

Risk Monitor



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Umbrella Coverage: Protect Your Exposed Assets

There's no doubt that we live in a litigious society. Jury awards continue to bankrupt individuals and many small companies. Some trial lawyers constantly search for deep pockets, and reach far and wide for defendants. Underwriters continue to be amazed to find seemingly unconnected insureds "invited to the dance."



The most common protection for a business, or for an individual of means, to use against a crippling judgment, is an umbrella policy. Umbrellas provide high limits of liability, usually with a small (\$10,000 is typical-and this is sometimes waived) self-insured retention, above those offered by primary Commer-

cial General Liability and Auto Liability policies. Umbrellas may also provide coverage for certain losses not covered by primary policies. Professional exposures such as Directors and Officers Liability or Errors and Omissions coverage, are excluded from "conventional" umbrella policies. High limits for those risks are available from specialty markets.

How do you know how much umbrella coverage is enough? While the question is best answered by information you'll collect from your accountant, attorney and insurance agent, many company underwriters recommend buying limits of two to two-and-a-half times the value of your exposed assets. Exposed assets are those that would not be exempt from liens or judgments, and a list of specific items may well be different for every insured. For example, the deed to a wealthy individual's primary residence might be in a foundation, blind trust or some other instrument that's out of reach, but the vacation home, boat, stock portfolio, etc., might be exposed.

If that individual's liquid net worth is \$2,000,000, a \$4M to \$5M umbrella might be adequate. There is some science, and some art, to making a decision on limits. If you or your client is "luminous," you might consider the exaggeration that will likely occur should you or that client be found at the defendant's table. A few years ago, a very successful professional tennis player, at the zenith of a stellar career, carried \$50M in umbrella limits. The player, unmarried and with no dependants to support, had five homes, nine cars, and significant other assets. That player attracted a lot of notoriety off the court as well, and while celebrities are often the targets of frivolous lawsuits, our tort system can find that the same injury to an innocent party is worth more if it was caused by an individual of means.

A business, especially one with stockholders,

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**1ST
INSURANCE**
Protection and Security Since 1921



Experience Modification Ratings Do Not Have to Adversely Affect You

If you are an employer who has received an experience modification rating, it is imperative that you understand how it affects your workers' compensation premium calculations to make your rating work in your favor.

Workers' compensation coverage is known as a class rated insurance program. That means that an insurance company gives all employers within a state who fall into a given industry or class the same rate. This is an average rate which doesn't take into consideration any individual characteristics of the employer. Since policy premiums are affected by the individual factors surrounding the business, carriers need a statistical method of differentiating one business in a given class from another. This is what an experience rating offers.

The experience modification rating is calculated individually for each employer who qualifies. In order to qualify, you would need to pay a premium in excess of \$10,000 or a 3-year average premium of \$5,000, depending on the state. The modification rating is a value that compares the claim profile of the employer to the claim profile that would be expected of an employer of similar payroll size in the same industry or class code. In this system, 1.00 is average, meaning the frequency and severity of the actual employer's losses is equal to what the carrier would expect the employer to lose. A rating greater than 1.00 means the employer has experienced worse than expected losses during the rating period, and a rating of less than 1.00 indicates the employer experienced better than expected losses for the rating period.

An employer's experience modification rating is calculated using claims data from the three most recently completed years.

The modification rating is a value that compares the claim profile of the employer to the claim profile that would be expected of an employer of similar payroll size in the same industry or class code.

The current calendar year would be excluded because it would not give a full picture of the year's losses.

Each claim's paid and reserved value is listed. Then the frequency of claims is evaluated. An organization with only one large claim will be looked on more favorably than a second one with numerous smaller claims even if both companies' losses are of equal dollar value. Since the second company is more prone to claims, for any claim over the highest dollar value claim, only a fraction of the amount in excess of that dollar value is used in the calculation. Also, in some states only a percent of the medical only claims are used in the formula. These adjusted claims are compared to the expected losses for the industry class and payroll size of the organization, and an experience modification rating is given to the individual employer. A rating that is less than 1.00 will reduce the company's premium, while a rating that is greater than 1.00 will increase it.

Obviously, a company will want to find ways to lower their rating. One method a company shouldn't try is to manipulate class codes when they are obtaining a policy in an effort to get the most payroll into the lowest rated class. This may actually raise the experience modification rating in the long run.

Because the rating is calculated from a comparison of actual losses versus expected losses, allocating payroll to less risky classifications will also put you in line for expected losses that are far lower than what you realistically experience. This increases the likelihood that your actual losses will be greater than expected for the classification, leading to a higher rating in the future. The best way to decrease your rating is to make safety a priority, which will eliminate losses and save you money in the long run.

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has to answer the "adequate" question from an entirely different perspective. Not only do physical properties, product inventories, valuable research, good will, cash, bonds, etc., have to be fully protected, the company's value to stockholders must also be covered by adequate liability limits. A stock certificate is owners' equity, and a successful class action suit or an uninsured product recall campaign, could prove catastrophic to its value. Imagine the aggregate costs if, say, a bug in a Microsoft product fried the motherboard in all those millions of computers that run its software. Imagine the cost if, say, a hole in the AOL gateway gave someone with malicious intent a free ride through all the data on the PCs of their some 30,000,000

subscribers. And high tech isn't the only vulnerable industry—what if Dial soap suddenly made all our hair fall out? Or what if Minute Maid (owned by Coca Cola) Orange Juice made us break out in hives? The immediate and consequential dollar losses stagger the imagination.

