

# MANAGEMENT LIABILITY INSURANCE: **EVERYTHING YOU NEED TO KNOW**

Legal actions may be brought against companies and individuals for a variety of reasons, ranging from allegations of financial mismanagement to alleged liability for injury/illness or for loss of or property damage. Therefore, board engagement with Management Liability insurance is critical to protect your



## In this guide we'll cover:

1. **Management Liability insurance**
2. **Employment Practices Liability insurance**
3. **Frequently asked questions, including:**
  - Why you need Corporate Legal Liability insurance, in addition to Management Liability insurance
  - Why Employment Practices Liability cover is important
  - What a wrongful act is, plus examples
  - Whether Directors and Officers (D&O) Liability insurance is a Legal Requirement
  - If D&O insurance benefits business directors, who pays
  - What you're liable for if you're named in a claim and don't have D&O insurance
  - Whether you still need D&O if your business ceases trading
  - Who is covered under a Management Liability insurance policy
  - The most common claims under the policy
  - Exclusions under the policy

**We've also included a risk management checklist for Directors and Officers.**

## What is Management Liability insurance?

Management Liability insurance is a suite of covers designed to offer costs and awards for you, your fellow Directors and Officers and your company for wrongful acts you have, or are alleged to have, committed.

There are three sections to this suite of covers:

- Directors and Officers Liability insurance (D&O)
- Employment Practices Liability insurance
- Corporate Legal Liability insurance

You must understand the differences between these different types of covers to ensure that you get the appropriate support for your business.

## What is D&O insurance?

Directors and Officers (D&O) insurance protects the Directors and Officers of a company from claims against them for wrongful acts committed solely because they act as a Director or Officer of a company.

**This is the core pillar of Management Liability insurance.**

## What is Employment Practices Liability insurance?

Employment Practices Liability (EPL) insurance protects your company against financial loss from claims made by employees for a wide range of employment practice violations, including unfair dismissal or discrimination on grounds of sex, race, disability, religion, belief, or sexual orientation.

**EPL is an optional and complementary element of ML.**

## What is Corporate Legal Liability insurance?

Corporate Legal Liability (CLL) insurance is like D&O but provides indemnity regarding costs and awards for any allegations/claims made against the company (entity) as opposed to individuals.

**CLL is an optional but highly advised area of ML.**

## MANAGEMENT LIABILITY INSURANCE: KEY ANSWERS TO KEY QUESTIONS

### Why would you need CLL insurance in addition to Management Liability insurance?

CLL insurance is essential for your businesses, irrespective of how big it is, or which industry you're in. In today's complex and litigious business environment, companies face a multitude of legal risks that can result in costly lawsuits and regulatory penalties.

CLL insurance provides you with a crucial safety net by covering legal expenses, settlements, and judgments related to a wide range of liabilities, including contractual disputes, employment issues, regulatory compliance, and even allegations of wrongful acts by corporate officers and directors.

Without this protection, you run the risk of financial damages and harm to your reputation. However, investing in Corporate Legal Liability insurance will help you protect their bottom line, provide your business with continuity, and provide the peace of mind you need to focus on your core operations while navigating the intricate legal landscape.

### Why is EPL insurance important?

Your company is more likely to be taken to employment tribunal than suffer from a fire, EPL coverage is indispensable in today's workforce-centric world.

With UK government statistics revealing 18,000 Employment Tribunals in 2022/23 alone<sup>1</sup>, Employment Practises Liability insurance is essential for safeguarding your company from the growing number of employment-related claims. These include widespread claims, which can encompass allegations such as:

- Wrongful termination
- Discrimination
- Harassment
- Wage disputes

Such assertions can be disruptive, time-consuming, and financially draining, irrespective of whether they prove to be true, or not.

