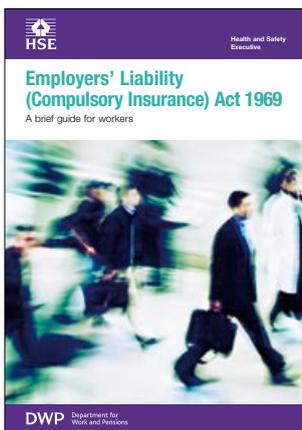


Employers' Liability (Compulsory Insurance) Act 1969

A brief guide for workers



This is a web-friendly version of leaflet HSE39(rev2)

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 formal 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 be able to seek compensation from them. The Employers' Liability (Compulsory Insurance) Act 1969 requires your employer to have at least a minimum level of insurance against any such claims.

Employers' liability insurance will cover relevant work injuries or illness whether these are caused on or off site. However, any injuries or illness relating to motor accidents which occur while you are at work 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.

* Further exemptions from the need to have employers' liability insurance are listed at section 3 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.

There are also exemptions for certain family businesses. Your employer will not need employers' liability insurance to cover you if you are closely related, ie if your employer is your 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.

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 at work or you become ill as a result of your employment with them.

If you are based abroad you will not be covered by employers' liability insurance under the law in Great Britain. However, you should check whether the law in the country where you are based requires your employer to take out insurance or take any other measures to protect 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 in Great Britain 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 or renews 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 have reasonable access to it. If they do not, they can be fined.

Since 1 October 2008, employers have been allowed to satisfy this requirement by displaying the certificate electronically. If your employer chooses this method, they must ensure that you know how and where to find the certificate and you have reasonable access to it.

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 at least £10 million.

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. In this case the group as a whole, including subsidiary companies, 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 www.moneymadeclar.fsa.gov.uk or telephoning the FSA's Moneymadeclar

consumer helpline on 0300 500 5000. 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 provide a copy of the certificate on every installation. However, you can ask to see a copy of the certificate and your employer must provide one within ten days of your request. Employers can provide a copy electronically or by fax if this is easier.

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

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

- they do not have employers' liability insurance;
- they have not displayed, or made available electronically, a certificate of insurance; or
- 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 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 on which they are without suitable insurance. If they do not display the certificate of insurance or refuse to make it available to HSE 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 employers' 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 contract with the person you work for. This contract can be spoken, written or implied. Even if you consider yourself to be self-employed for the purposes of tax, you may still be an employee for the purposes of employers' liability insurance depending on the nature of your relationship with the person you work for.

The following paragraphs may help give you some indication of whether or not you are an employee under the Employers' Liability (Compulsory Insurance) Act. However, if you have any doubts you should seek legal advice from your trade union, a Citizens' Advice Bureau or a legal centre.

* The level of fines are correct at the time of publication.

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 supply your work materials and equipment;
- they have a right to any profit you make, although they may choose to share this with you through commission, performance pay or shares in the company;
- you are required to deliver the service yourself and you cannot employ a substitute if you are unable to do the work; or
- you are treated in the same way as other employees, for example, if you do the same 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 (for example, if you operate as an independent contractor);
- you supply most of the equipment and materials you need to do the job;
- you are clearly in business for your own personal benefit;
- you can employ a substitute when you are unable to do the work yourself; and/or
- 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 or:

- 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, insurers will usually cover such cases under an existing employers' liability policy. If you are in one of these situations you should ask the person you are working for whether their insurance covers you. The advice given to employers is that there is generally no need to inform their insurer if they take on any of the above people. However, employers should talk to their insurer or insurance broker if they take on these people either for long periods, or to do work that is not the company's usual business, and employers should also bear in mind the level of risk the people may be exposed to during the time they are working for them.

Employers who do not have an existing employers' liability policy are told they should talk to their insurer before taking on any of the above people. If you are in any of these categories you are advised to check whether the person providing you with experience or training currently has employers' liability insurance. If not, they should contact their insurer or insurance broker before you begin.

One difficult area is domestic help. In general, if you work for more than one person, for example, if you are a cleaner, gardener or childminder, 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 employers' liability insurance to protect 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.

Since 1 October 2008, 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 employers' liability insurance. This is because some diseases can appear decades after exposure to their cause.

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 use the Employers' Liability Tracing Service, run by the Association of British Insurers (ABI). You will need to fill in an online enquiry form at www.abi.org.uk with details of your former employer and employment dates, and your illness or injury. If you have trouble filling out the form, you can contact ABI directly on 01908 843100. The Tracing Service is based on the voluntary insurance industry Code of Practice for Tracing Employers' Liability Insurance Policies, which can be viewed on the Department for Work and Pensions website: www.dwp.gov.uk.

Where can I go for further information?

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

You can obtain copies of the Employers' Liability (Compulsory Insurance) Act 1969, the Employers' Liability (Compulsory Insurance) Regulations 1998 (SI 1998/2573) the Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2004 (SI 2004/2882), and the Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008 (SI 2008/1765) from your local branch of The Stationery Office or from bookshops. Or you can order them by telephone from 0870 600 5522 and by fax from 0870 600 5533. The text of the Act and Regulations can be viewed online at: www.legislation.gov.uk.

Further information

For information about health and safety, or to report inconsistencies or inaccuracies in this guidance, visit www.hse.gov.uk/. You can view HSE guidance online and order priced publications from the website. HSE priced publications are also available from bookshops.

This guidance is issued by the Health and Safety Executive. Following the guidance is not compulsory, unless specifically stated, and you are free to take other action. But if you do follow the guidance you will normally be doing enough to comply with the law. Health and safety inspectors seek to secure compliance with the law and may refer to this guidance.

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