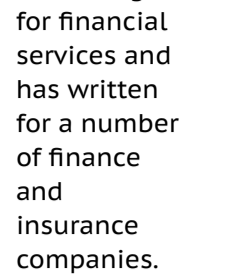


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What Does Professional Liability Insurance Cover?

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By [Jaclyn Moriarty](#) on August 11, 2020

Jaclyn worked in content marketing for financial services and has written for a number of finance and insurance companies. Her expertise is highlighted across [insurance](#) content on Fit Small Business.

This article is part of a larger series on [Professional Liability](#).

Professional liability insurance protects small business owners in claims they made an error or omission while performing professional duties. Generally, this policy covers financial losses due to unintentional acts of negligence rather than liability for bodily injury or property damage. Professional liability policies cover accusations over honest mistakes as well as meritless allegations from customers.

How Professional Liability Insurance Works

Professional liability insurance, also called errors and omissions insurance, covers clients' allegations that you were negligent or your work failed to meet professional standards. Policies cover losses when the policyholder is accused of making mistakes, giving bad advice, acting negligently, or failing to deliver services as promised.

For professional liability, losses are typically financial and may be the result of:

- Judgments awarded to your client
- Settlements between you and the plaintiff
- Your defense costs

The errors and omissions covered by professional liability are often unintentional acts, but small businesses may also face frivolous claims if a customer perceives negligence. An unintentional act may result in an economic loss or mismanaged time for a client. Claims made with no legal basis can be just as lengthy and costly as those with merit.

What Types of Professional Services Are Covered?

What is specifically covered by your professional liability insurance depends on the nature of your services. For example, an engineer needs to cover her design and the structural decisions she makes, while an accountant has to worry about the accuracy of his bookkeeping or tax analysis. Professional liability insurance can cover each of their unique risks because of the language found in the insuring agreement.

Professional Liability Insuring Agreements

As with any policy, the insuring agreement of a professional liability policy outlines what your insurer agrees to cover. It typically summarizes coverage in broad terms, stating your insurer will pay for a loss on your behalf if a client makes a claim over a wrongful act stemming from your professional services.

Most professional liability policies define a wrongful act as any actual or alleged act of negligence, errors, or omissions. Essentially, wrongful acts are the scenarios covered by your professional liability policy. Over time, courts have identified various scenarios that fall under the broad categories of wrongful acts. Five examples are listed below.

1. Errors and Omissions

If you make an error or omission while rendering professional services, it's a type of negligence because you failed to show reasonable care in your actions. As a professional, you have a duty of care, which means you're responsible for avoiding behaviors that could cause your clients' harm. Making mistakes or omitting information may be considered a failure to uphold this duty of care.

For example, if you're an architect and accidentally use the wrong dimensions to calculate square footage on a project. When the client discovers the problem, the design needs to be redone completely, setting back the entire project timeline. Your client can then sue, claiming a professional architect should know how to determine a space's square footage properly.

2. Misrepresentation

Misrepresentation in your professional services can be construed as making promises that you can't keep or exaggerating your abilities.

As an example, you're an electrician who takes full payment upfront for the task of rewiring an entire home. You begin the work by stripping out the old wiring but abandon the job after a few weeks when more projects pile up. Because you already took payment and failed to complete the project, your client sues.

3. Bad Advice

Giving incorrect advice when you should know better or exercise more restraint as a knowledgeable professional can lead to financial loss or bodily harm. These types of statements given to clients can lead to claims.

Say you're an accountant, and tell a client he doesn't have to declare a certain item on his taxes, but then he gets audited and that item should have been declared. As a professional, you should have known better than to make assumptions and could be held liable for failing to do so.

4. Violating Good Faith

A violation of good faith is failing to provide clients with full and factual information so that they can make informed decisions. Because you present yourself as an expert, your clients put their faith in you and your professional services. Withholding or altering information vital to your client's is a violation of that trust.

For example, imagine you're a financial advisor and are required by law to act in your clients' best interests first and foremost. However, you sold your client stocks in a company where you know the CEO without disclosing the relationship. If these stocks lose value, your client may see that as a violation of good faith and sue. All businesses providing professional services should strive to avoid conflicts of interest and disclose all relevant facts to clients.

5. Copyright Infringement and Defamation

Most professional liability policies do not cover allegations of advertising injuries because they are covered by general liability insurance for most businesses. However, if a business faces these risks because of actions central to its operation, such as public relations firms or marketing companies, then professional liability may cover it. Advertising injuries that might be covered by professional liability for some businesses include:

- **Copyright infringement:** Reproducing or distributing copyrighted work without consent
- **Defamation:** Publishing (libel) or making false statements (slander) that cause reputational damage
- **Plagiarism:** Passing off someone else's work as your own
- **Invasion of privacy:** Intruding into someone's personal life without justification

These claims are often considered exclusions under most professional liability policies. Businesses that need coverage for them should ask their insurer about [media liability insurance](#).

What Professional Liability Insurance Does Not Cover

Professional liability insurance does not cover intentional acts of negligence, fraud, or harm. If evidence shows that you intended to mislead or defraud a client, your carrier will deny the claim. Many policies also don't cover gross negligence—acts that demonstrate a reckless disregard for others. It's important to note that some bodily injury and property damage claims may be covered for doctors, architects, engineers, and other professions if the risk is inherent in their operations.