EPL insurance steps in to provide essential protection by covering the costs associated with legal defence, settlements, and judgments, thus shielding a business's financial stability and reputation. With the right EPL coverage, your company can confidently navigate the complexities of labour laws and employee relations, promoting a safe and fair workplace environment while mitigating the risks that employment-related disputes pose to their bottom line.

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<sup>1</sup>Tribunal Statistics Quarterly: July to September 2022 - GOV.UK ([www.gov.uk](http://www.gov.uk))

## What is a 'Wrongful Act'?

A wrongful act, in a legal context, refers to a behaviour or action that is considered unlawful, unethical, or in violation of someone's rights, and it can lead to legal consequences, such as civil liability or criminal charges. Wrongful acts can encompass a wide range of actions, including but not limited to:

### **Negligence**

Failing to exercise the level of care and caution that a reasonable person would in a similar situation which results in harm to another party.

### **Intentional Torts**

Deliberate actions meant to harm or infringe upon the rights of another person, such as assault, defamation, or invasion of privacy.

### **Breach of Contract**

Failing to fulfil the terms and conditions of a legally binding agreement, which can result in a breach of contract claim.

### **Discrimination**

Treating individuals unfairly or differently based on certain protected characteristics, such as race, gender, age, religion, or disability, which can lead to discrimination claims.

### **Harassment**

Engaging in unwelcome and offensive conduct or communication that creates a hostile or intimidating environment for another person.

### **Misrepresentation**

Providing false or misleading information, whether intentionally or negligently, which can lead to fraud or misrepresentation claims.

### **Professional Malpractice**

Negligence or misconduct by professionals, such as doctors, lawyers, or accountants, in the course of their professional duties.

### **Corporate Mismanagement**

Actions or decisions by corporate officers and directors that harm the interests of the company or its shareholders.

The exact definition of a wrongful act can vary depending on the specific legal context and the applicable laws and regulations.

In many cases, insurance policies, like D&O insurance or EPL insurance, provide coverage for legal defence and damages associated with wrongful acts by individuals or entities in certain roles or situations.

Anyone can make an allegation of a wrongful act for any number of reasons and Management Liability cover will defend you if you have not acted fraudulently or committed a criminal offence.

## Is D&O insurance a Legal requirement?

D&O insurance is not a legal requirement in most jurisdictions. It is typically considered optional coverage for businesses and non-profit organisations.

However, while you are not legally required to have it, D&O insurance is highly recommended and often considered essential for many companies and organisations, especially those with a board of Directors or Officers. Here are some reasons why D&O insurance is strongly recommended:

### **Protection for Directors and Officers**

D&O insurance provides financial protection for individuals serving as Directors and Officers, as well as the organisation itself, in case they are personally sued for alleged wrongful acts in the course of their managerial duties.

### **Recruitment and retention**

Knowing that there is liability protection in place can make it easier for you to attract and retain qualified individuals to serve on their boards or as officers. Without such protection, individuals may be reluctant to take on these roles due to personal liability concerns.

### **Risk mitigation**

D&O insurance helps mitigate the financial risks associated with legal claims and lawsuits related to corporate decisions and actions. This can help protect the personal assets of Directors and Officers.

### **Investor and stakeholder confidence**

Having D&O insurance can inspire confidence among investors, shareholders, and other stakeholders that your company is taking steps to manage potential liability risks and protect the interests of its leadership.

### **Legal and regulatory scrutiny**

In today's business environment, Directors and Officers can face legal and regulatory scrutiny for a wide range of issues, including corporate governance, financial disclosures, and compliance with laws and regulations. D&O insurance can help you cover the costs of legal defence and potential settlements or judgments.

While D&O insurance is not a legal requirement, it is an important risk management tool for companies and organisations of all sizes, particularly those with publicly traded stock or those that deal with substantial financial transactions.

The specific needs and coverage requirements can vary based on the organisation's structure, industry, and individual circumstances, so it's advisable to consult with an insurance professional to determine the appropriate level of coverage.

