Own Your Business Risk

The insurance you need to make bold moves

HUB

Contents

The risks you choose.
And the ones that choose you.

Operating a business is about taking a series of risks over time. And they're not always the risks you choose; every decision you make and every action you take can potentially be held against you.

You're under a microscope throughout the lifecycle of your business, from raising capital to downsizing and from acquisitions to compliance audits. And the person on the other end of that microscope could be anyone around you — shareholders, regulators, employees, business partners or customers.

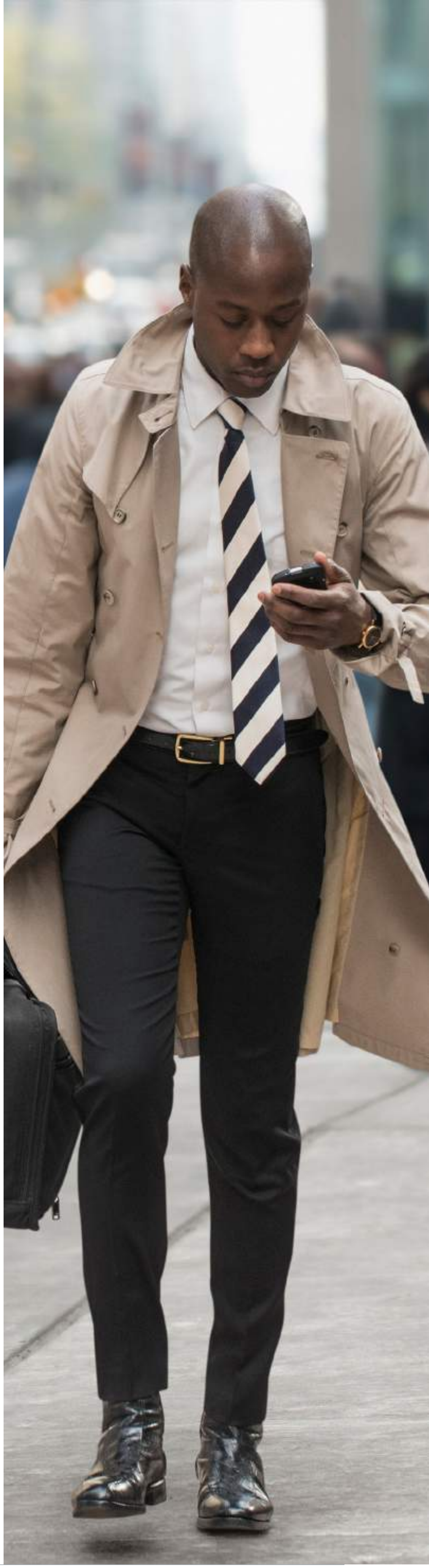
WOULDA, COULDA, SHOULDA?

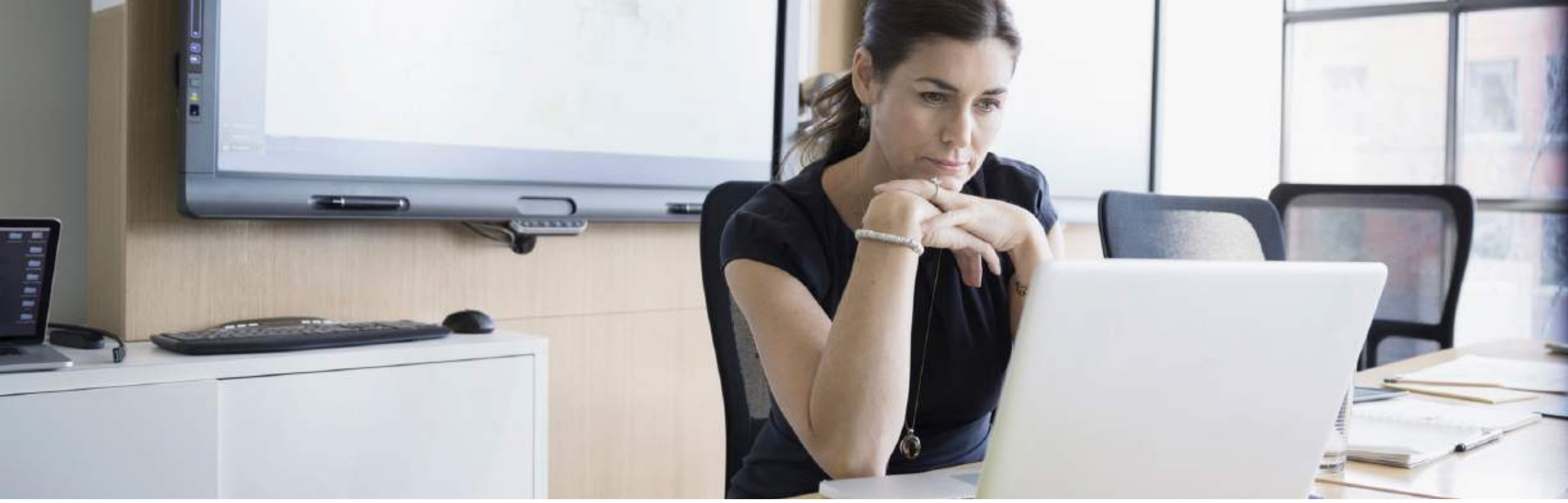
It's no wonder doing business can sometimes feel like an endless cycle of second-guessing: You could have been more compliant. You inadvertently acquired a bad apple. You left yourself open to a discrimination claim. You didn't secure the necessary coverage. You hired too many, too quickly.

