

Transferring Risk for Contractors to Avoid Lawsuits



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Contractors are routinely tasked with not only overseeing construction work for property managers and owners, but also hiring subcontractors for the project. From small repairs to specialty maintenance or installations of new parts and upgrades, you need the very best people at your disposal to execute your contract with the property management.

The work these subcontractors perform, however, can cause any number of problems. Bodily injury claims from actions taken on the job or actions that were not taken can directly contribute to claims by the subcontractor that results in a lawsuit. And if any of your subcontractors are uninsured, the risk of suffering liability for those losses only increases.

This can affect contractors and their subcontractors in a number of industries including:

- Landscaping
- Janitorial work
- Plumbing
- Carpentry and construction
- Electrical and HVAC
- Fire protection and security

Ensuring you are protected against liability in the event of loss is a vital component of operating your business. Competent contractual risk transfer is a big part of this. Best practices followed by yourself and your insurance carrier or broker will help reduce that risk of injury claims and potential litigation in the event of an accident.

How Risk Transfer Works for Contractors

Risk transfer involves a written agreement in which one party assumes liability for the other in the event of loss. The right language is vital in these situations, ensuring that both the primary contractor and the owner of the property are indemnified and protected against risk and potentially harmful lawsuits.

If you do not take these steps or if the language in these written agreements is not clear, it can result in your company and insurance carrier being responsible for the liability in these cases.

How can contractors use written contracts to execute risk transfer that will protect them in these situations?

There are several minimum requirements you should have in place to ensure proper risk transfer. Below are examples of each – the specific nature of these and how they are written will be determined by your business, nature of the work being performed, and the counsel of your attorney.

1

Hold Harmless/Indemnification Agreements, and Waiver of Workers Compensation Immunity

In such an agreement, the individual doing work for you will defend and hold you, the property owner and any of your agents harmless in the event of any liability, loss, or other claims related to certain types of damage. This should not be limited in any ways. This should be included not only in your main contracts but in specific work orders before work begins on any given project.

2

General Acceptance Provision

A general acceptance provision states that commencement of any part of the work being performed will be deemed as full acceptance of the indemnification and insurance requirement provisions as stated in the contract. For service work, such provisions should remain in effect until something in writing is submitted stating otherwise.

3

Insurance Requirements and Additional Insured Coverage

It goes without saying that your subcontractors should hold insurance for all operations they perform under contract with you via General Liability or Umbrella policies. Their own subcontractors should be insured as well, and you should evaluate and require a certain level of coverage from a standard insurance carrier. It's not unheard for subcontractors to try and reduce premium costs by getting their policy through a non-standard provider. They should also hold workers' compensation insurance for all states in which the contract will be executed.

4

Certificate of Insurance Requirement

Before any work begins, certificate of insurance should be provided to you and your company. In addition, the contractor and owner of the property should be included as additional insureds with the right limits stated in case of a potential loss. Additionally, a requirement should be in place that their policies be endorsed to guarantee a right to notice of cancellation.

A certificate of insurance provides evidence that particular types of coverage are in force at a particular time. It also lists the limits of coverage in force at the time coverage was issued. It is most commonly used to provide the certificate holder (e.g., you or your customer) with evidence that certain insurance requirements have been met.

No subcontractor should be permitted to enter your job site without first providing an up-to-date certificate of insurance. The ACORD Certificate of Insurance form has become the industry standard. It provides evidence of the types of coverage as well as endorsements to the commercial general liability (CGL) policy. The type of coverage, name of insurer, policy term and limits of coverage are the typical entries on the form. It provides a brief summary of the coverage in force when it was issued. Since it provides information only, it does not constitute a contract between the insurer and the certificate holder.

This agreement states that the subcontractor will waive any and all rights to subrogation against the contractor and owner. This states that they waive their right for reimbursement by your insurance in the event of your negligence on the job.

Minimum Insurance Requirement Limits for Your Subcontractors

The following limits should be maintained by your subcontractors to ensure required coverage:

- General Liability Coverage – Limits must be \$1 million for each occurrence, \$2 million general aggregate and \$2 million products-completed operations aggregate. This should apply per project and per location.
- Umbrella Liability Coverage – This should be a minimum of \$1 million and provide coverage for you as primary and non-contributory basis.
- Workers' Compensation – Bodily injury (BI) limits should be \$100,000 per accident, \$500,000 per policy and \$100,000 per employee for disease and should apply to all states in which work will be performed.
- Auto Liability – Per accident rate of \$1 million combined.
- Personal and Advertising Injury – Minimum of \$1 million. This will be included in an ISO GL policy, but a separate PAI policy should be selected for those who have non-ISO policies.



Most Common Sub-Contractor Related Mistakes

As a contractor, you will work with sub-contractors on a near-daily basis. Your business relies on them and their specific areas of expertise, but your business can also be put at significant risk if you don't manage it effectively. Here are some of the most common mistakes and risks you might face when working with subcontractors if the right actions are not taken in advance:

- Using handshake agreements or verbal agreements instead of written agreements, especially if it is someone you have worked with in the past and trust.
- Using contracts that do not contain indemnification clauses or that don't mention specific insurance coverage requirements for both sides.
- Assuming your subcontractor has insurance or that they are using a standard provider whose coverage will be sufficient.
- An expired or counterfeited certificate of insurance that you don't check in greater detail.
- Allowing other subcontractors who are not employed by you or included in documentation on the job site and to use your tools and equipment.
- Starting a project before the screening process and risk transfer agreement process are completed.
- Maintaining a job site that doesn't meet or exceed the necessary OSHA and state guidelines.
- Working in a rush and not prequalifying and verifying your subcontractors in that time period.



Most Common Sub-Contractor Related Mistakes

Beyond making sure your subcontractors follow all minimum requirements and are able to prove their insurance coverage is not only current but sufficient, there are several things you can do to reduce risk on the job site.

Preventing accidents, maintaining high safety standards, and following OSHA guidelines will all help in this regard. This means:

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How to Ensure Best Practices on Your Job Site

Beyond making sure your subcontractors follow all minimum requirements and are able to prove their insurance coverage is not only current but sufficient, there are several things you can do to reduce risk on the job site.

Preventing accidents, maintaining high safety standards, and following OSHA guidelines will all help in this regard. This means:

- Documentation of your training programs with written records, attendance checklists, and daily logs of all work completed and by whom.
- A clearly defined safety program that is documented and recorded, with regular enforcement by you or one of your direct employees.
- A special focus on fall prevention, with Fall Protection programs, training, equipment maintenance and upgrades, and integration of ladder alternatives.
- Careful selection of employees and subcontractors, including ongoing training, orientation and review of actions on a daily basis.
- Careful and immediate investigation of any accidents or near accidents that occur on your job sites and actions taken to resolve the cause.
- Making sure your team is directly involved in all aspects of the process.

With a good safety program in place, you can reduce and prevent accidents in many of the most common situations. Combined with your careful vetting of subcontractors, you can directly reduce risk and protect your business.

Ensuring Good Contracts and Coverage

As a contractor, your expertise lies in the work you perform, not contracts and insurance policies. But there will be hundreds of such contracts every year and you should have a system in place to ensure you are fully covered.

To do so, work with an attorney to review your contracts, risk agreements and procedures on the job site. There are also several standard form contracts you can use for these purposes. Finally, work with your insurance broker to help implement the right coverage and check the coverage of your subcontractors.

If done right, you can greatly reduce your risk as a contractor, which protects you against future liability, and can also reduce what you pay for your insurance policies.

