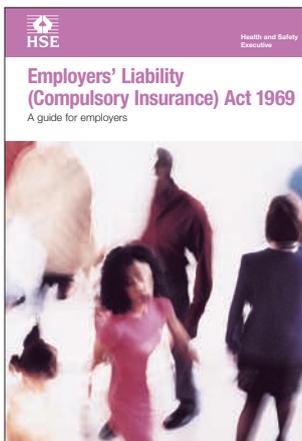


Employers' Liability (Compulsory Insurance) Act 1969

A guide for employers



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Most employers are required by the law to insure against liability for injury or disease to their employees arising out of their employment. This guide is intended to help you to understand what is required. It is not a legal interpretation of the Employers' Liability (Compulsory Insurance) Act and it has no legal status. You should be aware that only the courts can authoritatively interpret the law.

What is employers' liability insurance?

You are responsible for the health and safety of your employees while they are at work. Your employees may be injured at work, or they or your former employees may become ill as a result of their work while in your employment. They might try to claim compensation from you if they believe you are responsible. The Employers' Liability (Compulsory Insurance) Act 1969 ensures that you have at least a minimum level of insurance cover against any such claims.

Employers' liability insurance will enable you to meet the cost of compensation for your employees' injuries or illness whether they are caused on or off site. However, any injuries or illness relating to motor accidents which occur while your employees are working for you, may be covered separately by your motor insurance.

Public liability insurance is different. It covers you for claims made against you by members of the public or other businesses, but not for claims by employees. While public liability insurance is generally voluntary, employers' liability insurance is compulsory. You can be fined if you do not hold a current employers' liability insurance policy which complies with the law.

Do I need employers' liability insurance if my employees work abroad or my company is based abroad?

If any of your employees are normally based in England, Scotland or Wales (including offshore installations or associated structures) you must have employers' liability insurance.

You do not need employers' liability insurance under English law to cover any of your employees who are based abroad (eg if they are on secondment). However, you should check whether the law in the country where they are based requires you to take out insurance or take any other measures to protect your employees.

If any of your employees are normally based abroad but spend more than 14 days continuously in Great Britain, or more than seven days on an offshore installation, you will need employers' liability insurance under English law.

Which insurance companies can sell me employers' liability insurance?

You must use an authorised insurer. If you do not, you may be breaking the law. You should check that your insurer is authorised before you take out employers' liability insurance.

Authorised insurers are individuals or companies working under the terms of the Financial Services and Markets Act 2000. The Financial Services Authority (FSA) maintains a register of authorised insurers. You can check whether a company is authorised by searching their register on www.fsa.gov.uk, or telephoning the FSA on 020 7066 1000.

Can my insurance policy contain conditions?

If you take out employers' liability insurance, you will have an agreement with your insurer about the circumstances in which they will pay compensation. For example, the policy will cover the specific activities that relate to your business.

There are certain conditions which could restrict the amount of money your insurer might have to pay, which you cannot agree and your insurer cannot impose. You should make sure that your contract with your insurer does not contain any of these conditions.

Your insurer cannot refuse to pay compensation purely because:

- you have not provided reasonable protection for your employees against injury or disease;
- you cannot provide certain information to the insurer;
- you have done something they told you not to do (for example, said it was your fault);
- you have not done something they told you to do (for example, report the incident);
- you have not met any legal requirement connected with protection of your employees.

However, this does not mean you can forget about your legal responsibilities to protect the health and safety of your employees. For example, you must carry out a risk assessment, take practical measures to protect your employees and report incidents. If your insurer believes that you have failed to meet your legal responsibilities for the health and safety of your employees and that this has led to the claim, the policy may enable the insurer to sue you to reclaim the cost of the compensation.

Can the insurer make me pay part of any claim for compensation?

Your insurer must pay the full amount of any compensation agreed with your employee or former employee or awarded to them by a court. Your insurer cannot impose conditions which make you, your employee or your former employee pay part of any claim. However, you can agree with your insurer that you will pay back to them part of any compensation which they have paid to your employee or former employee.

How much cover will I need?

You must be insured for at least £5 million. However, you should look carefully at your risks and liabilities and consider whether you need insurance cover of more than £5 million. In practice, most insurers offer cover of at least £10 million.

If your business is part of a group, a policy for employers' liability insurance can be taken out for the group as a whole. In this case, the group as a whole, including subsidiary companies, must have cover of at least £5 million.

You can have more than one policy for employers' liability insurance. However, the total value of the cover provided by the policies must be at least £5 million. You should bear in mind that the £5 million minimum level of cover includes costs, so you may wish to purchase cover of more than this.

Do I need to tell my employees that I have employers' liability insurance?

When you take out or renew a policy, your insurer will give you a Certificate of Employers' Liability Insurance. This must state clearly the minimum level of cover provided and the companies covered by the policy. You must display a copy of the Certificate of Insurance where your employees can easily read it.

If you have employees working in the Isle of Man, Jersey, Guernsey or Northern Ireland as well as in England, Scotland or Wales you can use the same certificate in all locations. However, you must check that this complies with any local requirements as well as English law.

If your employees work on offshore installations or associated structures, you do not need to keep a copy of the certificate on every installation. However, if one of your employees asks to see a copy of the certificate, you must provide one as soon as possible and certainly within ten working days of their request. You can provide a copy by fax if this is easier for you.*

Does the law apply to me?

You need employers' liability insurance unless you are exempt from the Employers' Liability (Compulsory Insurance) Act. The following employers are exempt:

- most public organisations including government departments and agencies, local authorities, police authorities and nationalised industries;
- health service bodies, including National Health Service trusts, health authorities, primary care trusts and Scottish Health Boards;
- some other organisations which are financed through public funds, such as passenger transport executives and magistrates' courts committees;
- family businesses, ie if your employees are closely related to you (as husband, wife, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother or half-sister). However, this exemption does not apply to family businesses which are incorporated as limited companies;
- companies employing only their owner where that employee also owns 50% or more of the issued share capital in the company.