You have to keep moving; you're swimming with sharks, and the only way to stay alive is to stay ahead of the competition. But as you pursue your business goals, each decision you make brings with it specific risks that only the right insurance policies can mitigate.

You can't rely solely on business operator insurance or general liability coverage. Your policies must fit together like pieces of a puzzle built with your specific risks and exposures in mind.

Read on to learn what insurance you'll need to manage the risks you'll face at each step of your business's lifecycle.





Risk 1

Raising Capital

There's a lot at stake when you're raising capital. Accurately setting the expectations of your investors is critical. If your projections are overly optimistic, you may unintentionally misrepresent your financial position — a mistake for which you could be held liable.

To safeguard your company against this risk, you'll need the following coverage:

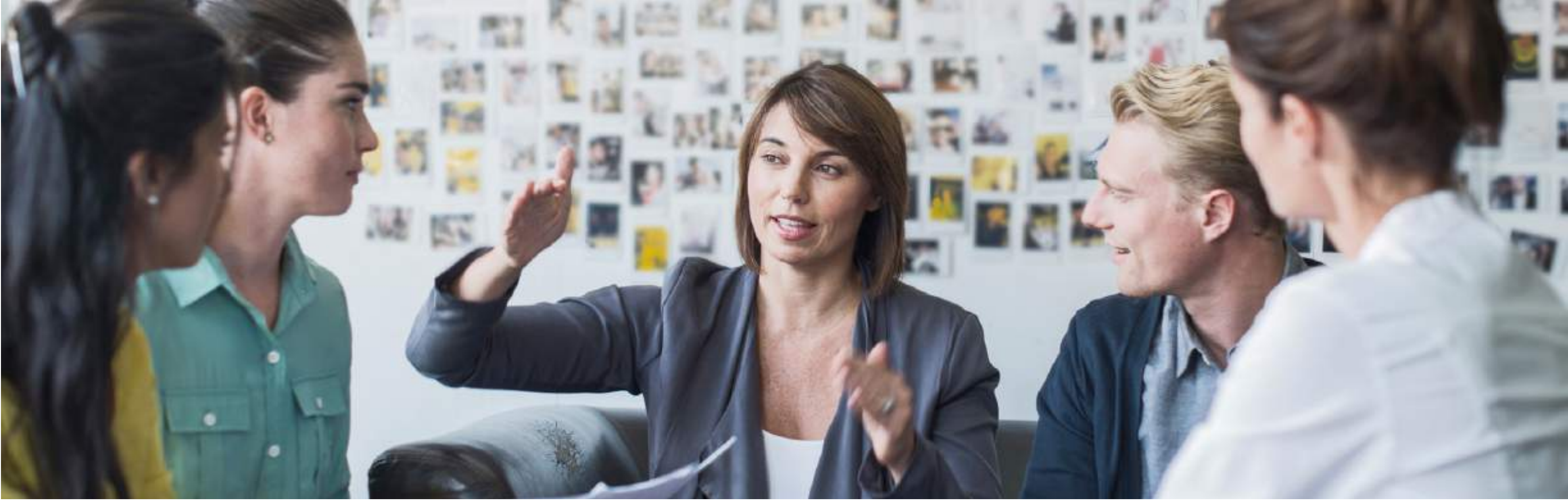
DIRECTORS AND OFFICERS (D&O)

D&O insurance will cover you in the event of lawsuits brought by shareholders, investors or any other stakeholders involved in raising capital. Such lawsuits might claim, for example, that:

- The timing wasn't right when you raised capital, due to such factors as a volatile market or your company's position
- The claimant's stock or ownership percentage were diluted when you brought other investors into the business
- You didn't deliver on the promise to increase profitability with the new capital

WHAT THE UNDERWRITERS REQUIRE

When you take on debt or assume a loan to raise capital, insurance underwriters will expect you to produce a repayment schedule in order to qualify for competitive interest rates. If for some reason you can't keep up with the payments, you'll need to develop a plan to repay the debt, or risk bankruptcy.



