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# Professional Insurance

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## 401(k) Lawsuits

Can an employee sue his/her employer for the poor or negligent administration of the firm's 401(k) plan? The answer is yes, according to the U.S. Supreme Court.

In 2008, the high court set a standard that adds employers to the list of potential sources of recovery for employees who claim administrative error, such as the failure to execute a requested change or the commission of an enrollment mistake, is to blame for the underperformance of that person's 401(k). Economic conditions, increases in automatic enrollment and other factors are just starting to expose the potential severity faced by many employers



offering retirement plans.

Employers should know that typical general liability insurance will not cover claims associated with negligence in the administration of a retirement plan.

The good news for employers is that there are insurance policies designed to cover this exposure. Insurance plans differ depending on the level of involvement in the administrative process and what type of plan is being administered.

If your firm provides a 401(k) or other type of retirement plan, you could be at risk. For more information on protecting your firm, call our service team today.

## Prior and Pending Events

"Prior" and "pending" are important terms in your firm's directors and officers (D&O) liability insurance policy. The terms may refer to litigation that began before your existing D&O policy took effect. In some cases, it can also refer to an event that triggers future litigation. For example, some insurance companies may deny coverage for a claim that arises after the policy takes effect if that litigation is based on an event that happened prior to the policy period.

Prior and pending restrictions are serious

considerations when your firm is shopping for D&O insurance. What do the policies say about them, and what exposures do you have that could be affected if one or the other isn't covered? Often, there are ways to close insurance gaps on prior and pending events, but a special endorsement or a different policy might be required.

Our professionals can assist you in finding appropriate D&O coverage for your firm's needs. Please give us a call for the personalized attention you need.

## Who Needs Employment Practices Insurance?



Unemployment continues to hover around 10% nationally, with some industries, such as construction, manufacturing and retail services, reporting even higher figures.

Firms cannot continue to ignore the correlation between high unemployment and employment-related lawsuits. As more workers are left looking for a job, more lawsuits are filed claiming wrongful termination, violation of privacy, age and other forms of discrimination as well as a number of other employment-related claims.

Firms must protect the bottom line if such a suit is filed. The costs of this type of lawsuit can be substantial, even if the firm is ultimately acquitted of any wrongdoing. Typical general liability insurance will not pay to defend a firm from employment-related claims.

Employment practices liability insurance is essential. Policies are available for firms of all sizes, public, private and not-for-profit. For more information on protecting your firm with this important insurance, call our service team today.

## Business Owners Policy and E&O

After careful consideration, you decided a business owners policy is the best insurance solution for your firm. Maybe you liked the fact that the business owners policy packages necessary property and general liability insurance together on a single policy. Or maybe you thought it would best cover your most pressing needs.

While the business owners policy is good at covering your firm's general insurance needs, it's important to remember that it is not all-inclusive. For example, while it will cover many types of general liability claims, most business owners policies will cover very few, if

any, professional liability claims. These are claims for which your firm is legally liable that did not result in bodily injury or physical property damage. Such claims typically arise when a third party has suffered financial harm due to the actions or lack of action taken by someone considered a professional at your firm.

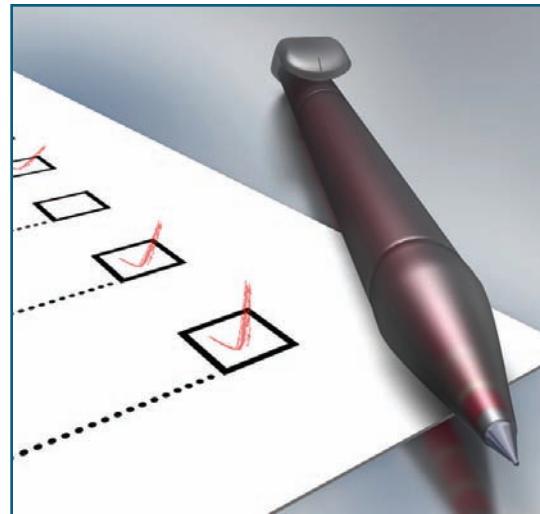
The business owners policy is a good start, but your insurance portfolio is not complete without an evaluation of your firm's professional liability exposure. For more information on your firm's exposure and insurance options designed to address it, call our service team today.

