

Special report from Paragon Underwriters, Inc.

When should consultants buy professional liability insurance?

Consultants who don't know about professional liability insurance run the risk of being taken to court if one of their projects goes awry. Here's a look at how such coverage may protect you and your livelihood.

As a consultant, you may have set up your own insurance coverage, including health insurance and possibly other policies. Along with these, you must evaluate your need for professional liability insurance, which will protect you if a client files a suit regarding how you did or didn't fulfill your professional obligations. This coverage, also called errors and omissions insurance, may be necessary, in addition to any general liability policy you may have, to protect you in the event that clients sue, claiming that you caused them financial loss or interruption of services.

It's important to assess your risk and consider coverage, because as an independent consultant you may not have the financial resources of a big company to back you up in the event of a client lawsuit. Also, more companies have recently begun requiring consultants to carry liability insurance when working on a project for them. You can assess your risk based on the type of work you do, the clients you take, and how well your contracts shield you from this type of lawsuit.

A few examples

Let's say you design a custom application for a client. A problem that you did not anticipate develops after implementation and causes a delay in the execution of the plan for one week. The company sues, using weekly sales figures to argue that you caused the company to lose \$750,000 in sales. Professional liability insurance with coverage of at least that amount plus your legal fees would protect you in the event of a judgment.

In another example, a client might sue if a solution you implemented caused a virus to be introduced or allowed a hacker to access company data. You could also miss a deadline on a mission-critical project. If the company experiences financial loss in any of these scenarios, you could find one of those thick envelopes full of legal documents in your mailbox.

How real is the risk?

It's easy to look at these examples and downplay the risks. You may be thinking, "My advice would *never* cause a problem like that. They would at least have a backup to their system. I use virus safeguards, so an attack wouldn't be *my*

fault.”

However, your risk isn't based on the likelihood of your losing a lawsuit but rather that of a client bringing one against you. Even if the case is completely baseless—and the judge agrees with you—you could go bankrupt defending yourself against the claim.

Here are some realities:

- **You're at higher risk in technology based businesses**
The tech industry is particularly susceptible because technologies are so new: The law is still being defined and shaped, and there's no clear standard on what constitutes acceptable and reasonable client expectations or even on what a consultant is. There are simply not enough legal precedents in this industry yet.
- **Dissatisfied or dishonest clients could bring claims**
The standard claim is brought when clients perceive that they've lost money because of something you did (an error) or something you should have done but didn't (an omission). Another type of claim could arise when a client simply isn't satisfied with the job you've done. Perhaps the client expected your solution to deliver something it doesn't or to function in a different way. However, to your understanding, it functions exactly as agreed. Ideally, you and the client will negotiate a solution, but if you can't, your client may sue. Worse, dishonest clients with well-equipped legal departments may decide to sue to avoid paying monies they owe you. Contemplate the prospect of explaining why your solution *does* work as intended to a judge who knows little or nothing about your business and insurance may suddenly look like a good idea after all.
- **However, that doesn't mean that you have to buy coverage**
You can assess risk by looking at the type of work you do and the financial stake your clients have in it. For example, you may decide not to carry professional liability insurance. The reason isn't because you've decided that you can't afford it; it's because the work you're doing *at this time* isn't particularly risky. As a business consultant, you may create user documents, conceive conceptual ideas, and help formulate plans for companies. You may not develop solutions that process credit card transactions or handle billions of dollars in customer investments. However, if your projects take on aspects that involve even documenting such products, you should reassess your risk.

Your contract may cover you

Even considering the potential benefits; professional liability coverage is expensive, starting at about \$1,500 for a one-year premium. Despite the cautions I've pointed out here, I don't believe it's indispensable for all contractors in all cases. You might decide to forego coverage based on two conditions:

- The work you do and the type of clients you take place you at low risk.

- You make sure that every contract you sign—perhaps using a contract that’s been approved by a lawyer experienced in professional liability cases—offers some degree of protection against lawsuits.

Although neither of these criteria offers foolproof protection, they do help you balance investment with benefits, as you must do with all other expenditures.

Having a well-written contract that shields you from disastrous financial loss is simply a necessity. For example, a standard contract should state that in no case can you be held responsible for damages that exceed the monies I earned from that project. Although it sounds good, I have to admit that you can’t be absolutely certain it will hold up in court.

Do you still have questions?

We are here to help you manage your insurance protection. We promise that we will be honest with you and try to get you the best coverage for your insurance dollar.

We can’t always have the “cheapest” rates around, but I can guarantee you that we will do everything possible to make sure that you are getting all the discounts you deserve and have your insurance with one of the top insurance companies doing business today.

So if you want to protect yourself, your business and your assets in the event of a crisis or catastrophe, call our office and speak to our knowledgeable staff. We will be more than happy to assist you with any of your necessary coverage’s.



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