Risk 2

Expanding Your Workforce

The choice to expand your workforce puts you between a rock and a hard place. On the one hand, you need talent to succeed, but hiring new people opens you immediately to greater liability. Adding staff increases regulatory, workers' compensation and shareholder risks, and may not necessarily generate more profitability — and in that case, having to consolidate can create even more exposure.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

D&O insurance provides coverage in circumstances where shareholders accuse you of overspending on talent, payroll, employee benefits, training or insurance. Onboarding new employees also opens you to risk related to regulatory scrutiny from the Department of Justice (DOJ) and other governing bodies.

EMPLOYMENT PRACTICES LIABILITY (EPL)

As you grow, it's difficult to maintain effective control over your workforce. When new employees come on board, the work environment is altered, company culture shifts, and the dynamics between staff members starts to change. In those circumstances, there is an increased likelihood that employees will file EPL claims against other employees, or the company. You could see lawsuits alleging:

- Discrimination
- Wrongful termination
- Harassment
- Wage-and-hour violations

EPL insurance shields you from all of these risks.

DID YOU KNOW?

36% of U.S. businesses report serious concerns about employee lawsuits alleging discrimination, harassment, wrongful termination and other employment-related claims.[1]

1 2016 Travelers Risk Index. https://www.travelers.com/iw-documents/resources/risk-index/2016-report.pdf

FIDUCIARY

When it comes to administering benefits and ensuring compliance for your new, larger employee base, a fiduciary policy will protect you against such risks as:

- A claim that you failed to properly educate new employees on their benefits
- Allegations of an error made in administering 401(k) benefits
- A lawsuit from an employee or regulators based on the Employee Retirement Income Security Act (ERISA)

CRIME

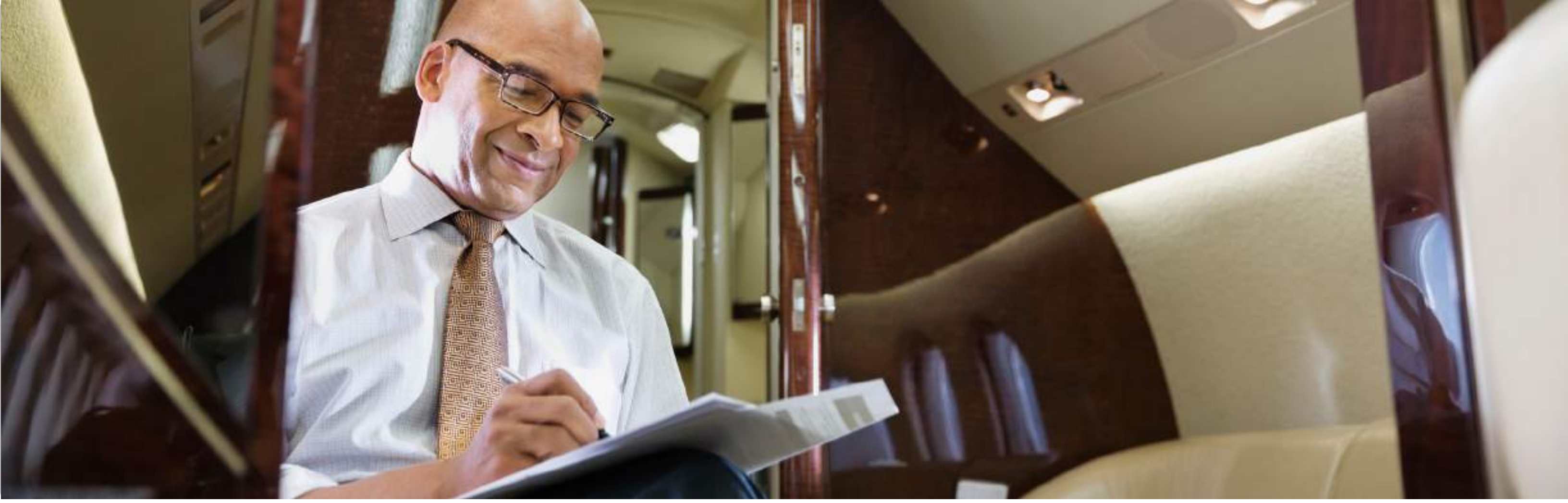
When your workforce expands, it can open gaps in internal controls. That's where a crime policy becomes necessary. While people often associate business crime with third-party theft, the reality is that such acts are most often committed by employees. And business crime can occur at any level of an organization. A warehouse worker could steal extra scrap metal, or the controller of the company could be responsible for a ghost vendor scandal.