Finally, the right number for an umbrella or excess limit is one you, your accountant, attorney and insurance agent and carrier(s) are comfortable with. Remember that in some cases, plaintiff's counsel has the right to know how much insurance coverage there is to pay a given claim. Don't buy so much that you make yourself a target. Get the best advice you can, and buy limits that make sense and that you can afford.



Risky Business: Why You Need Employment Practices Liability Insurance

Running a company can be a risky business. According to the Department of Labor, the amount workers received from employers due to discrimination claims rose nearly 78% between 2001 and 2006. A total of more than \$51 million dollars was awarded to employees who pursued claims in federal court.

You may have seen news stories about huge jury awards in workplace discrimination claims. It happens every day, and every business is vulnerable. Here are just a few examples:

- Thirteen current or former computer company employees claimed employment discrimination on the basis of race and national origin. Employees claimed they were treated unequally and subjected to a hostile work environment. Amount of settlement: \$635,000 (salary increases, enhanced promotional activities).
- Eight employees filed a class action suit alleging sex discrimination by their employer in the handling of wages, promotions, pregnancy leaves and other conditions of employment. Amount of settlement: \$600,000 (plus \$5 million in legal fees).
- A senior regional attorney sued a securities dealer claiming age discrimination and retaliation. He claimed he was unfairly terminated for advice he gave to a co-worker regarding his employment rights. Amount of verdict: \$443,000.

All businesses are at risk from issues related to employment practices. It can come up during hiring situations if you don't hire someone who then assumes you were discriminating. It can happen if you terminate an employee who then decides he or she was treated unfairly. Employment-related lawsuits are filed every single day, and up to half of all businesses will face a lawsuit at some point. Is your business prepared?

How can you protect your business?

As an employer, you do everything you can to treat your employees fairly. However, you can be held liable for the actions of your other employees or even vendors and customers. And with new employment-related regulations being added to the books frequently, it can be difficult to understand exactly what you are expected to do.

It's important to make sure you remain in compliance with laws governing treatment of employees. But there's an added layer of protection you can obtain: employment practices liability insurance, or EPLI.

What EPLI covers

Employment practices liability insurance can protect your business against claims made by potential hires, employees currently on your payroll and terminated employees. With a good EPLI policy, your company is protected against claims of:

- Wrongful termination
- Employment-related emotional distress and invasion of privacy
- Defamation
- Retaliatory/constructive discharge
- Sexual harassment and discrimination
- Workplace torts such as slander

EPLI coverage generally includes the cost to defend against the charges plus any damages you are ordered to pay. Depending on your business needs, it might make sense to purchase EPLI coverage as part of your company officers' liability insurance since company officials can be named in lawsuits against the business.



Learn more about EPLI

Your business insurance agent can answer your questions about EPLI and recommend the coverage that is right for you. Your agent can also discuss how employment-related lawsuits can affect your business by assessing the risk typically associated with your industry.

Remember, employment-related claims can affect businesses of all types. Even if you are just starting out, you could be the subject of a discrimination suit if someone you interview but fail to hire feels that he or she was treated unfairly. And even if you do everything right and comply with all federal, state and local regulations, you can still be held liable for the actions of your employees, vendors or customers. EPLI can provide much-needed protection—and welcome peace of mind.

Liability Insurance: Hired and Non-Owned Auto Policies Provide Necessary Coverage

Non-owned auto coverage and hired auto coverage both provide coverage for you and your business in the event an employee is involved in an accident while working on your clock. But the similarities stop here. These different policies offer very different types of coverage, and it is important to understand each to ensure you find the policy that is right for you.

On one hand, non-owned auto coverage protects your company if sued as a result of an auto accident that you or one of your employees has in a personal vehicle while on company business. On the other hand, hired auto coverage provides your business with liability insurance for vehicles that you rent on a short-term basis for business purposes.

These coverage options should be considered if your company rents cars or vans for business purposes (including travel to conferences, visiting clients, etc.) or if employees use their personal vehicles to run company errands.

Hired auto liability will pay for damages to a third party if you or one of your employees causes an accident or injury to someone while driving a rented vehicle for business purposes. For instance, if you rent a vehicle to drive employees to a conference or to visit a client and cause an accident during the trip, the person you hit will undoubtedly look to your company to pay for damages. Without

this coverage, your company will have no insurance for the rented vehicle.

The same applies if you have an employee run an errand or visit a client in his or her personal car. If the employee causes an accident, the injured party will look to your company to pay damages since the employee was using the car on company business.

Both of these coverages are usually added to a general liability policy. When there are no vehicles titled in the company name, this additional coverage will serve to meet the contract requirement for commercial auto coverage in most states.

Hired auto coverage replaces or augments the liability coverage offered by auto rental agencies. However, the vehicle must be rented in the company's name. This does not replace the physical damage coverage that applies to damage caused to the vehicle rented by your company.

Non-owned auto coverage protects your company in the event it is sued as a result of an employee accident, but it will not protect you or your employee personally. Only your personal auto insurance policy can do that.



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