

Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972

A guide for employers



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 Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order and it has no formal legal status. You should be aware that only the courts can authoritatively interpret the law.

What is employer's liability insurance?

Employers are responsible for the health and safety of their employees while they are at work. Your employees may be injured at work or they, or your former employees, may become ill as a result of their work while in your employment. They might try to claim compensation from you if they believe you are responsible. The Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 ensures that you have at least a minimum level of insurance cover against any such claims.

Employer's liability insurance will enable you to meet the cost of compensation for your employees' injuries or illness whether they are caused on or off site. However, any injuries and illness relating to motor accidents that occur while your employees are working for you may be covered separately by your motor insurance. Public liability insurance is different. It covers you for claims made against you by members of the public or other businesses, but not for claims by employees. While public liability insurance is generally voluntary, employer's liability insurance is compulsory. You can be fined if you do not hold a current employer's liability insurance policy which complies with the law.

Do I need employer's liability insurance if my employees work abroad or my company is based abroad?

If any of your employees are normally based

in Northern Ireland (including offshore installations or associated structures) you must have employer's liability insurance.

You do not need employer's liability insurance under Northern Ireland law to cover any of your employees who are based abroad (eg if they are on secondment). However, you should check whether the law in the country where they are based requires you to take out insurance or take any other measures to protect your employees.

If any of your employees are normally based abroad but spend more than 14 days continuously in Northern Ireland, or more than seven days on an offshore installation, under Northern Ireland law you will need employer's liability insurance for them.

Which insurance companies can sell me employer's liability insurance?

You must use an authorised insurer. If you do not, you may be breaking the law. You should check that your insurer is authorised before you take out employer's liability insurance.

Authorised insurers are individuals or companies working under the terms of the Financial Services and Markets Act 2000. The Financial Services Authority (FSA) maintains a register of authorised insurers. You can check whether a company is authorised by searching their register on www.fsa.gov.uk, or telephoning the FSA on 0845 606 1234.

Can my insurance policy contain conditions?

If you take out employer's liability insurance, you will have an agreement with your insurer about the circumstances in which they will pay compensation. For example, the policy will cover the specific activities that relate to your business.

There are certain conditions which could restrict the amount of money your insurer might have to pay, which you cannot agree and your insurer cannot impose. You should make sure that your contract with your insurer does not contain any of these conditions.

Your insurer cannot refuse to pay compensation purely because:

- you have not provided reasonable protection for your employees against injury or disease;
- you do not keep specified records or cannot provide the insurer with information from those records;
- you have done something they told you not to do (for example, said it was your fault);
- you have not done something they told you to do (for example, report the incident); or
- you have not met any legal requirement connected with protection of your employees.

However, this does not mean you can forget about your legal responsibilities to protect the health and safety of your employees. For example, you must carry out a risk assessment that is suitable and sufficient, and take all reasonably practicable measures

to protect your employees and report incidents. If your insurer believes that you have failed to meet your legal responsibilities for the health and safety of your employees and that this has led to the claim, the policy may enable the insurer to sue you to reclaim the cost of the compensation.

Can the insurer make me pay part of any claim for compensation?

Your insurer must pay the full amount of any compensation agreed with your employee or former employee or awarded to them by a court. Your insurer cannot impose conditions which make you, your employee, or your former employee pay part of any claim. However, you can agree with your insurer that you will pay back to them part of any compensation which they have paid to your employee or former employee.

How much cover will I need?

You must be insured for at least £5 million. However, you should look carefully at your risks and liabilities and consider whether you need insurance cover of more than £5 million. In practice, most insurers offer cover of at least £10 million.

If your business is part of a group, a policy for employer's liability insurance can be taken out for the group as a whole. In this case, the group as a whole, including subsidiary companies, must have cover of at least £5 million.

You can have more than one policy for employer's liability insurance. However, the total value of the cover provided by the policies must be at least £5 million. You should bear in

mind that the £5 million minimum level of cover includes costs, so you may wish to purchase cover of more than this.

Do I need to tell my employees that I have employer's liability insurance?

When you take out or renew a policy, your insurer will give you a certificate of employer's liability insurance. This must state clearly the minimum level of cover provided and the companies covered by the policy. You must display a copy of the certificate of insurance where your employees can easily read it. Since 1 April 2009 you have been allowed to display your certificate electronically. Employers choosing this method need to ensure their employees know how and where to find the certificate and have reasonable access to it. Factors to consider include the availability of the chosen format and ensuring employees understand how to use it. For example, this arrangement may be suitable where all employees have access to a computer as part of their job. If you have employees working in England, Scotland, Wales, the Isle of Man, Jersey or Guernsey as well as in Northern Ireland you can use the same certificate in all locations. However, you must check that this complies with any local requirements as well as with Northern Ireland law.

If your employees work on offshore installations or associated structures, you do not need to provide a copy of the certificate on every installation. However, if one of your employees asks to see a copy of the certificate, you must provide one as soon

as possible and certainly within ten working days of their request. You can provide a copy electronically or by fax if this is easier for you.

Does the law apply to me?

You need employer's liability insurance unless you are exempt from the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order. The following employers are exempt:

- most public organisations including government departments and agencies, district councils, the Northern Ireland Policing Board and nationalised industries;
- health service bodies including Health and Social Services Trusts and Regional Health and Social Care Board;
- some other organisations which are financed through public funds, such as Education and Library Boards;
- family businesses, ie if all of your employees are closely related to you (as husband, wife, civil partner, 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;
- companies employing only their owner where that employee also owns 50% or more of the issued share capital in the company.

