



Insurance Information

Insurance

A promise of compensation for specific potential future losses in exchange for a periodic payment. Insurance is designed to protect the financial well-being of an individual, company or other entity in the case of unexpected loss. Some forms of insurance are required by law, while others are optional. Agreeing to the terms of an insurance policy creates a contract between the insured and the insurer. In exchange for payments from the insured (called premiums), the insurer agrees to pay the policy holder a sum of money upon the occurrence of a specific event. In most cases, the policy holder pays part of the loss (called the deductible), and the insurer pays the rest.

Liability Insurance

Insurance covering the insured against losses arising from INJURY or DAMAGE to another PERSON or PROPERTY; insurance against loss resulting from civil liability for injury or damage to the persons or property of others.

Liability insurance is a broad term that covers legal claims against the insured. Many types of insurance include an aspect of liability coverage. For example, a homeowner's insurance policy will normally include liability coverage which protects the insured in the event a claim is brought by someone who falls on the property. Automobile insurance also includes an aspect of liability insurance that indemnifies against the harm that a crashing car can cause to others' lives, health, or property.

The protection offered by a liability insurance policy is twofold:

1. A legal defense in the event of a lawsuit against the policy holder; and
2. Indemnification (payment on behalf of the insured) with respect to a settlement or court verdict. Liability policies typically cover only the negligence of the insured, and will not apply to results of willful or intentional acts by the insured.

There are 2 main types of liability insurance for a company:

1. General Liability
2. Professional Liability

General Liability Insurance

Liability insurance, also called Commercial General Liability (CGL) or Comprehensive General Liability, covers four categories of events for which you could be held responsible.

1. Bodily injury
2. Damage to others' property
3. Personal injury, including slander and libel
4. False or misleading advertising.

Examples related to Childproofing:

1. Scratched floor
2. Flooded area due to drilling into a pipe
3. Damage to patio or hitting electric line
4. Bodily injury due to gate or product

CGL coverage pays for the injured party's medical expenses. It **excludes** your employees, who are covered by workers' compensation. Even trespassers can sue you if they fall and get hurt on your business premises.

There are three types of legal damages people may sue you for that are typically covered by a CGL policy:

1. **Compensatory damages:** financial losses suffered by the injured party and future losses they may suffer resulting from an injury they claim in the lawsuit.
2. **General damages:** non-monetary losses suffered by the injured party, such as "pain and suffering" or "mental anguish."
3. **Punitive damages:** additional penalties and charges the defendant must pay.

Standard liability insurance does not protect a business against:

1. *Claims from sexual harassment, wrongful termination of employees, failure to employ or promote, or race and gender lawsuits.* These and other employee-related claims are covered by employment practices liability coverage. The cost of employment practices liability coverage depends on a business' number of employees, whether there is a history of the company having been sued in the past, and other business risk factors. The policy also pays for legal costs associated with a company's defense of a lawsuit related to employment practices.
2. *Claims related to operating an automobile or truck.* If you own vehicles for your business, whether for deliveries or client consultations, you will need separate commercial automobile coverage to protect you and your employees against liability claims resulting from car accidents. Automobile liability insurance is required by most states. It covers medical expenses and damages to another person's property as a result of a motor vehicle accident caused by the insured's negligence. Some states mandate "no fault" auto insurance, which provides

coverage for medical expenses, rehabilitation, funeral expenses, lost wages and in-home assistance to the driver and his or her passengers, regardless of who is held at fault in an accident. Many policies offer or include uninsured or underinsured motorist protection, which provides coverage for the insured and his or her passengers if they are injured in a collision caused by an uninsured or underinsured motorist. **If your vehicle is primarily used for business, make sure your company's name is on the policy instead of your personal name to avoid complications later should you need to file a claim.**

3. *Other exclusions as defined in your policy.* Examples of exclusions in IAFCS policy: Babysitting; Babysitting Referrals, Home Improvement, Construction, manufacturing of child safety products. It is best to discuss your coverage with your insurance agent so that you understand possible exclusions. All services that you offer should be discussed with the insurance agent to insure coverage.

4. *Professional Liability Losses*

Professional Liability Insurance

Also known as Errors and Omissions insurance, professional liability insurance is critical to your business. Professional Liability insurance is coverage for wrongful practices by professional service providers. It protects professionals against claims arising from their actual or perceived negligence, errors, and mistakes in the performance of service for others. This type of insurance covers faulty service (errors) or failure to provide a service (omission). Professional Liability insurance provides protection against claims that the policyholder becomes legally obligated to pay as a result of an error or omission in his professional work.