WORKERS' COMPENSATION

Naturally, workforce growth puts greater strain on safety controls and causes an increase in the number of workers' comp claims. Depending on where your new employees reside, you should review federal- and state-mandated workers' compensation requirements.

WHAT THE UNDERWRITERS REQUIRE

Expanding your workforce is likely to lead to the need for additional coverage or increased coverage limits. When assessing liability, your insurance underwriters will ask if you are providing adequate training, including safety and job instruction for new employees. They'll also want to know where the newly hired employees are located. Employers in California, for example, are at greater risk because of the state's relatively litigious environment.



Risk 3

Making Acquisitions

The complexity of an acquisition doesn't end when the contract is signed — and neither does the risk. Integrating two companies is a tall order, and it opens you up to a whole new set of risks related to employees, shareholders and regulatory agencies.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

When making an acquisition, D&O coverage is critical to mitigating risk from shareholders, regulatory bodies and third-party business associates. For example:

- Your newly acquired business's former shareholders, investors, debtors, customers or regulators could come after you if its promises were unfulfilled or its practices were questionable.
- Regulators, such as the Securities and Exchange Commission (SEC), will want to make sure there are no conflicts of interest. If you don't disclose a family connection or personal investment in the acquired company up front, you could face fines or further investigation.
- Your newly acquired business's former shareholders, investors, debtors, customers or regulators could come after you if its promises were unfulfilled or its practices were questionable.

EMPLOYMENT PRACTICES LIABILITY (EPL)

You'll be covered by your EPL insurance should new employees file claims after being laid off, or if your business or the business you acquire has made promises to employees that can't be kept.

DID YOU KNOW?

84% of business executives say at least some of their mergers and acquisitions (M&A) didn't generate the expected value or ROI. The factors cited include economic and market forces, lack of expected sales, and execution and integration gaps.[2]

2 Deloitte M&A Trends, Year-End Report 2016. https://www2.deloitte.com/content/dam/Deloitte/us/Documents/mergers-acqisitions/us-ma-mergers-and-acquisitions-trends-2016-year-end-report.pdf

FIDUCIARY

A fiduciary policy will cover you from lawsuits that could arise if:

- The company you bought had legacy benefits-compliance issues
- You choose to integrate the two companies' policies in a way that doesn't suit your employees
- You fail to educate new employees about your policies, which is a violation of the Employee Retirement Income Security Act (ERISA)

CYBER RISK

If the company you're acquiring has an existing and undetected data breach, it could lead to a major loss of data and key records — and you'll be held liable. Once you've integrated your IT systems, your existing records are at risk as well. A cyber policy covers your notification and credit monitoring requirements, and can help pay for a lawsuit from affected individuals as well.

WHAT THE UNDERWRITERS REQUIRE

When you add the assets, operations and employees of a new business entity to your policies, insurance underwriters require a re-evaluation of your current coverage. You'll need to describe the risk related to the acquisition and demonstrate that you exercised due diligence ahead of the purchase. Underwriters may even demand a list of third-party vendors/firms used to evaluate the seller, including accountants and lawyers.

Risk 4

Adding a Product or Service Line

As a business owner, you have to be nimble in the face of growing customer expectations. Competition is fierce and it's growing across all industries. Adding new products and services is the key to survival. But it also multiplies your risk.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

When adding a new product to your repertoire, your D&O policy has you covered in the event of false advertising claims by consumers or regulatory agencies. Exaggerating the benefits of your new product, even unintentionally, could lead to a lawsuit, class action or even regulatory fines.

PROFESSIONAL LIABILITY

Sometimes good advice goes bad for a client. Perhaps a client finds fault with a new service, and a lawsuit results. With a professional liability policy (also known as errors and omissions or E&O coverage), you're protected against exposure when you offer a product, service or piece of advice.

EMPLOYMENT PRACTICES LIABILITY (EPL)

If you acquired a new company to obtain the new product line, you may have hired new staff to support it. If the venture isn't successful, you may have to shut down operations and lay off employees — in which case, an EPL lawsuit or claim could follow.

CYBER RISK

Adding a new product or service often means collecting more client or consumer data — which necessitates a cyber policy. For example, if you begin selling a product and you collect additional credit card information or patient data, your exposure to claims will increases dramatically.

GENERAL LIABILITY

With this coverage, your business is insured for claims of property damage, bodily injury and personal injury. Specific to this risk, general liability would cover you if your new product injures someone — but no matter where your business is in its lifecycle, you need general liability coverage specific to the size and location of your organization.