Many of the employers who are exempt

from the need to have employer's liability insurance are listed in Schedule 2 to the Employer's Liability (Compulsory Insurance) Regulations (Northern Ireland) 1999; however, some public sector employers are exempted by other statutory provisions. If you are in any doubt about whether your organisation is exempt, contact the Health and Safety Executive for Northern Ireland – see "Where can I go for further information?" at the end of this booklet.

Do I need employer's liability insurance for all the people who work for me?

You are only required by law to have employer's liability insurance for people who you employ under a contract of service or apprenticeship.

Whether or not you need employer's liability insurance for someone who works for you depends on the terms of your contract with them. This contract can be spoken, written or implied. It does not matter whether you usually call someone an employee or self-employed or what their tax status is. Whether you choose to call your contract a contract of employment or a contract for services is largely irrelevant. What matters is the real nature of your relationship with the people who work for you and the nature and degree of control that you have over the work they do.

The following paragraphs may help give you some indication of whether or not a person is an employee under the Employer's Liability (Defective Equipment and

Compulsory Insurance) (Northern Ireland) Order 1972. However, it is for you to satisfy yourself of the status of the persons working for you and if you have any doubts, you should seek legal advice.

You may need employer's liability insurance for someone who works for you where:

- you deduct national insurance and income tax from the money you pay them;
- you have the right to control where and when they work and how they do it;
- you supply their work materials and equipment;
- you have a right to any profit your workers make although you may choose to share this with them through commission, performance pay or shares in the company;
- you require that person only to deliver the service and they cannot employ a substitute if they are unable to do the work; or
- they are treated in the same way as other employees, for example, they do the same work under the same conditions as someone else you employ.

You may not need employer's liability insurance for people who work for you where:

- they do not work exclusively for you (for example, if they operate as an independent contractor);
- they supply most of the equipment and materials they need to do the job;
- they are clearly in business for their own personal benefit;
- they can employ a substitute when they are unable to do the work themselves;
- you do not deduct income tax or national

insurance. However, even if someone is self-employed for tax purposes they may be classed as an employee for other reasons and you may still need employer's liability insurance to cover them.

In some cases you will not need additional employer's liability insurance for volunteers or for:

- students who work for you unpaid;
- people who are not employed, but taking part in a youth or adult training programme; or
- a school student on a work experience programme.

Insurers will usually cover the above under an existing employer's liability policy, and there is generally no need to inform your insurer if you take on any of the above. However, you should talk to your insurer if you take on the above either for long periods, or if they are doing work that is not your company's usual business, and you should bear in mind the level of risk they may be exposed to during the time they are working for you. It may be necessary for you to carry out a separate risk assessment (eg for young workers) or take special measures for those listed above.

If you do not currently have any employer's liability cover you should talk to your insurer before taking on any of the above.

One difficult area is domestic help. In general, you will probably not need employer's liability insurance for people such as cleaners or gardeners if they work for more than one person, nor are you

likely to need it if you employ a childminder. However, if you employ someone who works only for you, you may be required to take out insurance to protect them.

Do I need to keep copies of certificates of insurance which are out of date?

Since 1 April 2009 there has been no legal requirement for employers to keep copies of out-of-date certificates.

However, employers are strongly advised to keep, as far as is possible, a complete record of their employer's liability insurance. This is because some diseases can appear decades after exposure to their cause and former or current employees may decide to make a claim against their employer for the period they were exposed to the cause of their illness.

Employers that fail to hold the necessary insurance details risk having to meet the costs of such claims themselves.

What happens if I do not have employer's liability insurance?

The Health and Safety Executive for Northern Ireland (HSENI) enforces the law on employer's liability insurance and HSENI inspectors can check that you have employer's liability insurance with an approved insurer for at least £5 million. They may ask to see your certificate of insurance and other insurance details.

You can be fined up to £2500 for any day which you are without suitable insurance. If you do not display the certificate of insurance or refuse to make it available to

HSENI inspectors when they ask, you can be fined up to £1000.

Where can I go for further information?

If you want further information and advice about anything in this leaflet you can get in touch with:

Health and Safety Executive for Northern Ireland
83 Ladas Drive
Belfast
BT6 9FR
Telephone: (028) 9024 3249
Textphone: (028) 9052 9304
Fax: (028) 9023 5383
Email: hseni@detini.gov.uk

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

You can obtain copies of the Employer's Liability (Defective Equipment and Compulsory Insurance) (Northern Ireland) Order 1972 (ISBN 0 11 020963 X), the Employer's Liability (Compulsory Insurance) Regulations (Northern Ireland) 1999 (SR 1999 No.448) (ISBN 0 3379385 7 1) and the Employer's Liability (Compulsory Insurance) (Amendment) Regulations (Northern Ireland) 2009 (SR 2009 No. 85) (ISBN 978-0-337-97688-9) from The Stationery Office Bookshop, 16 Arthur Street, Belfast BT1 4GD. Telephone (028) 9023 8451, Fax (028) 9023 5401 or from any good bookshop.

The text of the 1999 and 2009 Regulations can also be viewed on the Office of Public Sector Information website at: www.opsi.gov.uk/stat.htm.

This Guide is based very closely on *A Guide for Employers* published by the Great Britain Health and Safety Executive and Department for Work and Pensions.

Copies are free and a web version can be found at www.hseⁿⁱ.gov.uk

© *Crown copyright* This publication may be freely reproduced, except for advertising, endorsement or commercial purposes. First published 02/10. Please acknowledge the source as HSENI.