised insurer. The cover provided must be for a minimum of £5 million in respect of all claims arising out of any one occurrence.

In addition, employers must display, at each place of business, a certificate of insurance to demonstrate that the employer has the required insurance. The Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008 allow for a certificate to be made available electronically, perhaps through an intranet site, provided all employees have access to it.

Only a very few businesses are not legally required to have Employers' Liability Insurance; for example, those who have no employees; family business where all employees are closely related to the business owner; and most public organisations including government departments, local authorities, police forces and nationalised industries.

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Typical cover provided

An employers' liability policy provides cover for any sum which the employer may be legally liable to pay to any employees in respect of injury, disease, illness or death caused during employment in the business of the insured. Key words, such as 'employee' and 'business', are defined in the policy.

The term employee is widely defined as 'any person who is under a contract of service or apprenticeship' with the insured. It can therefore include not only direct employees but also self-employed persons, hired persons and students on work experience.

The injury or illness must have been caused in connection with the trade or business stated in the policy wording. However, it is usual to extend cover to include any ancillary activities of the insured; for example, first-aid facilities, canteens, private fire brigade and ambulance services and any private work carried out for any director, partner or employee of the company.

Cover also includes:

- the claimant's costs and expenses associated with a claim
- any legal costs incurred by the insured in defending a claim with the insurer's consent. This includes representation at any hearing for breach of statutory duty, such as Health and Safety legislation
- any director, partner or employee of the insured for any action brought against them, in their personal capacity, for which the insured would be entitled to indemnity under the policy.

There is no cover for liability for loss of, or damage to, an employee's property. This would instead be dealt with under the employer's public liability policy.

Cover is subject to a limit of indemnity; usually £10 million. Employers' liability cover for acts of terrorism is limited to £5m, this being the minimum amount of cover which is compulsory.

Cover only applies where bodily injury is sustained within the territorial limits stated in the policy, which are usually:

- Great Britain, Northern Ireland, the Isle of Man or the Channel Islands
- anywhere in the world in connection with commercial visits by employees, provided that such employees are normally resident in the countries noted above.

The injury or illness must have been caused during the period of insurance. Some diseases, such as lung diseases and deafness, may not become apparent until some years after the employees was exposed to the unsafe conditions. Any claim must be made against the insurer that was 'on risk' at the time the injury or illness was caused. It is immaterial that the policy may have subsequently expired. For gradually developing diseases, such as asbestosis, the insurers that covered the employers' liability risk over the development period must share the cost of any claim, according to the length of time that they were on cover.

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Optional extensions

As an Employers' Liability policy is designed to meet compulsory insurance requirements, cover is typically written on an inclusive basis, rather than offering optional extensions.

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Key exclusions

As Employers' Liability insurance is compulsory, policy exclusions are not permitted.

However, cover may be limited by an insurer as part of the underwriting process by applying clauses which:

- restrict the definition of the 'business';
- exclude certain kinds of work;
- exclude certain machines and/or processes.

This allows insurers to exclude, for example, off shore work and nuclear risks.

In addition, the policy wording will exclude liability for injury to employees whilst travelling in (or getting into or out of) a vehicle, whilst being used on a road. This is because the Motor Vehicles (Compulsory Insurance) Regulations 1992 require cover for such risks to be provided under the employer's motor policy.

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Rating factors

Most Employers' Liability policies are rated on wages, split between different types of jobs. A higher rate would apply to manual jobs, such as builders, than to clerical staff such as administrators.

The premium is usually based on estimated figures at the beginning of the period of insurance and is then adjusted on actual figures at the end of the period.

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Product providers

There are very few separate Employers' Liability policies issued. It is more common to issue combined liability policies which include employers', public and products liabilities within one policy document.

Most composite insurers, as well as a number of specialist insurers and Lloyd's syndicates, offer employers', public and products liability cover. Cover is often arranged through an insurance intermediary, although small businesses can purchase cover by telephone or on line as part of a commercial package policy.

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