SPECIALIZED PRODUCTS LIABILITY

If you're adding risky products — such as pharmaceuticals, aircraft or children's toys — the exposure to claims of bodily injury are great. In such cases, you'll need the protection of a specialized products liability policy.

PRODUCT RECALL INSURANCE

Should your new product be recalled, this unique coverage will reimburse you for related expenses, including costs to:

- Pull the product from the stream of commerce
- Dispose of or replace the item
- Retain media specialists and attorneys to help control damage to your brand and reputation, and to manage any ensuing lawsuits

WHAT THE UNDERWRITERS REQUIRE

Inform your underwriter immediately if you plan to add a new product or service. If you don't, you're risking claims denial if the new product or service becomes a source of liability. The underwriter will want to understand the new product or service offering so they can set the right limits and ensure you'll be covered for all related exposures.

Risk 5

Adding a New Vendor

Choose wisely when it comes to partnering with third-party vendors. If you don't, you could be liable for their mistakes. Whether they leak your customers' data, offer you bad business advice or sell you a defective product — you could be held responsible.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

Your D&O policy will protect you if a vendor relationship sours and the vendor sues you for violating their contract or causing their bankruptcy. It will also protect you against regulatory exposures if a vendor's failure to comply causes a compliance issue for your organization.

EMPLOYMENT PRACTICES LIABILITY (EPL)

If you fire or lay off employees based on bad advice from a vendor such as an HR consultant or lawyer, and a discrimination or harassment suit results, an EPL policy will protect you.

FIDUCIARY

A fiduciary policy will protect you in an instance when your benefits consultant gives you bad advice on such matters as health, retirement or 401(k) plans, and following that advice leads to a fiduciary claim or regulatory action against you.

CYBER RISK

If your vendor suffers a breach that leaves your company data exposed, you may still be responsible for necessary notifications and related regulatory fines.

WHAT THE UNDERWRITERS REQUIRE

Your insurance underwriter will ask about your vendor contracts. They'll want to ensure that responsibility for risks and exposures are clearly defined and owned by the vendor, and that they've agreed to cover you in their policies as well.

DID YOU KNOW?

All your vendor contracts should include clear language regarding cyber breaches. Your insurance carrier will want to know that, if you are named in a lawsuit resulting from a breach of the vendor's network, the vendor will bear responsibility for:

- Any damages against your organization
- Claims brought by individuals whose private information you maintain, and which may have been compromised

Expanding Internationally

The good news is that many insurance policies will cover your company abroad. However, you may need additional and local liability policies to ensure coverage.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

While each country has its own regulatory bodies, your D&O policy will generally cover your regulatory D&O exposures worldwide. That being said, for countries with a tighter regulatory climate, it may be advantageous to purchase a separate local policy to ensure indemnification.

PROFESSIONAL LIABILITY

Regardless of what country you're in, your professional liability policy will protect you if there is a claim or lawsuit brought against you due to a vendor service-contract violation.

EMPLOYMENT PRACTICES LIABILITY (EPL)

Your EPL policy will cover you if you're found in violation of local employment laws and practices, or run into HR conflicts with employees abroad. Such a situation could arise, for example, where employees are accustomed to more vacation or personal days than you provide, and decide to sue you over the issue.

FIDUCIARY

International employees may have higher expectations regarding health benefits than your domestic workforce. Your fiduciary policy will protect you if you find yourself facing a benefits-related claim or lawsuit.

DID YOU KNOW?

D&O underwriters will require that American companies ensure compliance by training any employees working overseas (whether they are local or American) on the U.S. Foreign Corrupt Practices Act. Similarly, Canadian companies should acquaint their employees with the Corruption of Foreign Public Officials Act.