## If you're personally named in a claim and don't have D&O insurance, what are you liable for?

Without D&O insurance then the defendant may be legally obligated to pay the legal costs from their personal assets, even if they are found innocent of the complaint.

The exact cost of these expenses will vary depending on the nature and circumstances of the allegation, the complexity of the case, the volume of documents, number of witnesses and the level of damages sought.

However, even a 'simple' court case will require the employment of at least a Solicitor to defend the case. The costs associated with defending tribunal claims are generally, but not limited to the following:

### **Legal fees**

A solicitor or barrister, or both, are needed to help prepare and present their defence. Most tribunal claims can be complex, so employers will typically need suitable legal representation to stand any chance of successfully defending a claim.

### **Damages**

If a claim is successful, the tribunal has the power to make a number of different orders, including an order for damages.

### **Time**

Collating relevant documentation and liaising with legal advisors, as well as time taken out of the business for staff to give evidence at a hearing, or for a suitable representative of the business to be available to make decisions about the conduct of the defence add to the cost of legal fees.

## Do you still need D&O insurance if your business ceases trading?

Maintaining D&O insurance after your business ceases trading protects prior decisions and action against possible future claims. This is known as a 'run-off period', and while your risk diminishes as time passes, it is recommended that a robust run-off cover is in place for this reason.

For example, claims can manifest even years after a business ceases trading, the most common of which are personal injury claims, where injuries present themselves years after the event. Claims can also arise from insolvency disputes, and from unsatisfied creditors.

If the company in question does not provide an individual with D&O insurance that includes the run-off period, an individual can arrange personal cover to protect themselves.



## Who is covered under a Management Liability insurance policy?

A Management Liability insurance policy typically provides coverage for individuals and entities in leadership or management positions within a company, whether that's in the past, present, or future.

The specific individuals and entities covered can vary depending on the type of Management Liability insurance and the policy's terms and conditions, but the following are common categories of coverage:

### **D&O**

D&O insurance typically covers directors and officers of a company, including members of the board of directors and senior executives, against claims alleging wrongful acts in the course of their managerial duties. This can include claims related to corporate mismanagement, breach of fiduciary duty, and decisions that negatively impact the company or its shareholders.

### **The management team**

In addition to directors and officers, Management Liability insurance may extend coverage to other key members of the management team, such as vice presidents, general managers, and other senior executives, who may also face claims related to their management decisions and actions.

### **The company itself**

The entity (the company) may also be covered under certain aspects of a Management Liability policy, particularly in cases of corporate liability, securities claims, or regulatory investigations. This coverage can help protect the company's assets and financial stability.

### **EPL insurance**

EPL is often included within a Management Liability policy and covers the company and its management team against claims related to employment practices, including allegations of discrimination, harassment, wrongful termination, and wage and hour violations. This coverage extends to the company and its management team, as they can be named in such claims.

### **Outside directors**

If a company has outside directors who are not involved in the day-to-day management of the organisation such as non-executive and shadow directors, they may be covered under a D&O policy too.

It's important to note that the specific coverage and individuals/entities covered can vary significantly from one Management Liability insurance policy to another. The terms, limits, and exclusions of the policy will dictate the extent of coverage. Companies should carefully review their policy and work with their insurance provider or broker to tailor coverage to their specific needs.

Additionally, individuals who are engaged as non-exec/advisory/shadow directors for other organisations should ensure that organisation has Management Liability.

## What is the most common type of claim under the policy?

Whilst claims can be brought by anyone, the most common claims relate to allegations of Employment Law failings, such as:

- Bullying - 29% of the UK workforce has experienced workplace bullying<sup>2</sup>
- Harassment - Almost three in five women (58%) have experienced harassment at work<sup>3</sup>
- Discrimination - One in five (22%) people have faced discrimination in the workplace<sup>4</sup>
- Failure to promote/recruit

## Are there any exclusions under the policy?

There are instances when Management Liability insurance may exclude coverage for certain situations or events. The specific exclusions can vary from one policy to another, but here are some common instances and scenarios that may be excluded from a Management Liability insurance policy:

### Intentional wrongdoing

Many Management Liability policies exclude coverage for intentional acts or wrongdoing by insured individuals. This means that if a director or officer intentionally engages in fraudulent or criminal activities, the policy may not provide coverage.

