

Controlling Contractor Liability

Why Should You Care About Contractors' Liability?

Consider the following scenarios...

- A hotel owner hires a contractor to install a new roof on their building. During the course of replacing the roof, a winter storm blows through. No special protection or preparation was made by the contractor to preserve the interior structure or contents and over \$500,000 damage resulted.
- A resort hotel was undergoing some interior renovation when the contractor's welding process contacted some combustible furnishings and caused a \$3 million loss.

Most employers and business-owners know that they are liable for the actions of their employees done in the performance of their duties. Many also know that they may avoid this liability in some cases by hiring independent contractors to perform the work often done by employees. However, hiring an independent contractor does not protect you from all liability. You can reduce your loss costs by identifying where these vulnerabilities lie and taking proactive measures to minimize their impact on your business' profits

As a Business Owner, Your Goal is to...

- Know the limits of your liability for the actions of a contractor
- Know who is and, more importantly, who is not a contractor
- Know how to control your liability for the actions of a contractor

How Can My Business be Liable for the Actions of a Contractor?

Here are some of the ways that you can be held liable for the actions of a contractor you hire:

Negligence of the Business Owner.

Although an owner is not liable for the actions of a contractor, he/she must still select a contractor using due diligence and reasonable care. An owner cannot hire a contractor without checking references for workmanship and safety and then expect to litigate when the materials are substandard, the work is poor, or the schedule is not met. As a minimum, every owner must:

- Use reasonable measures to ensure that the contractor hired has the skills, resources, and experience to complete the work effectively and safely.
- Ensure that the contractor is adequately insured for task undertaken. This includes ensuring that the limits of coverage are at least \$1 million for general liability and that you are named as an additional insured on the contractor's policy.

Non-Delegable Duties of the Employer.

Where the law assigns a non-delegable duty to an employer or where the employer is contractually obligated to perform a function, they cannot avoid liability by hiring a contractor. As an example, if an employer hires a contractor (now a subcontractor) to repair or remodel a building for another customer, the owner cannot avoid liability if the subcontractor does the work poorly, incorrectly, or dangerously (e.g., the work causes a fire). The owner, of course, may have an independent action against the subcontractor. However, his ability to collect from

the subcontractor does not affect his liability as to the customer. As a minimum, the employer should:

- Ensure that these exposures are adequately insured to at least \$1 million for liability
- Take special care to control frequency and severity exposures for these liabilities
- Regularly evaluate the workmanship, the quality of materials, and project progress?

Contractually Assuming the Liabilities of the Contractor.

The owner should avoid unnecessarily assuming the liability of the subcontractor through the contract agreement. In order to avoid unintentional liability, the owner should:

- Review the contract with an insurance representative [producing sales agent] and legal counsel.
- Retain the right of recovery from the contractor. Avoid indemnity agreements, waiver of subrogation agreements and hold harmless clauses where appropriate.

- Refrain from verbally dictating work methods, material specifications, and safety procedures that are not specifically mentioned in the contract.

- Manage the terms of the contract, not the workers, when evaluating their work.

Identification of an Independent Contractor.

While legal definitions of a contractor can be quite complex, the bottom line is that an independent contractor has the expertise and tools to do the work they have agreed to do. Part of that expertise is their professional ability to interpret the contract, plans, or specifications to identify the equipment, work force, and materials needed, and determine methods and procedures to complete the task.

A business-owner directing the contractor's employees, lending the contractor tools or equipment to complete their work, and providing safety equipment are all points that erode the employer/employee relationship and potentially increase the owner's liability.

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