WORKERS' COMPENSATION

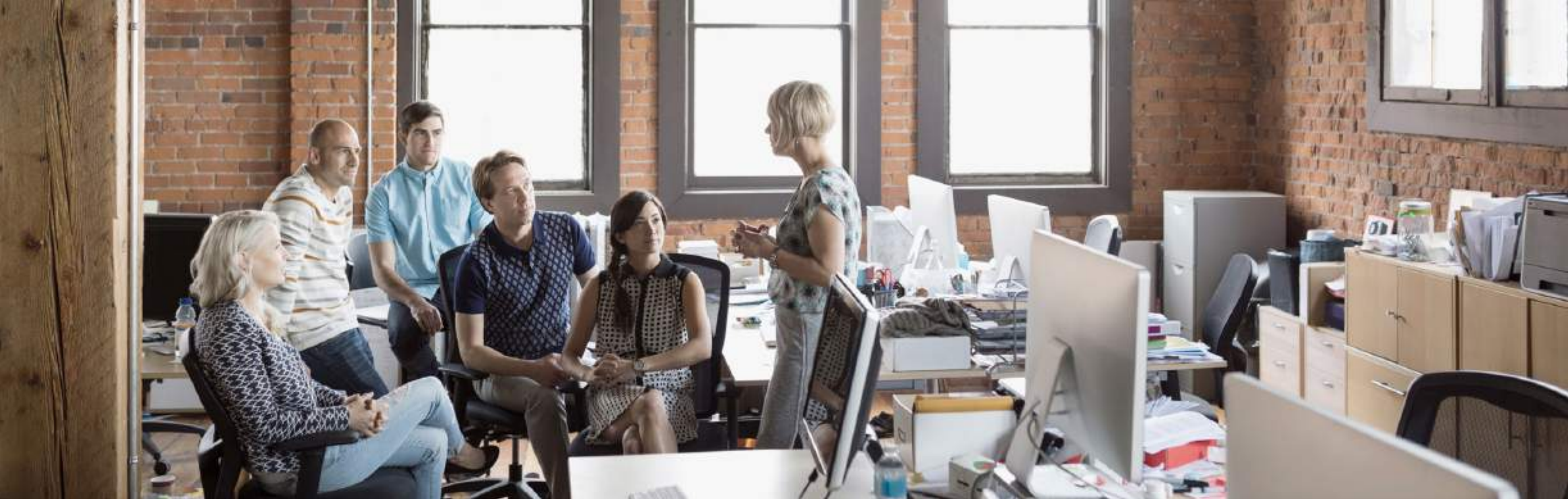
Many countries require businesses to have workers' compensation policies. However, you'll require a special international or local workers' comp policy before you can place or hire employees overseas. In some countries, the government authors the policy; in other countries, workers' comp is insured privately.

CYBER RISK

Your cyber policy will protect you if you have a breach of personal data abroad. However, definitions of personal and private data and allowable methods for data protection differ by country. For example, while it's common in the U.S. for companies to send advertisements to users' phones when they're near a particular location, this practice requires explicit consent in Europe. Consider all local cyber laws before doing business abroad.

WHAT THE UNDERWRITERS REQUIRE

While all policies are effective worldwide, your insurance underwriter will want to know that you've retained local counsel in your host country in case any of the above liability issues arise. Specifically, they'll want you to demonstrate that you have proper guidance from someone who is familiar with the local employment practices, D&O and cyber laws.



Risk 7

Downsizing

When you shrink your staff, your exposure, liability and risk skyrocket. Regulators will closely examine your operations; disgruntled employees will consider ways to retaliate; shareholders and business partners could accuse you of not maintaining the same caliber of service or product output; and your reputation may suffer in the eyes of your consumers and clients.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

Your D&O policy will protect you against shareholder, employee and regulatory exposures during downsizing. With fewer people doing the same work, compliance controls may suffer, leading to regulatory exposure. When downsizing, business leaders often make cuts in areas such as insurance, consulting fees, and maintenance of the business network, any of which could increase investor, shareholder, customer and vendor risk — and all of which are covered by a D&O policy. The Canada Labour Code provides similar guidance for comparable circumstances.

EMPLOYMENT PRACTICES LIABILITY (EPL)

When downsizing, you'll rely on your EPL policy to deal with regulatory and employee risk. For example, if you fail to abide by the Workers Adjustment and Retraining Notification (WARN) Act, which requires employers with 100 or more employees to provide 60-calendar-day notice of plant closings and mass layoffs, you'll face complaints through the Department of Labor. You're also likely to face accusations of wrongful termination, especially if you lay off employees of a protected class.

WORKERS' COMPENSATION

Employees who learn about an impending downsizing will often look for a way to protect themselves financially — such as filing more workers' compensation claims than usual. In that case, your workers' comp policy will protect you.

DID YOU KNOW?

As many as

40%–50%

of workers' compensation claims related to impending layoffs are filed within six months of employee termination.[3]

3 Travelers. https://rccustomers.travelers.com/riskcontrol/rcpublicdocs.nsf/0/56A232FC46773BE585257515007674FF/$FILE/GS341_RiskMgmnt-DownsizingsClosings.pdf

CYBER RISK

A cyber policy is crucial if layoffs affect your IT staff. Angry former IT personnel have been known to sabotage the business's network, and to sell corporate, employee and customer data on the black market. This creates a very real risk of cyber risk insurance claims and potential class action lawsuits by affected individuals. Your cyber policy will cover you should you need to notify affected individuals or respond to regulatory action.

WHAT THE UNDERWRITERS REQUIRE

When you downsize, underwriters will want proof that you engaged outside counsel to determine which employees to lay off, and that you obtained signed release forms from each terminated employee stating that they won't sue. Typically, the only way to get the latter is to provide employees with severance packages.