### Prior acts

Some policies have a retroactive date, also known as a 'prior acts' date. Claims related to wrongful acts that occurred before this date may not be covered.

### Insured vs. insured exclusion

This exclusion typically prevents one insured party from suing another insured party under the same policy. It's designed to prevent collusion or fraudulent claims between insiders of the organisation.

### Bodily injury and property damage

Management Liability Insurance generally does not cover bodily injury or property damage claims. These types of claims are typically covered under a separate general liability insurance policy.

### Contractual liabilities

Specific contracts and liabilities assumed by the insured may be excluded from coverage. This is because contract-related disputes are typically covered by other types of insurance, such as Commercial General liability or Professional Liability insurance.

### Punitive damages

Some policies may exclude coverage for punitive or exemplary damages, intended to punish the wrongdoer rather than compensate the claimant.

### Employers' Liability claims

Claims related to workplace injuries and workers' compensation are typically excluded, as they are covered under Employers' Liability insurance.

### Employment disputes outside of EPL coverage

While EPL coverage is included in some Management Liability policies, claims that fall outside the scope of EPL coverage may not be covered. For example, wage and hour disputes or Employee Retirement Income Security Act (ERISA) claims may be excluded.

It's crucial for businesses to carefully review their Management Liability insurance policy to understand the specific exclusions and limitations. If necessary, they can work with their insurance provider or broker to tailor coverage to their unique needs and consider additional policies to address any gaps in coverage.

<sup>2</sup> <https://www.agencycentral.co.uk/articles/does-the-uk-have-a-workplace-bullying-problem/>

<sup>3</sup> Sexual Harassment In The Workplace In 2023 Is Still A Huge Problem | Glamour UK ([glamourmagazine.co.uk](http://glamourmagazine.co.uk))

<sup>4</sup> [https://www.peoplemanagement.co.uk/article/1832813/one-five-uk-adults-faced-workplace-discrimination-international-survey-finds#:~:text=One%20in%20five%20UK%20adults%20has%20faced%20workplace%20discrimination%2C%20international%20survey%20finds,-Experts%20urge%20HR&text=One%20in%20five%20\(22%20per,a%20new%20study%20has%20found](https://www.peoplemanagement.co.uk/article/1832813/one-five-uk-adults-faced-workplace-discrimination-international-survey-finds#:~:text=One%20in%20five%20UK%20adults%20has%20faced%20workplace%20discrimination%2C%20international%20survey%20finds,-Experts%20urge%20HR&text=One%20in%20five%20(22%20per,a%20new%20study%20has%20found)

# A RISK MANAGEMENT CHECKLIST FOR DIRECTORS AND OFFICERS

Our specialist team have drafted the following guidance to protect yourself as a director/officer:

- Educate yourself on the risks that drive litigation and regulatory actions
- Invite subject experts to board meetings to discuss emerging risks
- Draw on the expertise of insurers and learn from D&O claims trends
- Reduce risk by developing robust governance and a strong culture
- Encourage diversity of knowledge and experience at the board level
- Carry out due diligence on business partners for corruption, ethics, and cyber risks
- Do not be afraid to question and challenge the conduct of others
- Take red flags seriously and act on them

## CONTACT US

For more information on how you can protect yourself and your fellow Directors and Officers within your organisation, please get in touch.

[Contact us](#)

If you are unsure of what the appropriate cover might be for your business or situation, our team of specialists is available to carry out a confidential review of your risk.

[Request a confidential review](#)

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