* The requirements described in this paragraph came into force on 1 January 1999.

Further exemptions from the need to have employers' liability insurance are listed at section 3(1)(a) and section 3(1)(b) of the Employers' Liability (Compulsory Insurance) Act 1969, and Schedule 2 to the 1998 Regulations.

Do I need employers' liability insurance for all the people who work for me?

You are only required by law to have employers' liability insurance for people who you employ. However, people who you normally think of as self-employed may be considered as your employees for the purposes of employers' liability insurance.

Whether or not you need employers' liability insurance for someone who works for you depends on the terms of your contract with them. This contract can be spoken, written or implied. It does not matter whether you usually call someone an employee or self-employed or what their tax status is. Whether you choose to call your contract a contract of employment or a contract for services is largely irrelevant. What matters is the real nature of your relationship with the people who work for you and the degree of control you have over the work they do.

There are no hard and fast rules about who counts as your employee for the purposes of employers' liability insurance. The following paragraphs may help give you some indication. However, if you have any doubts you should seek legal advice.

In general, you may need employers' liability insurance for someone who works for you if:

- you deduct national insurance and income tax from the money you pay them;
- you have the right to control where and when they work and how they do it;
- you supply most materials and equipment;
- you have a right to any profit your workers make although you may choose to share this with them through commission, performance pay or shares in the company. Similarly, you will be responsible for any losses;
- you require that person only to deliver the service and they cannot employ a substitute if they are unable to do the work;
- they are treated in the same way as other employees, for example, if they do the same work under the same conditions as someone you employ.

In general, you may not need employers' liability insurance for people who work with you if:

- they do not work exclusively for you (for example, if they operate as an independent contractor);
- they supply most of the equipment and materials they need to do the job;
- they are clearly in business for personal benefit;
- they can employ a substitute when they are unable to do the work themselves;
- you do not deduct income tax or national insurance. However, even if someone is self-employed for tax purposes they may be classed as an employee for other reasons and you may still need employers' liability insurance to cover them.

In most cases you will not need employers' liability insurance for volunteers. Although, in general the law may not require you to have insurance for:

- students who work for you unpaid;
- people who are not employed, but taking part in a youth or adult training programme; or
- a school student on a work experience programme.

It is advisable to inform your insurance company if you take on:

- volunteers;
- students who work for you unpaid;
- people who are not employed but are taking part in youth or adult training programmes; or
- school children on work experience programmes.

You may require insurance cover for any of the above and should bear in mind the level of risk they may be exposed to during the time they are working for you. It may be necessary for you to carry out a separate risk assessment or take special measures for those listed above.

One difficult area is domestic help. In general, you will probably not need employers' liability insurance for people such as cleaners or gardeners if they work for more than one person; nor are you likely to need it if you employ a childminder. However, if you employ someone who works only for you, you may be required to take out insurance to protect them.

Do I need to keep copies of certificates of insurance which are out of date?

You must retain for at least 40 years copies of certificates of insurance which have expired. This is because claims for diseases can be made many years after the disease is caused. You can keep copies electronically if this is more convenient than paper copies. You must make these available to health and safety inspectors on request.

These requirements apply only to policies which were in force on 31 December 1998 or later. However, it is still very important to keep full records of your previous insurance policies for your own protection in case any of your employees make claims relating to injuries or illness caused in the past.

What happens if I do not have employers' liability insurance?

The Health and Safety Executive (HSE) enforces the law on employers' liability insurance and HSE inspectors will check that you have employers' liability insurance with an approved insurer for at least £5 million. They will ask to see your certificate of insurance and other insurance details.

You can be fined up to £2500 for any day which you are without suitable insurance. If you do not display the certificate of insurance or refuse to make it available to HSE inspectors when they ask, you can be fined up to £1000.

Where can I go for further information?

If you want further information and advice about anything in this leaflet you can get in touch with your local HSE office. You can find their address and telephone number under Health and Safety Executive in the telephone directory. Or you can get in touch with the Department for Work and Pensions; contact details for employers' liability insurance issues are at the end of this leaflet.

If you need legal advice, for example, if you are unsure about whether someone is your employee, you can consult a solicitor or go to a legal centre or a Citizens' Advice Bureau.

You can obtain copies of the Insurance Annual Report, Employers' Liability (Compulsory Insurance) Act 1969 (ISBN 0 10 545769 8), the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573 ISBN 0 11 079725 6) and the Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2004 (SI 2004/2882 ISBN 0 11 050068 7) from your local branch of The Stationery Office or from any good bookshop. Or you can order them by telephone from 020 7873 9090 and by fax from 020 7873 8200. The text of the 1998 and 2004 regulations can also be viewed through the Office of Public Sector Information website at: www.opsi.gov.uk/stat.htm.

Further information

DWP

Employers' Liability Compulsory Insurance (ELCI)
Level 2, The Adelphi, 1-11 John Adam Street,
London WC2N 6HT Tel: 020 7712 2745
(9.00 am - 5.00 pm Monday to Friday)
Fax: 020 7962 8524
Email: Employers-Liability-Insurance@dwp.gsi.gov.uk

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For information about health and safety ring HSE's Infoline Tel: 0845 345 0055
Fax: 0845 408 9566 Textphone: 0845 408 9577 e-mail: hse.infoline@natbrit.com
or write to HSE Information Services, Caerphilly Business Park, Caerphilly CF83 3GG.

This leaflet contains notes on good practice which are not compulsory but which you may find helpful in considering what you need to do.

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