Risk 8

Losing a Major Customer

Customers are the lifeblood of your business. Losing even one can be devastating. Especially if they leave with payments outstanding for goods or services, you may be facing a serious threat to the long-term viability of your business.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

Your D&O policy will cover you should perceived negligence on your part be the cause of a major customer loss that affects the financial viability of the company. In this case, you can expect a lawsuit from shareholders at least. And in a worst-case scenario, when bankruptcy is the result, your D&O policy will cover lawsuits from creditors as well.

EMPLOYMENT PRACTICES LIABILITY (EPL)

EPL coverage will protect you when the loss of a major customer leads to a decline in revenues that forces layoffs. When executives or employees of a protected class are laid off, the risk of lawsuit rises significantly. Because severance benefits are commensurate with an employee's prior salary, the dollar amount at stake will rise quickly for high-ranking employees. When it comes to employees of a protected class, even those with a severance agreement still retain the ability to file a discrimination claim, which can turn a small grievance into a class action.

TRADE CREDIT INSURANCE

When you lose a major customer that can't afford to pay its debt to you, trade credit insurance ensures you'll be paid what you are owed.

WHAT THE UNDERWRITERS REQUIRE

Underwriters prefer companies with a diversified customer base. They'll want to make sure you aren't overly reliant on a single customer, and will ask about your market standing, account portfolio and ability to weather the loss of a major client.

Risk 9

A Takeover or Attempted Acquisition

A hostile takeover can bring out hostility *within* your organization as well. It creates an atmosphere ripe for infighting, and questions may arise as to whether you negotiated the best value for the company. This can open you up to the risk of a lawsuit.

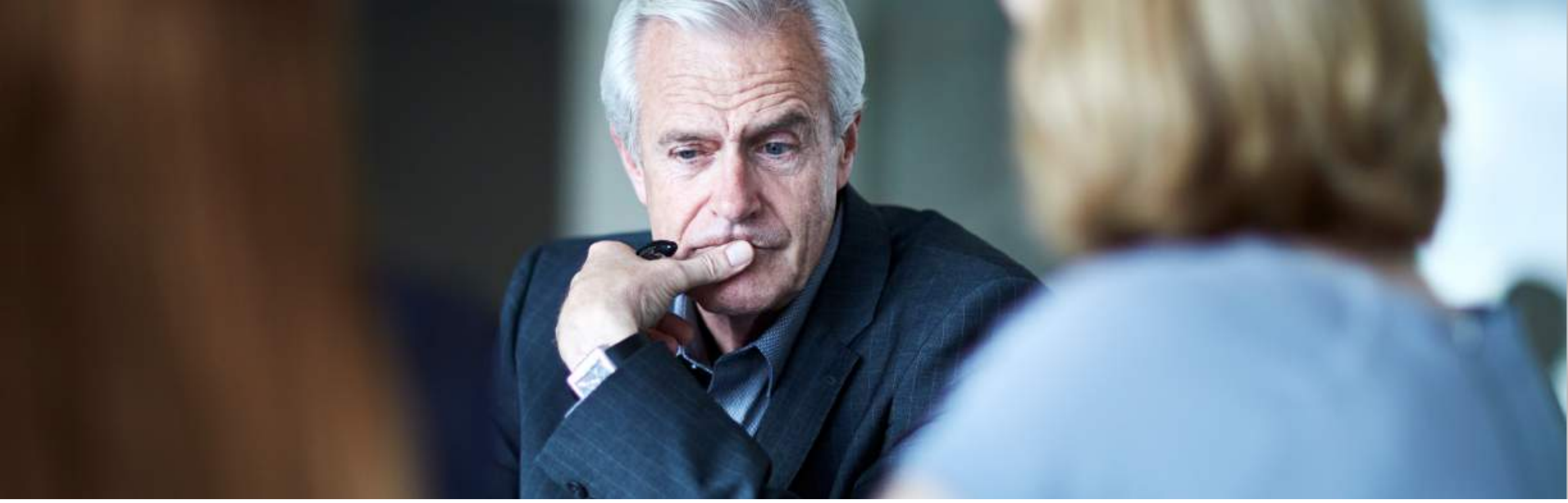
To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

As a director or officer facing a hostile takeover, you'll need to rely on your company's D&O policy. You may face a lawsuit from the company's shareholders or ownership for the way you handled the business prior to or during the takeover. And yet there's an even bigger risk: the new buyer may not indemnify you for lawsuits after the takeover. Once you relinquish control of the business, you'll need a D&O tail policy to extend your company's previous coverage on your own behalf.

