



EMPLOYERS' LIABILITY
(COMPULSORY INSURANCE)
ACT 1969



A GUIDE FOR
EMPLOYEES
and their
REPRESENTATIVES

This guidance reflects the requirements of Regulations
which came into effect on 1 January 1999

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?

Your employer is responsible for your health and safety while you are at work. If you are injured as a result of an accident at work, or become ill as a result of your work, and if you believe your employer is responsible, you may seek compensation from them. To make sure that your employer can pay the compensation they must take out an insurance policy. This is an employers' liability insurance.

Employers' liability insurance will provide compensation for injuries or illness caused on or off site. Any injuries or illness relating to motor accidents which occur as a result of your employment may be covered separately by your employer's motor insurance.

Public liability insurance is different. It covers employers for claims made against them 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. Your employer can be fined if they do not hold a current employers' liability insurance policy which complies with the law.

Does my employer need employers' liability insurance?

All employers must have employers' liability insurance except the following:

- 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.

If you work for one of these public sector organisations, you can still claim compensation if you are injured at work or become ill as a result of your work and your employer is to blame. Any compensation will be paid directly from public funds.

Family businesses are also exempt. Your employer will not need employers' liability insurance to cover you if you are closely related, ie if your employer is your 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.

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. You can also get advice on this and other aspects of employers' liability insurance from your trade union.

Am I protected if I work abroad?

If you are normally based in England, Scotland or Wales (including offshore installations or associated structures) your employer must have employers' liability insurance to compensate you if you are injured or you become ill as a result of your employment.

If you are based abroad you will not be covered by employers' liability insurance under English law. You should check whether the country where you are working requires your employer to have similar insurance or whether your employer has arranged some other protection for you.

If you are normally based abroad but you spend more than 14 days continuously in Great Britain, or more than seven days on an offshore installation, the law requires your employer to take out employers' liability insurance to cover you.

How do I find out about my employer's insurance policy?

When your employer takes out a policy for employers' liability insurance, the insurance company will give them a certificate containing information about the policy. Your employer must display a copy of this certificate where you can easily read it. If they do not, they can be fined.

What should I look for on the certificate of insurance?

The certificate of insurance must contain the following information:

Level of cover – The certificate must show that your employer has insurance cover for at least the minimum level required by the law. At present the minimum level of cover required is £5 million, which includes costs. Your employer can have more than one policy for employers' liability insurance. In this case, the total value of the cover provided by the policies must be at least £5 million. In practice, most insurance companies provide cover of £10 million or more.

Company covered – The certificate should make clear which companies are covered by the policy. If the company you work for is part of a group, the policy can cover the group as a whole. The group must have cover of at least £5 million.

Name of insurer – The certificate must be signed by an authorised insurer. The Financial Services Authority

(FSA) maintains a register of authorised insurers. You can check whether a company is authorised by searching their register on <http://www.fsa.gov.uk> or telephoning the FSA on 020 7676 1000.

If the insurance policy is not with an authorised insurer or does not provide cover of at least £5 million, your employer may be breaking the law.

What if I work on an offshore installation?

If you work on an offshore installation or associated structure, your employer does not need to keep a copy of the certificate of insurance on the installation. However, you can ask to see a copy of the certificate and your employer must provide one as soon as possible and certainly within 10 working days of your request.*

What should I do if I think my employer is breaking the law?

The Health and Safety Executive enforces the regulations on employers' liability insurance. Your employer may be breaking the law if:

- they do not have employers' liability insurance;
- they have not displayed a certificate of insurance; or

* Applied from 1 January 1999

- the insurance policy, or policies if there is more than one, does not provide cover of at least £5 million or is not issued by an authorised insurer.

If you think that your employer may be breaking the law for any of these reasons you should ask them to explain their insurance arrangements to you. If you are not satisfied with the explanation, you should get in touch with your local Health and Safety Executive (HSE) office. You can find their address and telephone number in the telephone directory.

Your employer can be fined up to £2500 for any day which they are without suitable insurance. If they do not display the certificate of insurance or do not make it available to health and safety inspectors when they ask, they can be fined up to £1000.

How do I know whether I am protected by employers' liability insurance?

You will only be protected by your employer's liability insurance if you are an employee.

Sometimes it can be difficult to work out whether you are protected, especially if you generally think of yourself as self-employed. Whether or not you are covered by employers' liability insurance depends on your agreement with the person you work for. This agreement can be spoken, written or implied. It does not matter whether you generally call yourself an employee or self-employed and your tax status is irrelevant. What matters is the real nature

of your relationship with the person you work for and the degree of control they have over the work you do.

