

YOUR Business

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Labor law disrupts insurance market for contractors



Insurance companies are not only raising rates for contractors and eliminating coverage vital to their financial well-being, but they are also withdrawing altogether from writing liability insurance for contractors. Why? The precipitating cause is the recent decline in profits that is generally plaguing the insurance industry. However, in New York, the problem is aggravated by certain sections of the labor law that inordinately favor injured workers.

Employees of a contractor hired by another contractor or the owner of the property where work is performed will receive **workers' compensation benefits** when injured on the job. This includes payment for unlimited medical expenses, lost income (up to a maximum of \$400 per week), rehabilitation expenses, funeral expenses, death benefits to the surviving family members, as well as other types of scheduled benefits. In exchange for providing these defined benefits without regard to fault, the employer is relieved from tort liability; meaning, the employee cannot sue the employer for such damages as pain and suffering or additional economic loss.

While an employee cannot directly sue his employer, the employee *can* sue the general contractor or the owner of the property. To succeed in court, these defendants would in some degree need to be negligent in causing the employee's injury—in all states but New York. Under court interpretations of New York's Labor Law sections 240 and 241, the owner and general contractor can be held liable in the absence of any negligence on their part. They are absolutely liable even if they did not control or supervise the work, or even if the injury was solely caused by the employee's own actions. The bottom line: The employee is guaranteed to win in court! The only question is how much the jury can be convinced to award as damages.

Our agency believes this law permits the enrichment of injured employees at the expense of innocent defendants and tends to frustrate the exclusive remedy of workers' compensation. While negatively impacting the construction industry, the law discourages economic development in New York, which will ultimately affect us all. Consequently, our agency, along with insurance and contractor associations, supports reformation of the law from an absolute liability basis to a negligence basis. We believe this would be fair and it will offer stability to the construction industry. Let your legislator know how you feel today.

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How are you using certificates of insurance?

Often in the usual course of business, cities, counties, large organizations and risk managers require that businesses produce a **certificate of insurance** that attempts to create an obligation not contained in the actual insurance policy. Commonly, the organization will request that it be added to the business' policy as an additional insured or be notified a chosen number of days in advance should the policy be canceled.

If this happens to you as the insured, you may request any provisions that your certificate holder requires. If your insurance company agrees, then an appropriate endorsement to your policy can be drafted to include the agreed language.

Certificates of insurance **only provide information** to an interested third party that insurance is in force at the time of issuance. **Certificates cannot be used to amend, expand or otherwise alter the terms of the actual policy.** Think of a certificate as a snapshot of your coverage at that moment. It cannot be used to change your coverage.

If you have any questions about certificates of insurance and what they can and can't do, call our agency. We'll be happy to explain.

Traveling for work? Don't forget insurance coverage

As you plan for your next business trip, don't forget to **take insurance coverage along** with you. If you take multiple business trips for your employer throughout the year, it's a wise idea to evaluate what's protected.

Review your health insurance policy to see how well you're covered while away from home. **Personal health insurance** usually travels with you. But we'll help you answer any specific questions on this.

Renting a car? When you drive a rented car for business use in the United States or Canada, don't assume your personal auto insurance policy will cover you for both liability and collision. Some policies cover collision for only a limited time, and do not cover all obligations assumed in the rental agreement. Check to see if your business policy will cover employees renting cars.

Consider what personal items you value. Items like clothing and baggage are typically covered under homeowners or renters insurance. Your laptop or personal computer, however, may not be. In the event your business bought it for you, you'll need special insurance. Electronic data processing coverage, for example, insures all your computer equipment on the road, at home and in the office.

As always, call our agency if you have coverage questions before your trip. And have a great time.



Lawsuits—a threat to any business

Sexual harassment. Emotional distress. Discrimination. Wrongful termination. Invasion of privacy. Employers increasingly face the threat of lawsuits in today's business environment. The reality is, any legal action, whether well-founded or frivolous, threatens the financial welfare of your business.

Don't rely on your general liability policies for employment-related claims. General liability policies are not designed to cover specific discrimination or breach of contract claims, and other exclusions may also apply. For example, most GL policies exclude wrongful discharge and discrimination claims brought by past, present or prospective employees.

EPLI, or **employment practices liability insurance**, is a specialized protection that provides coverage for employers, directors and officers for suits by employees. Coverage and cost varies given the type and size of operation, and the account's employment practices. Location also has a distinct impact on coverage because part of the employer's liability is determined under state law.

Safeguard your business against the very real possibility of employee claims. Call our office today to find an EPLI policy that works for you.



Employee benefits— more than money

If you have employees, then **salaries, wages and benefits** are a large part of your monthly expenses. You want to make sure you are getting the most productivity for your money. While most employees are productive when their pay is tied to their performance, you may run into situations where this is not the case. When it comes to employee retention, big companies can throw money at the problem. Chances are, you can't. Consider some of these alternatives.