Commercial general liability does NOT provide coverage for errors or any other Professional Liability issues, including attorney's fees to cover professional liability issues. Professional liability coverage is not provided under homeowners endorsements, in-home business policies or business owners policies.

Professional liability insurance, also called professional indemnity insurance, protects insured professionals against potential negligence claims made by their clients. Professional liability insurance may take on different names depending on the profession. For example, professional liability insurance in reference to the medical profession may be called malpractice insurance. Malpractice insurance is a specific type of professional liability policy that protects physicians and other licensed professionals from liability associated with bodily injury, medical expenses, property damage, and the cost of defending lawsuits related to such claims. Professional liability pays damages (up to a stated limit) in negligence related cases of professionals.

Simply stated, it insures a person and/or an entity (corporation, LLC, LLP, partnership, etc.) against claims made by third parties (clients, patients, customers, etc.), alleging negligence in the rendering of, or the failure to render, professional services.

Exactly what constitutes "negligence" is often a bit ambiguous, but can be loosely defined as the failure to provide the degree of knowledge, care or skill of the average professional peer, in good standing, under similar circumstances. **Essentially, anyone or any company that holds themselves out as experts in a particular field can be held responsible for their work, their advice, their counsel.** Just about anyone who claims to be an expert in whatever field, and is compensated for their expertise, can be held liable in the event that things don't turn out as they should.

Examples related to Professional Liability coverage:

- 1) A child is burned and the client claims that you did not properly discuss fireplace gates or locks or burn safety during the home evaluation.
- 2) A child falls from the window and the client claims you did not explain the risk of window falls well.
- 3) Missing a hazard in a home.
- 4) Gate installed against manufacturer's instructions.

Professionals are expected to have technical knowledge or training in their particular area of expertise. They are also expected to perform the services for which they were hired, according to the standards of conduct in their profession. If they fail to use the degree of skill expected of them, they can be held responsible in a court of law for any harm they cause to another person or business. When liability is limited to acts of negligence, professional liability insurance may be called "errors and omissions" liability.

Corporations/LLCs

A common misconception is that all one needs to do in order to avoid liability is to establish a corporation, limited liability company ("LLC"), or other type of limited liability entity, so that should a claim be made all one supposedly has to do is to "bankrupt" the entity and just walk away. Most professional liability claims are based upon a personal service. While the contract (written or not) may have been made with a corporation or LLC, the actual work or advice is provided by a person, whether a member or shareholder of the entity, or an employee. Thus, this type of claim generally names both the entity and the individual(s) involved.

Attorney's Fees

One of the key issues to consider when deciding upon professional liability insurance coverage is that of defense. Even if we assumed that you or your company would *never* make an "error" or "omission," you cannot ignore the fact that anyone can allege virtually anything - and drag you into court. Even if it turns out that you have done nothing wrong, you could still be faced with *thousands of dollars* in defense costs.

Attorney's fees for the IAFCS policy are provided outside the limits. This means that attorney's fees are not part of the maximum coverage for general or professional liability. If you participate in another insurance plan, it is best to understand if your defense costs are provided within limits or outside limits

Indemnification

The technical definition of indemnity means to make whole again. There are two types of insurance contracts; an "indemnity" policy and a "pay on behalf" policy. An "indemnity" policy will never pay claims until the insured has paid out of pocket to some third party. For example, a visitor to your home slips on a floor that you left wet and sues you for \$10,000 and wins. Under an "indemnity" policy the homeowner would have to come up with the \$10,000 to pay for the visitor's fall and then would be "indemnified" by the insurance carrier for the out of pocket cost of \$10,000. Under the same situation, a "pay on behalf" policy, the insurance carrier would pay the claim to the claimant and the insured would not be out of pocket for anything (the insured owes the deductible to the insurance company). Most liability insurance is written on the basis of "pay on behalf" (the IAFCs insurance policy is this type).

Completed Operations

Completed Operations provides coverage for a contractor's liability for injuries or property damage suffered by third parties as the result of the contractor completing an operation (after an operation is completed). The contractor must take reasonable care in rendering a project safe and free from all reasonable hazards. It does not apply to damage to the completed work itself (example: the gate that was installed).

An operation is completed (a) when all operations under the contract have been completed or abandoned; or (b) when all operations at one project site are completed; or (c) when the portion of the work out of which the injury or damage arises has been put to its intended use by the person or organization for whom that portion of the work was done.