WHAT THE UNDERWRITERS REQUIRE

When assessing risk for the existing or newly combined business entity, the underwriter will want to know what outstanding legacy claims exist against your business. If you stay on with the new company (even in the interim), the underwriter will assess what risks, including layoffs, may surface as the new company takes over.



Risk 10

Losing a Key Executive

A company is defined by its leadership. When a key executive leaves, shareholders, employees, investors and customers will anticipate instability — often rightfully so.

After such a departure, you'll have to prove to investors, employees and customers that services and operations haven't changed; you'll also have to closely monitor other key employees and departments to prevent a domino effect of employee turnover.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

A D&O policy is important to shield leadership when a key figure leaves, especially in situations where no business contingency plan exists. With the executive gone, the company's leadership may suffer, and it could start to lose market share. Without business-contingency and succession planning in place, the organization's stability and performance will be put in question, opening the door to litigation.

EMPLOYMENT PRACTICES LIABILITY (EPL)

An EPL policy will shield you if a key executive is let go and sues for wrongful termination or severance — especially if the executive is of a protected class. Such retaliation lawsuits can be drawn out, costly and have a negative impact on the company's reputation.

WHAT THE UNDERWRITERS REQUIRE

Underwriters will want to know how and why the executive left — and what the fallout has been. Were they terminated? Did they leave voluntarily? Or was their position eliminated? Is the business still running smoothly? Has it retained its customers? Is it still financially stable?

DID YOU KNOW?

Replacing a high-level employee can cost businesses as much as

400%

of that employee's annual salary in lost productivity, interviewing, hiring and training.[4]

4 https://www.eremedia.com/tlnt/what-was-leadership-thinking-the-shockingly-high-cost-of-employee-turnover/

Risk 11

Increased Regulatory Oversight

Regulatory oversight affects all businesses, regardless of size or industry. And it can amplify *any* risk you face.

Did you properly educate employees on their benefits? Have you notified all affected parties of a cyber breach? Do your employees follow safety practices on the job? Are your workers' compensation policies and procedures compliant with all state and federal regulations? If you can't confidently answer yes to all of the above, you could be subject to fines and penalties — the government could even freeze your assets.

To safeguard your company against this risk, you'll need the following coverage:

DIRECTORS AND OFFICERS (D&O)

When it comes to regulatory exposure, D&O is the most critical policy. It indemnifies leadership, your facilities' personnel and everyone in between against a variety of risks. For example, you might face a shareholder lawsuit claiming that proper policies and controls could have prevented a regulatory investigation. And the stakes are higher if you're a government vendor; a regulatory investigation will result in company assets being frozen.

EMPLOYMENT PRACTICES LIABILITY (EPL)

Your EPL policy will cover you when you face federal regulatory oversight. Should a non-compliance claim or lawsuit surface, make sure you can prove you did your due diligence. You may also need to provide proof that you've educated your employees on appropriate employee practice procedures.

DID YOU KNOW?

Since 2008, the U.S. government has imposed

$733.9B

in regulatory costs on private businesses. For every 10% increase in regulatory costs in an industry, the number of small- and medium-sized businesses in that industry falls by 3%–6%.[5]

The average small business owner spends at least

$12,000

annually on federal regulation compliance.[6]

5 American Action Forum. https://www.americanactionforum.org/research/regulatory-impact-on-small-business-establishments/

6 National Small Business Association, Small Business Regulations Survey. http://www.nsba.biz/wp-content/uploads/2017/01/Regulatory-Survey-2017.pdf

FIDUCIARY

Your fiduciary policy will protect you in case of a compliance investigation or lawsuit alleging non-compliance related to employee benefits or retirement plans. Any number of factors could trigger an investigation or claim, including:

- The benefits you offer
- How you present benefits (or fail to present them) to employees
- How you fund or administer your 401(k)

If they do find fault, you'll need your fiduciary policy to protect you during the ensuing compliance investigation and potential lawsuit.

CYBER RISK

In the case of a cyber breach, regulatory risk comes less from your wrongdoing than from your response. Your cyber policy will protect you from fines and penalties levied against your business if you fail to properly notify affected individuals. It's worth noting that such regulatory fines and penalties can be applied even in the case of a breach you're unaware of.

WORKERS' COMPENSATION

Laws requiring businesses to have workers' compensation policies vary by country and state. Knowing the specific requirements at the local level is key to maintaining compliance.

WHAT THE UNDERWRITERS REQUIRE

Underwriters will want to know that you have conducted adequate staff compliance and harassment/discrimination training in case they have to create an affirmative defense against a potential lawsuit. They will also ask if your policies and procedures are regularly reviewed by outside counsel.