



Solutions for a safer workplace

ARE YOU AT RISK?

Not having adequate contractual liability protection can increase your insurance expenses as well as your exposure to loss. Greater exposure to loss can result in higher insurance premiums to offset that potential for loss. And, quite importantly, contractual liability claims have the potential to threaten the viability of your business.

Most businesses have some degree of exposure to contractual liability claims. For instance, your business may be at risk in all of the following examples: leasing a building; operating a wholesale or retail store, motel, restaurant, or manufacturing facility; hiring a contractor to perform equipment maintenance or repairs, remodel a building or add an addition; or having a vendor or salesperson visit your property.

Contractual Liability Protection Costs

It is relatively easy to implement optimal contractual liability controls. All you need to do is check that your subcontractors are purchasing the types of insurance that your contracts require and that the limits of coverage meet those requirements.

Contractual Liability Protection Benefits

- Reduces exposure to loss for your organization
- Minimizes defense costs
- Controls insurance liability exposures
- Provides peace of mind

CHECKLIST FOR CONTROLLING CONTRACTUAL LIABILITY CLAIMS

To protect your organization:

- Have a written contract with each subcontractor or tenant. The contract or lease should include a "hold-harmless and indemnification agreement" in your favor. The contract or lease should also specify minimum liability coverage limits that the subcontractor or tenant must maintain.
- Require that subcontractors or lessees name you as an "Additional Insured" on their policies. Require that "Additional Insured" coverage be primary and non-contributory and that their policies include full Comprehensive General Liability for Premises/Ongoing Operations and Products/Completed Operations.
- Obtain a Certificate of Insurance. It should be provided to you by each contractor or lessee prior to the start of work by the subcontractor or the commencement of a lease term. The certificate should list you as an "Additional Insured" on both general liability and umbrella liability policies.

WRITTEN/SIGNED CONTRACTS

Written and signed contracts confirm the responsibilities of those with whom you are dealing.

Work performed or hazards created by others can result in property damage or bodily injury to another employee, another contractor, or the general public. Depending upon the state(s) in which you are conducting business, when your contracts include a "hold-harmless defense and indemnification agreement" you or your business may be entitled to protection from having to satisfy a claim. This occurs because contracts with appropriate provisions, which satisfy your state's laws, transfer the risk to the contracted parties.

"ADDITIONAL INSURED" STATUS

Are you listed as an "Additional Insured" for ongoing and completed operations on the liability policies of those with whom you do business? "Additional Insured" status provides:

- The benefits of insurance in the event your hold-harmless agreement is determined not to be enforceable;
- The potential for additional limits added to your policy's limits; and
- Possible protection from subrogation claims made by those who named you as an "Additional Insured."

CERTIFICATES OF INSURANCE

Certificates of Insurance verify that those with whom you deal have insurance coverage. It may also provide you with information that indicates whether you are listed as an "Additional Insured" under someone else's policy.

AMOUNTS OF INSURANCE

Your contracts with others should require they maintain adequate limits equal to your own, and in no case less than the following limits:

General Liability

- Minimum \$1,000,000 each occurrence/
\$2,000,000 aggregate

Auto Liability

- Minimum \$1,000,000 each accident

Employers Liability Coverage (Part 2 of Workers' Compensation Policy)

- Minimum \$100,000 each accident
- Minimum \$100,000 each employee for injury or disease
- Minimum \$500,000 aggregate for injury or disease



EXAMPLES OF CONTRACTUAL LIABILITY CLAIMS

Construction

An employee of a drywall subcontractor was moving a rolling scaffold while still on the unit. The scaffold wheel hit some construction debris left on the floor by the subcontractor. The employee fell off the scaffold and was seriously injured. After his workers' compensation carrier paid for his medical expenses, the employee sued the general contractor, alleging that the general contractor was negligent because it had "not maintained a safe worksite." He sought \$300,000 in damages for loss of consortium and pain and suffering. The contractor had a written contract with the subcontractor that included hold-harmless language and an indemnification clause. Based upon the wording of the contract and applicable state law, the contractor was successful in holding the subcontractor responsible for satisfying his employee's claims.

Renovation

A building owner operated a restaurant on his property. He hired a contractor to renovate the restaurant and add an addition onto the building. During this project, one of the contractor's employees fell off a ladder.

There was no written contract or hold-harmless agreement in place between the building owner and the contractor. Additionally, the building owner was not listed as an "Additional Insured" on the contractor's general liability or umbrella policies. Because the contractor and restaurant owner were friends, their deal was consummated with a handshake.

The injured employee filed suit against the restaurant owner, alleging that because he had directed some of the work, he was acting as a general contractor and had the responsibility for maintaining a safe worksite.

The claim was in excess of \$1,000,000. The building owner had to face the suit without the benefit of the protection which may have been available had there been a written contract with appropriate indemnity, "hold harmless" language, and insurance provisions.

Leased Property

A customer parked in a no-parking zone at an auto parts store. While getting out of the car, the individual stepped into a pothole and twisted an ankle. The incident resulted in a torn tendon and required surgery.

The auto parts executive (tenant) signed a lease containing a hold-harmless agreement, assuming responsibility for the inspection and maintenance of the property. The tenant's insurance carrier settled the claim for \$200,000. The landlord was absolved of any responsibility and incurred no loss.



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