## D&O Checklist

### How much do you really know about your firm's directors and officers (D&O) liability insurance policy?

Consider the following questions designed to help you learn about the reach of your firm's coverage:

- What are the cancellation terms of the policy?
- Does the policy discuss the elimination of coverage for "failure to maintain insurance"?
- What does the policy say about subsidiaries? Is the term defined? Will it cover the actions of executives in a subsidiary?
- Are defense costs paid in excess of the policy limits?
- Does the coverage extend to anyone who is not a director, officer or executive?
- Does the policy discuss "punitive damages"? If so, are they covered in any capacity?
- How does the policy define "loss"?



Most of the answers can be found in your policy, but a thorough reading is needed. We suggest that all directors and officers at your firm understand the company's D&O policy, since they are directly affected by it. If your executives have any questions about the coverage after reading the policy, please contact us. We can help get the answers you need.

# Types of Professional Liability

Professional liability is a comprehensive term often used to describe insurance designed for liability exposures that go beyond traditional general liability insurance coverage. While general liability insurance typically covers claims of bodily injury or property damage, professional liability insurance addresses actions, or the failure to act, that result in financial harm to others.

Examples of common professional liability insurance policies include fiduciary liability, employment practices liability, errors and omissions (E&O), and directors and officers (D&O) insurance. Each policy type (including several not listed above) is designed to address a different and serious exposure. Although most firms have each of these exposures, some do not.

Fiduciary liability insurance covers those who handle money for either the firm or its employees. Mistakes or carelessness on a fiduciary's part can cause financial harm to others—for example,

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in the poor choice or monitoring of a retirement plan.

Employment practices liability insurance covers the firm for claims of discrimination, unjust terminations, unfair

wage and hourly compensation, harassment and other types of inappropriate employment practices. These claims are very common and can be very costly when lawyers and the government get involved.

Directors and officers liability can cover more than just those executives mentioned. It can extend to others in management positions, as well as independent members of your firm's executive, advisory or oversight team. It can even be purchased for retired directors and officers.

For information on other available professional liability insurance that addresses your particular needs, give us a call. We will be happy to look at your exposures and show you options that minimize your risk of loss.

## Culturing Young Employees

How would you describe your firm's young workers? Energetic? Aggressive? Ambitious?

Your young employees have a lot to learn as they merge into your professional culture. Not only do they need to learn good technical and business practices, they also need to be apprised of some routine defensive behaviors. These are actions that are taken at each step of a transaction, consultation or duty that ensure thoroughness and excellence in performance and communication with clients.

It's easy for young employees to miss details or skip steps that seem minor in an effort to meet deadlines. Since they are not yet

high on the learning curve, mistakes are also common. Establish some procedures to help your young employees avoid costly

culture, and consider assigning a veteran mentor for at least the first couple of months.

Additionally, by sharing important terms of your firm's E&O policy with your new recruits in the early stages, you can help them become more aware of the ramifications negligence can cause.

Eliminating errors and omissions is an ongoing effort. Make sure diligence is practiced, and witnessed, by all employees at all times, and emphasize the positive side of catching errors before they affect clients. By doing so, you'll create a culture of cooperation and communication and minimize your professional liability risk.



errors and omissions, and educate them on their role in defending the firm from E&O claims.

Make double-checking procedures part of young employees'



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## Non-Profit D&O Insurance

Less than a quarter of claims filed against the directors and officers of for-profit corporations are from employees. In contrast, over 95% of the claims filed against directors and officers of not-for-profits are from employees.

Unfortunately, strained budgets and an overall lack of awareness to exposure often deter non-profits from purchasing directors and officers (D&O) liability insurance. This insurance is designed to protect those charged with making important decisions on behalf of your organization who face potential consequences if those decisions cause financial detriment to someone.

Potential directors, officers and executives of non-profits are growing savvy in requesting evidence of this coverage before taking on a leadership role and potentially exposing personal assets. Learn more about what's available and what you can offer your leadership team by contacting our professionals. We will be happy to assist you.



## Have we got you covered?

Fill out this form and fax it in.



Or give us a call today.

We'd like to provide you with further information about your business insurance needs and other special coverages. And don't forget your friends! We'd be happy to provide them with the same great service.

Name of someone you'd like us to contact:

Name: \_\_\_\_\_

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

## Professional Insurance

My name: \_\_\_\_\_

E-mail: \_\_\_\_\_

My preferred number: (\_\_\_\_) \_\_\_\_\_

Best time to call: \_\_\_\_\_

### Please call me about:

- Employment practices coverage
- Insuring mergers and acquisitions
- Directors and officers coverage
- Environmental liability coverage
- Professional liability coverage