

Management Liability Cover – Who needs it?

Increased regulation and a more litigious society have made Management Liability an essential cover for all companies – especially SMEs who can least afford to pay hefty fines and legal fees.

By Stephanie Myers, National Underwriting Manager, Professional Liability



Not so long ago only larger companies and corporations saw the need for Management Liability insurance – the umbrella term for a range of covers that can include Directors and Officers (D&O) Liability, Employment Practices Liability (EPL), Statutory Liability, Company/Entity cover, Fidelity, Tax Audit, Trustees Liability and Internet Liability. But recent changes to regulations – such as the new work health safety (WHS) legislation, Food Act and the Fair Work Act – coupled with a more litigious society have created increased exposures for small-to-medium-sized enterprises (SMEs).

Without some of these insurance covers in place, smaller businesses often don't have deep enough pockets to stay viable following a hefty fine and/or expensive legal fees.

Weighing up the risks

Statutory exposures are a good case in point because the information from court proceedings is readily available in the public domain. For example, in September 2013, a NSW company was fined \$80,000 when one of its workers was injured using a client's forklift to unload bread from a truck.

While the forklift's broken handbrake was the primary cause of the incident, the judge found employer Levira culpable. The reasons cited included: the lack of documented company procedures for unloading bread from the truck; failure to ensure the employee had sufficient

training to operate the forklift; and the poor condition of the truck's metal delivery ramp, which was supposed to be used to unload goods.

Prosecutions under the Food Act can also carry large fines and incur significant legal fees, with food manufacturers, restaurants/cafes, retailers and wholesalers all at risk of prosecution. Here are a couple of recent cases:

1. Sydney cake manufacturer Sunfield Australia and its Director were each prosecuted under the Food Act in July 2013 for producing and selling cakes containing nut and egg that were not declared on the label. On one occasion, this resulted in a child suffering an allergic reaction. The Chief Industrial Magistrates Court issued a combined \$48,000 fine plus ordered the company to pay \$21,000 in professional costs.
2. The Indian Tavern Tandoori restaurant in Bendigo was fined \$35,000 and its two directors ordered to pay \$10,000 and \$5000 respectively in July 2013 for breaches of the Food Act and Food Standards. The restaurant was also ordered to pay more than \$13,000 towards the City of Greater Bendigo's legal costs.

In addition to fines and court costs, a company's legal defence costs can also quickly mount up in these situations, with lawyers charging \$300 to \$500 per hour, junior counsel \$1500 to \$3000 per day and senior counsel \$3000 to \$12,000 per day. And that's not to mention investigative costs.

The good news is that insurance for these exposures can be very affordable, with premiums for [Lumley's Management Liability options](#) starting from \$700 plus charges.

What's the cover for?

Management Liability insurance is not a one-size-fits all solution; what covers are required will vary from one business to the next. Another important distinction is that D&O and Trustees Liability products provide coverage for individual exposures, while the other options protect the business entity from a variety of risks.

D&O dilemmas

Contrary to popular belief, company directors do not have limited liability; they have onerous duties and responsibilities with unlimited personal liability.

D&O cover provides protection for any claim alleging a wrongful act by a director or officer including misrepresentation, negligence and breach of duty. Typical claimants can include shareholders (for mismanagement of company assets etc.), employees (for harassment, failure to promote etc.), creditors (to recover debts), regulatory bodies (ASIC, ACCC, ATO etc.) and liquidators/receivers (for wrongful trading).

EPL essentials

EPL provides cover for alleged employment breaches, such as discrimination, harassment, bullying, failure to promote, breach of contract and wrongful dismissal.

Investigation and defence costs for EPL claims are very expensive – the average EPL claim costs \$50,000 – so this cover is essential for any company with employees.

Company/entity exposures

Any business is at risk of legal action by a third party and the costs can be extremely high. Company/Entity insurance can cover these defence costs.

Even if you successfully defend the claim, your company can be left considerably out of pocket. A local café who was sued by a competitor for misleading advertising, which allegedly caused a significant downturn in the company's business, successfully defended the claim but was left \$30,000 in the red after paying their legal fees.

Statutory risks

Statutory Liability insurance provides cover for defence costs incurred from any formal investigation by a regulatory/government/professional body or other authorised institution. Many regulatory bodies have become increasingly vigilant and proactive in recent years, which is why this cover is so important for many businesses.

According to Safe Work Australia's latest statistics, nearly 400 OHS-related legal proceedings were finalised in 2010-11 with \$15.5 million in safety fines issued by the courts, usually following the death or serious injury of an employee or contractor. And some lawyers argue that SMEs are much more likely to be prosecuted for OHS offences than their larger counterparts.

A word of warning: Statutory Liability policies can vary significantly from one insurer to the next and some provide only limited cover/material exclusions such as: cover that's limited to OHS and Pollution legislation; no cover for OHS fines and penalties, which can be very substantial; restrictive sub-limits; and exclusions for the Privacy Act, Consumer Protection legislation and Copyright laws. So be sure to read the fine print.

More options

Other Management Liability covers include: Fidelity insurance, which protects against employee dishonesty (e.g. embezzlement); Tax Audit insurance, which covers the accounting costs incurred during an ATO audit/investigation; and Trustees Liability for directors and officers acting in the capacity of a trustee for the company's employer sponsored superannuation scheme.

This article has been published by Lumley Insurance as general information only and is not a comprehensive account. For full details of the insurance products offered by Lumley Insurance, please read the relevant Policy Wordings available from www.lumley.com.au.