

Risk insights

Management Liability



What is Management Liability Insurance?

Traditionally known as Directors and officers Insurance, Management Liability Insurance protects you and your directors (and officers) from allegations of wrongdoing; from employment claims and negligence to wrongful trading, health and safety claims and even claims of corporate manslaughter.

In today's business climate of corporate transparency and accountability, an organisation's officers and directors can find themselves exposed to a multitude of employment-related risks. Claims can come from many sources, employees, regulators, shareholders, creditors, customers etc. Management Liability Insurance will cover claims brought against an individual in court, or at an employment tribunal, as well as legal action taken against your company.

It's the thing you wish you didn't have to think about, but it's an essential insurance for any company with directors and senior managers.

Who needs Management Liability Insurance?

In the wake of recent headline grabbing corporate scandals, it's easy to think that Management Liability policies only need to be applied to large corporations, however, SME's and smaller privately owned companies such as residents associations and not-for-profit organisations, and even some start-ups, are at risk too. Regardless of your organisation's size or industry, legal action against senior leaders can occur without warning and easily total thousands of pounds.

Every decision that directors and officers of a company make has the potential to be scrutinised by clients, employees, shareholders and peers. The stakes are high – directors and officers risk losing their personal assets if they are ever involved in legal action for a decision made in the course of performing their regular duties.

The growing threat for Director and Officers

Operating in a continually evolving legal and regulatory landscape can present challenges for company executives. With their business decisions and activities increasingly scrutinized, all organisations, whether public, private or not-for-profit, and the people who lead them, are vulnerable to a multitude of Directors and Officers exposures.



Did you know?

Your business is **more likely to be taken to an employment tribunal** than have a fire. But you're **more likely to have Commercial Property Insurance** than Management Liability Insurance.



"As a company director, you can be held personally liable for your actions. With the appropriate cover in place, you, your directors, officers and partners can focus on making the right decisions for your business."

Ben Butler

Managing Director,
Macbeth Insurance Brokers

£13.6bn

is lost by SMEs each year due to failure to take care of their legal issues¹

48,267

finances issued to businesses for failing to meet their auto-enrolment duties²

46%

of businesses have experienced a cyber breach or attack in the last 12 months³

1 in 10

SME businesses are under a tax investigation⁴

¹ The financial impact of SMEs' failure to take care of their Legal Business, Lawbite, 2017.

² TPR drives up pension standards and safeguards more schemes, The Pensions Regulator, 2020.

³ Cyber security Breaches Survey 2020, DCMS. See footnote 1.

⁴ Tax Avoidance and Evasion enquiry, www.parliament.co.uk, 2018. See footnote 1.

Footnote 1: This source contains public sector information licensed under the Open Government License v3.0.

How Management Liability Insurance protects you

A single Management Liability Insurance policy combines three key areas of risk:

- Claims against a company director**
- Claims against your company**
- Costs incurred at an employment tribunal**

In the event of a claim against you or your company, Management Liability Insurance would pay your defence costs and any final settlement or compensation following legal action. Cover includes Directors and Officers Liability, Corporate Liability and Employment Practice Liability. It can also extend to cover cyber risks and criminal activity.

Directors' and Officers' Liability

Cover for the cost of defending a claim made against any company director or officer.

Corporate Liability

Cover for claims made against your limited company.

Employment Practice Liability

Cover for legal defence costs and compensation awards made by employment tribunals.

Cyber risks

Your cover can also include first-party losses such as cyber extortion and fraud, and third-party losses such as privacy breaches.

Criminal activity

Optional protection against losses arising from employee theft in relation to you or your clients.



Key fact

Even as a small business, Management Liability is still relevant - The cost of defending allegations made against a director or the company can be extremely costly whether a small or large business.

Even if you don't have a board of directors in place you are still at risk for breach of contract, health and safety issues and employment-related claims.



Did you know?

Senior leaders are being held increasingly accountable for large-scale organisational disasters such as 'bad news' litigation and environmental issues.