Common Professional Liability Exclusions

Professional liability policies aren't standardized, so each carrier defines its own set of exclusions. While exclusions vary and are often industry-specific, there are some that you find in many carriers' professional liability policies. Below are a few examples:

- Punitive damages
- Dishonest, fraudulent, or criminal acts committed by you or another insured
- Wrongful acts you were aware of before the policy inception date
- Wrongful acts or claims you reported under a previous policy
- Bodily injury or property damage
- Liability assumed under a contract
- Fee disputes
- Profits you have gained illegally
- Failure to maintain insurance
- Discrimination based on race, sex, color, or creed
- Pollution
- Sale or distribution of any goods or products
- Nuclear projects, radiation, or radioactive contamination
- Cost to repair or replace faulty workmanship

Professional Liability vs Errors and Omissions

Professional liability insurance and errors and omissions insurance are essentially the same thing. Tomato, tohmatto—right? Many people use these terms interchangeably, but the name for your coverage may depend on your specific industry. Most professional liability policies are tailored to the specific needs of your particular profession.

For example, businesses in some industries, such as technology companies, need provisions protecting against lawsuits arising from compromised data. Each industry typically has specific clauses in their professional liability policies addressing their own unique needs.

Professional Liability vs General Liability

The [difference between professional liability and general liability](#) is the risks they cover. General liability insurance covers risks that any business might face simply by opening its doors, such as slip-and-fall accidents and property damage involving people who aren't employees.

Meanwhile, professional liability insurance covers risks that are specific to the business owner's profession. When a business owner presents herself as an expert, she is responsible for meeting expectations and behaving professionally. This is the type of risk professional liability covers. Except in certain cases, professional liability covers claims involving financial loss to third parties, not physical harm.

Professional Liability vs Malpractice

[Medical malpractice insurance](#) is a specialized type of professional liability coverage for healthcare professionals and providers, such as physicians, dentists, and nurses. It protects them against patient accusations of negligence and mistakes—this is the one time a professional liability policy may also cover bodily injury. Only a handful of states require doctors to carry a minimum level of malpractice insurance, but most healthcare professionals need this coverage because a lawsuit could be financially devastating to their business.

Claims-Made vs Occurrence-based Professional Liability Policies

Professional liability insurance policies generally are offered two ways: claims-made and occurrence-based. Most professional liability coverage is set up as claims-made policies, meaning the policy is triggered by any claim made during the policy period. It doesn't matter when the triggering event occurred as long as it's covered by your policy, and your policy is active when the claim is filed. Once a claims-made policy ends, your insurer is no longer responsible for paying claims.

Occurrence-based policies cover claims that occurred while your policy is in force—regardless of when it's filed. Your client may sue after your regardless has expired, but your insurer still covers the claim as long as the triggering event, the wrongful act, happened during the policy term. Occurrence-based policies are usually more expensive because they provide more coverage for a longer period of time.

Prior Acts Coverage

Claims-made errors and omissions insurance coverage may have prior acts coverage, also called a retroactive date, that precludes events that happened before the policy start date. The triggering event must have occurred on or after the retroactive date to be covered. Professional liability policies can also offer full prior acts coverage that provides complete protection for your previous activities, with no retroactive date.

Professional Liability Insurance Coverage Limits

If your business faces a professional liability claim, your policy limit dictates how much your insurer pays. Most errors and omissions policies contain an individual limit (per occurrence) and an aggregate limit. Professional liability insurance pays settlements up to policy limits, but some policies don't include defense costs in those limits. The amount you need per occurrence depends on your business's risk, which your [professional liability insurance provider](#) can help determine. Limits often start at as low as \$250,000.

Defense Within Limits and Outside of Limits

There are two types of liability policy limits when it comes to covering your legal defense. The first, defense within the limits, means that all defense costs, such as attorney fees and court costs, are deducted from the policy limit, which cuts into the overall dollars available to pay settlements or damages.

Defense outside the limits coverage pays these costs without deducting them from your policy limits, leaving more money to pay settlements or judgments. This can make a big difference if you end having to pay a judgment that exceeds your policy limits. Once you hit your limit, the extra costs come out of your pocket.

Defense costs outside the limits ordinarily is added as an endorsement on the policy and requires an additional premium. Professional liability carriers are hesitant to offer policies without eroding limits because they place no limit on defense costs, which potentially exposes insurers to excessive costs.

Who's Covered by Professional Liability Insurance?

If your business provides professional services or advice to clients, you likely need professional liability insurance. Common professions include:

- Accountants
- Architects
- Consultants
- Doctors
- Engineers

However, traditional professionals are not the only business owners who can be sued for negligence. Other business owners can have professional liability exposures too, including insurance agents, information technology (IT) businesses, lawyers, notaries, and real estate agents. Owners of these businesses are more likely to be offered errors and omissions insurance coverage. Negligence in any field or industry can lead to a potential claim, so it's wise to consider obtaining coverage.

Bottom Line

A professional liability policy protects professionals and service providers from claims and losses arising from mistakes in job performance or delivery. Even if a claim is frivolously made by a dissatisfied client, errors and omissions pays for the defense of your business and potential settlements.

About the Author

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Jaclyn Moriarty is a writer with our finance team focusing on insurance. Prior to joining Fit Small Business, Jaclyn worked in content marketing for financial services. She holds a Bachelor of Arts degree in journalism and English from Bradley University and has written for a number of finance and insurance companies, including Insureon and Amica.

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