

# What is covered by employer liability coverage?

Many businesses owners are under the misconception that any employee injury on the job is covered by their workers' compensation benefits. In reality, there are several exceptions that aren't. However, they *are* covered by employers liability, like:

- **Third-party countersuits.** Say an employee is injured due to equipment malfunction while operating a forklift. They file for workers' compensation and your business is covered, right? What if they also sue the manufacturer of the forklift? The manufacturer's lawyers will most likely bring a cross suit against your company, claiming the malfunction was due to improper maintenance. Workers' compensation won't help you fight that case, but employers liability insurance can step in.
- **Loss of consortium.** In most cases, an employee who receives benefits from a workers' compensation claim can't file a lawsuit against the employer. However, nothing prevents the spouse of the injured employee from filing a claim against your business asserting that they have suffered losses due to the injury. Employers liability insurance can pick up the tab for these types of claims.
- **Dual capacity suits.** These are lawsuits brought by an employee against the employer when the injury stems from a product manufactured by the employer. In such cases, the employer is liable, as both an employer and a manufacturer. Workers' compensation can't handle such complicated cases, but employers liability insurance can.
- **Gross negligence claims.** If one of your managers directs an employee to do something that the manager knows is

dangerous and could result in an injury or worse, your business can be held liable, and workers' compensation will not come to your aid. These are the most common type of employers liability claims and are commonly filed by spouses after a fatality where they believe the employer disregarded the employee's safety.

Many policies have limits on what they will pay out on these claims. You can choose higher limits and pay slightly higher premiums, but rates are usually fairly cheap for an additional \$1 million in coverage.

Or, to increase your limits, you may want to think about a commercial umbrella policy, which works above the employers liability coverage. Your agent can help steer you toward the right choice for you.

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## **What is not covered by employers liability coverage?**

As great as employers liability coverage is, it still doesn't cover everything. It also contains exceptions, such as:

- Punitive or exemplary damages because of bodily injury to an employee who is employed in violation of the law.
- Bodily injury to an employee while employed in violation of the law with the employer's knowledge.
- Any obligation imposed by a workers' compensation, occupational disease, unemployment compensation, or disability benefits law, or any similar law. These types

of losses are covered under the specific policies designed for these exposures.

- Bodily injury intentionally caused, or aggravated, by the employer.
- Bodily injury occurring outside the United States, its territories, possessions and Canada. Note that this exclusion does not apply to bodily injury if a citizen or resident of the United States or Canada is temporarily outside of the country.
- Damages arising out of wrongful termination, discrimination, harassment, and other workplace-related wrongful acts. Coverage for this exposure is provided under an employment practices liability policy.

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## **What is employers liability coverage?**

You've probably heard of auto gap insurance – a separate policy to cover the difference between what car insurance covers and what is still owed on the loan for a vehicle.

Employers liability insurance is purchased with the same thought in mind: to protect your business from costs resulting from employee claims that are not covered by workers' compensation benefits.

It covers the gap between your company's bottom line and lawsuits stemming from employee activities. Some insurance companies and state regulations even refer to employers liability insurance as "stopgap coverage."

Your state, or the county in which you do business, may even require you to carry employers liability insurance. Which is why it's important to work with an experienced insurance agent who is familiar with your industry, the area in which you do business, and any laws with which you must comply.

You may already have a professional liability policy, an EPLI policy (employment practices liability insurance), a general liability policy, and perhaps a host of other coverages to protect your business from liability risk exposures.

Do you really need another liability insurance policy? Yes. Not one of these products fills the gap between workers' compensation and your revenues and assets, but employers liability insurance does.