Management Liability Insurance Tips

- ✓ There is more and more scrutiny and regulation around directors' duties, actions and responsibilities. The Companies Act 2006 contains a list of statutory duties that directors must comply with and if there is a breach, directors can be held personally liable.
- ✓ Management liability cover extends to anyone who makes a claim against your company including employees, customers, suppliers, shareholders and competitors.
- ✓ Consider extending your cover to include crime and cyber insurance.
- ✓ Management Liability Insurance fills gaps in other cover you might have. For example:
 - ✓ Limited liability status isn't applicable to a director's personal assets.
 - ✓ Legal expenses cover can be invalid where a successful defence is unlikely.

Changing trends of the Management Liability landscape

In recent years, the management liability landscape has experienced a major shift as senior leaders have been held more accountable by their fellow employees, clients and government bodies for organizational failings. As a result, stakeholders have begun taking increased legal action against individual leaders within organisations rather than the company as a whole when incidents occur.

With this in mind, the following trends have started to emerge in the UK management liability landscape:



'Bad news' litigation

Instances of 'bad news' litigation, also known as 'event-driven' litigation, have become a top cause of Management Liability claims. These claims can occur as a result of product problems (e.g. recalls, malfunctions or false advertising), natural disasters or corporate corruption. In these cases, stakeholders will take legal action against an organisation's senior leaders following a disaster, holding them responsible for any damages that resulted. Senior leaders can be deemed accountable in these cases if they failed to implement reasonable controls to help prevent the disaster or lacked a proper response plan to limit the damages after the disaster took place.



Environmental issues

As climate change concerns continue to rise, organisations are now expected to consider environmental risks within their daily business operations. Failure to adjust key operations and bolster environmental risk management measures as climate change progresses could result in Management Liability claims from a variety of sources—including government bodies, regulators and investors.



Securities class actions

Workplace technology is consistently evolving, providing innovative solutions and advancements for organisations across industry lines. However, new technology comes with increased cyber-security and data protection risks. What's more, the General Data Protection Regulation (GDPR) requires organisations and their senior leaders to take specific steps to prevent and appropriately respond to a cyber-attack—or face hefty non-compliance consequences. In response, senior leaders are being held accountable more than ever before for maintaining proper data protection practices.

Senior leaders who don't ensure GDPR compliance or effectively protect stakeholder data could face Management Liability claims in the form of securities class actions—a type of litigation in which a group of stakeholders takes collective legal action against a senior leader for the damages that result from an organisational security failing.



Financial failings

The past few years have seen a significant increase in business insolvencies and bankruptcies across the globe, with the 2018 collapse of Carillion making waves throughout the UK. As financial experts predict economic downturn to continue in the coming years, it's crucial for organisations to engage in proper cash flow practices with trusted senior leaders to avoid the risk of insolvency or bankruptcy. Senior leaders who engage in poor financial decision making could face substantial Management Liability claims.

How you can ensure you have the right level of Management Liability cover



Talk to your broker

Make sure you meet with your broker to discuss what level of cover and unique policy features your organisation needs. Your broker has the insurance expertise to provide you with the most cost-effective, high-quality cover solutions.

Ensuring you have open communication with your broker will help you stay informed of the market conditions.



Start the renewal process early

Be sure to start your Management Liability policy renewal process as early as possible. Doing so will give you plenty of time to gather any documentation required for renewal.

Insurers may ask more questions than usual before finalising your policy, making it even more vital to get a head start on the process.



Invest in risk management

Now more than ever, it is vital to invest in robust risk management processes and provide documentation of these practices to your insurer upon renewal time. Your risk management documentation should highlight:

- ✓ Proper financial practices, cash flow controls and healthy profit margins
- ✓ Seamless contracts with stakeholders
- ✓ A business continuity plan, cyber-incident response plan and risk assessment
- ✓ Robust internal policies to mitigate on-site risks and ensure regulatory compliance

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