- **Give flexibility.** For some employees, flexible schedules can be a valued perk. Offer four-day workweeks, with 10-hour days. Or allow commuters to work from home when possible.
- **Offer employees a casual dress code.** Ask that your employees wear clothing that is clean, untorn and free of offensive slogans or graphics.
- **Share the perks of your business.** Is there an aspect of your business that you could turn into an inexpensive employee benefit? For example, one music-related apparel and accessories store reimburses employees for tickets to music concerts.
- **Do fun stuff.** CEOs and employees alike need ways to blow off steam. Take your staff to a baseball game or on a picnic. Some companies offer travel, such as a cruise to the Bahamas, to salespeople or even the entire staff if sales or profit goals are met.
- **Feed employees' bodies.** Provide monthly in-house luncheons for the company, or bring in dinner when your staff is working late.
- **Offer advancement opportunities.** One of the best incentives for ambitious people is opportunity. Provide a well-defined career track, with specific criteria for raises and advancement.
- **Pat people on the back.** Few perks are cheaper, easier or more effective than recognition.

Call us first if you have any questions about your insurance coverage.

Violence in the workplace: A growing concern

That could never happen here at our company! Or could it?

Workplace violence and drug abuse is plaguing American businesses, both large and small. Approximately 1 million workplace crimes are reported each year, and experts say that another 1 million crimes are left unreported. Many of these incidents are directly related to employee drug abuse. As a result, employers are starting **workplace substance abuse programs** that include the following five components: 1. a written substance abuse policy that details prohibited substance abuse-related behaviors and the consequences of violating policy; 2. training for supervisors so roles in implementing the policy are understood; 3. education for employees on the dangers and impacts of substance abuse at work; 4. employee assistance; and 5. drug and alcohol testing.

Employers should also take preventative measures against violence such as limiting access to the workplace, improving lighting and visibility, training employees and installing security.

Many factors may trigger violent actions—layoffs, disciplinary actions, firings or pay cuts—and, in some cases, workplace violence accompanies domestic violence. This is why it is extremely important for all companies to take preventative measures against workplace violence.

Conduct **background checks** on new hires to determine if the person has been involved in a workplace attack or displays violent or unreasonable tendencies. Implement **crisis training** to help employees resolve conflicts peacefully and prevent incidents of workplace violence. Conduct **exit interviews** to give fired employees an opportunity to express their feelings. Establish realistic **disciplinary programs** for employees who assault or threaten other employees—and stick to them! Finally, **don't ignore threats** against your business or an employee.

Proper precautions and informative safety policies will help reduce losses and make for a healthier workplace.

Call us today to review your current procedures and coverages—we're here to help.



Keep premiums down; help stop fraud

Industry estimates reveal insurers paid out more than \$110 billion in **phony insurance claims** in the 1990s. These scams lead to increased premiums for the typical consumer—an average of \$200 each year.

Fraudulent claims range from staged accidents and premeditated conspiracies to padding values of damaged property or staying home a few extra days from a work-related injury.

Anti-fraud measures taken by legislators, regulators and industry coalitions are increasing, and penalties are getting tougher. But, it's up to all of us to stop insurance fraud. Take an active role in reporting any suspicious or fraudulent activities you know of, and you may save your bottom line. If you suspect fraud, call New York State's Insurance Department at (888) FRAUD-NY.



How much do you 'value' your property?

When it comes to your building property, we recommend **insuring up to 100 percent of its value**. That way you avoid coinsurance penalties, and you have an adequate limit for the worst case scenario. But having made the assumption that buildings will be insured to their full value, the next question is this:

What do we mean by *value*? Are we talking about the property's replacement cost, actual cash value, functional replacement cost, book value or market value? Here's a primer:

- **Replacement cost** is the value at the time of loss, using comparable materials of the same quality to replace the damaged property with no deduction for depreciation. A commercial policyholder usually must specifically request this valuation basis for insuring buildings.
- **Actual cash value** is normally the default basis for insuring buildings. One way to define actual cash value is replacement cost less depreciation, where depreciation may mean obsolescence as well as actual physical depreciation.
- **Functional replacement cost** is the cost to replace a building with a functionally equivalent building rather than an identical building. This valuation basis permits a policyholder to take advantage of the lower premiums that are charged to insure a functional equivalent, without the extras deemed unnecessary to the policyholder's operations at that premises.
- **Book value** is an accounting value having no relevance to insurance values. Often, book values are distorted by accelerated depreciation under Internal Revenue Service rules.
- **Market value** rarely is a factor when setting insurance limits, unless it is reduced by the value of the land it sits upon, and the resulting value is used to help determine the actual cash value.

Which valuation basis is best for your building(s)? Give us a call; we can talk about it.



Is my home-based business covered under my homeowners policy?

Many **small business owners** assume their homeowners policies will provide adequate protection. The fact is homeowners policies simply weren't designed to cover the business use of the home.

Most homeowners policies have a \$2,500 on-premises limit for business property. A typical home-based business might easily have several thousand dollars of equipment or inventory. It is also important to remember that no coverage is provided for lawsuits resulting from your business under your homeowners policy.

What would happen to your in-home business if a disaster destroyed your billing records and other important files? Or if you were faced with a legal liability such as a client injuring himself in your home?

Home-based business owners should have **coverage for liability, business interruption, accounts receivable and valuable papers**. These business exposures can be covered in a variety of ways.

Give us a call. We can discuss the kind of coverage that will best safeguard your business.