The CGL insuring agreement promises to pay *only* if bodily or property damage *occurs during the policy period*. If your policy provides completed operations coverage as part of your CGL policy, the injury needs to occur while you still carry insurance for you to be covered. If a claim occurs 2 months *after your terminate coverage, you will not have completed operations coverage*. Put another way, products-completed operations coverage does not *extend* the policy period—the policy *must* be in effect when the bodily injury or property damage occurs. It does not matter that, or even if, a CGL policy was in effect when the insured designed, built, or sold the product/service

The supplemental extended reporting period (SERP) or "tail" that is sometimes offered as the solution to a coverage gap will not work. The SERP or tail is not available on an occurrence CGL policy. Second, even if it was available, or if the insured had purchased a claims-made CGL policy and purchased the SERP, the SERP does not apply to bodily injury or property damage that *occurs during the tail or reporting period*. As the name suggests, the SERP only extends the CGL policy to include claims made against an insured during the extended reporting period that result from bodily injury or property damage *that took place when the policy was in effect*.

Aggregate Limit

When total claims exceed a given annual aggregate limit of liability, the policy limits are said to be exhausted and no more claims for that year will be paid under the policy.

Other Insurance

There are other types of insurance that you will need to consider.

1. Health Insurance
2. Automobile Insurance
3. Life Insurance
4. Disability Insurance
5. Property Insurance (such as tools in your vehicle; some may be covered under your automobile policy subject to deductible and limits; it could be excluded for business)
6. Worker's Compensation Insurance.
Worker's Compensation is mandatory in all states except Texas. The majority of states will classify independent contractors (1099 employees) as employees and therefore require worker's compensation for them.

Workers' compensation insurance protects a business owner from claims by employees who suffer a work-related injury or illness. In all states, most companies are required to carry workers' compensation insurance for their employees. Typically, workers' compensation covers the employee's medical expenses, rehabilitation costs and missed wages. You will need a separate policy for this type of coverage. Check with your state insurance department for specific requirements in your area.

According to the Small Business Administration, business owners, independent contractors, domestic employees in private homes, farm workers and unpaid volunteers are usually exempt from workers' compensation eligibility. If this is the first time you're purchasing workers' compensation insurance, the rate will depend on your payroll and your industry. After a few years, your premiums may be based on the actual experience of your company.

7. Umbrella liability policy
This provides extra protection above a standard policy. Umbrella policy coverage limits are typically within the \$1 million to \$5 million range and are appropriate for business owners who have large assets or may be especially vulnerable to lawsuits. An umbrella policy is currently not available for the IAFCS group policy.
8. Crime Insurance
It protects businesses from theft and malicious damage, such as employee embezzlement.
9. E-insurance or Internet Business Insurance
This type of insurance covers web-based businesses for damages caused by computer hackers and viruses.

Pricing

Liability insurance premiums are typically based on a business' sales and payroll estimates provided *prior* to policy inception. If the actual amounts turn out to be higher after the policy has been issued, you may need to pay an incremental premium. As with other liability insurance policies, premiums for professional liability coverage depend on the type of professional service being provided and its level of risk.

Group insurance

Insurance purchased by a group of persons, such as the employees of a company, often at a reduced individual rate. The aggregate is shared by all participants in the policy. For example, if the policy's aggregate is \$1 million dollars; the policy pays \$1 million that year; it will not pay additional amounts that year.

Certificate of Insurance

A Certificate of Insurance can be issued by your insurance agent to provide proof of insurance coverage. It can list an additional insured (such as a condo owner) along with your policy limits. Some organizations and condos require a Certificate of Insurance to do work. There is usually a fee to issue a Certificate of Insurance.

About the IAFCS policy

- \$500 deductible (per occurrence basis)
- Rate: \$6 per \$1000 gross sales per insured, minimum premium of \$1000 per insured applies subject to a policy minimum (plus tax).
- Employment-related practices exclusion
- Lead exclusion
- Mold, Mildew and Fungus exclusion
- All claims, occurrences, incidents, lawsuits should be reported immediately
- General Aggregate Limit: \$2,000,000 (Each Occurrence Limit: \$1,000,000)
- \$1,000,000 Completed Operations Aggregate
- Personal and Advertising Injury Limit: \$1,000,000
- The insurance company selects defense counsel and decides on how the claim will be resolved (settled, etc.).
- If you need to take time away from your practice or your business for depositions, trial, etc., you will not be compensated for your lost income.

For detailed information about coverage, please contact the IAFCS insurance agent and/or review your policy.

The above document was reviewed for the IAFCS by Carolyn Gilbert, Scarbrough Medlin & Associates, Plano, TX. 1-800-929-2446; Fax: 214-423-3350