There are no hard and fast rules about when you are an employee for the purposes of the employers' liability insurance. The following paragraphs may help give you some indication. However, **if you have any doubts you should seek legal advice from your trade union, a Citizens' Advice Bureau or a legal centre.**

In general, the person you work for may need employers' liability insurance to cover you if:

- they deduct national insurance and income tax from the money they pay you;
- they have the right to control where and when you work and how you do it;
- they provide most of the materials and equipment you need to do your job;
- they have a right to any profit you generate, although they may choose to share this with you through commission, performance pay or shares in the company. Similarly they will be responsible for any losses;
- you have to deliver the service yourself and cannot choose to employ a substitute;
- you are treated in the same way as other employees, for example, if you are doing the same kind of work under the same conditions as someone else who is an employee of the business.

In general you may not be covered by employers' liability insurance if:

- you work for more than one customer and operate as an independent contractor. However, if you have more than one job you could still be an employee;
- you supply most of the equipment and materials you need to do the job;
- you receive the benefit from any profit you make rather than the person you work for, and you are personally liable for any losses;
- you can employ a substitute when you are unable to do the work yourself;
- the person you work for does not deduct income tax or national insurance. However, even if you are self-employed for tax purposes you may be classed as an employee for other reasons and your employer may still need employers' liability insurance to cover you.

You may not be covered by employers' liability insurance if you are a volunteer. Although the law may not require your employer to cover you if you are:

- a student working unpaid;
- not employed, but taking part in a youth or adult training programme; or
- a school student on a work experience programme.

In practice, many insurance companies will provide cover for such cases. If you are in one of those situations, you should ask the person you are working for whether their insurance covers you.

One difficult area is domestic help. If you work for more than one person, for example, if you are a cleaner or a gardener, you will probably not be protected by employers' liability insurance. However, if you work for only one person they may be required to take out insurance to cover you.

What happens if my injury or illness was caused some time ago?

If you are awarded compensation, this will relate to the insurance policies which were in force at the time your illness or injury was caused. Your employer will renew their employers' liability insurance every year.

It is therefore important that you are able to find details of policies which have expired. Your employer must retain for at least 40 years copies of certificates of insurance which have expired. These requirements apply only to policies which were in force on 31 December 1998 or later.

If your employer has gone out of business since your original illness or injury, you can still claim compensation from the insurer who issued the employers' liability insurance policy which was in force at the time. However, it can be difficult to find the details of the policy and the name of the insurer. You might find it helpful to seek legal

advice. You can go to a Citizens' Advice Bureau, a legal centre or your union for initial legal advice.

You can also consult the voluntary insurance industry Code of Practice for Tracing Employers' Liability Insurance Policies available on request from the Department of Transport, Local Government and the Regions (DTLR). Tel: 020 7944 4428, Fax: 020 7944 4979, e-mail: elci@dtlr.gov.uk, website: <http://www.environment.dtlr.gov.uk/liability/index.htm>.

Further information can be obtained by submitting an enquiry under the Code to the Employers' Liability Enquiry Unit, Association of British Insurers, 51 Gresham Street, London EC2V 7HQ. Tel: 020 7216 7546, Fax: 020 7367 8612, e-mail: info@abi.org.uk, website: <http://www.abi.org.uk>.

Where can I go for further information?

If you want further information and advice about anything in this leaflet you should get in touch with your local Health and Safety Executive office. You can find their address and telephone number under Health and Safety Executive in the telephone directory.

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

You can obtain copies of the Insurance Annual Report Employers' Liability (Compulsory Insurance) Act 1969

(ISBN 0 10 545769 8) and the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573 ISBN 0 11 079725 6) from your local branch of The Stationary Office (formerly HMSO) 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 regulations can also be viewed at the Stationery Office website at: <http://www.legislation.hmso.gov.uk/si/si1998/19982573.htm>.

Further information

Department for Work and Pensions
Health Disability and Work Division
Level 2
The Adelphi
1-11 John Adam Street
London
WC2N 6HT

Tel: 020 7712 2171 (9.00am-5.00pm Monday-Friday)
Fax: 020 7712 2386

Website: www.dwp.gov.uk

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e-mail: **hseinformationservices@natbrit.com**

or write to **HSE Information Services,
Caerphilly Business Park, Caerphilly CF83 3GG.**

You can also visit HSE's website: **www.hse.gov.uk**

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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