

COMMERCIAL LEGAL EXPENSES INSURANCE

Version: October 2006

CB/GEN/023

Introduction

Increasing Government legislation and alternative ways of conducting tax investigations by the Inland Revenue are placing heavy burdens on businesses nationwide.

Small to medium sized enterprises are unlikely to have the in-house resources to deal with these and are consequentially most at risk. Commercial Legal Expenses insurance policies protect against the cost of potential commercial legal disputes, provide the legal advice and the representation a business needs to its exposure to these risks.

Employment law and the fear of a claim from an employee, ex-employee or even potential employee is the driving force behind many companies' need for commercial legal expenses insurance. Legislation such as the Employment Act 2000 reflected a shift back towards the employee introducing new rights for part-time workers, parental and maternity leave. The Working Time Regulations and National Minimum Wage Act have also increased employee rights. All are causing employers to check and in many cases, amend their policies and procedures to remain within the law. Keeping up to date often requires the help of a lawyer. This is exactly where the benefits of legal protection policies kick in. Standard covers also generally include Tax Protection cover, Legal Defence, Property Disputes and Property Protection cover, with extensions such as Statutory Licence Protection, Contract Dispute and Debt Recovery available.

In its early days commercial legal insurance concentrated on underwriting a risk and stepping in to finance claims when they occurred. Now as the market develops, insurers are increasingly using risk management tools to reduce the likelihood of their policyholders becoming involved in a dispute. These may take the form of on-line business advice services, providing detailed guidelines on matters of employment, tax and debt recovery.

Providing free legal advice through an e-mail or telephone helpline service enables the policyholder to obtain up to date information on the law and how it affects their individual circumstances. The lawyers providing this explain what action a policyholder can or should take under the law to pursue their case or to comply with requirements under new legislation.

Legal advice is often the first point of contact a policyholder has with their insurer before making a claim. Should a mistake be made and a claim brought at an Employment Tribunal, uninsured firms will probably face a legal bill of several thousand pounds. Without legal expenses insurance, winning their case will be of limited relief as, regardless of the outcome, costs are not recoverable under the tribunal system.

Examples of Claims

Employment dispute - An employee resigned her position and then made a claim of sexual discrimination against her former employer. The employer's legal expenses insurer appointed a solicitor to represent them at the Employment Tribunal. Despite their successful defence, they incurred legal costs of £3,300 which could not be recovered. The costs were paid by the legal expenses insurer.

Employment Dispute - A recent case highlights some of the difficulties facing employers. An employee working as a shop assistant tendered her resignation with no reason given for her decision. The shop was subsequently notified that an application had been made to Employment Tribunal alleging Unfair Dismissal. The case took four days to be heard at the end of which the allegations were dismissed. The costs incurred in defending the case were £5,792 which were met by insurers. If the case had been lost an award of up to £53,500 could have been made against the company.

Employment Dispute - An employee submitted a second sick note for a four week period asserting she was suffering from depression, her employer was not convinced the absence was genuine. After taking advice from the

department of Social Security, the employer withheld the payment of Statutory Sickness Pay, and advised the employee accordingly. This resulted in the employee sending a written notice of resignation, but gave no reason for this decision. The employer was then informed that a complaint had been submitted to Employment Tribunal by the ex-employee, alleging Unfair Dismissal as a result of Sexual Discrimination. When the case was heard the allegation could not be substantiated and the case was dismissed. The legal costs of defending the case amounted to £6,612 and were paid by insurers.

Employment Dispute - When an employee sustained serious injury as a result of a car accident their employer took steps they considered reasonable to help the employee return to work. This included a reduction in working hours which could be increased when the employee felt able, and a specially designed work station and voice activated computer. Despite these measures the employee brought a claim against the policyholder alleging Disability Discrimination on the grounds no proper measures were put in place to enable the employee to use equipment to the fullest and he had therefore been denied the right to work full time. The court found in the employer's favour stating that the employee had at no time intimated that he felt able to return to work or that he was experiencing difficulties using the equipment provided. The legal costs of defending the case still amounted to £8,881, which were met by insurers.

Employment Dispute – Age Discrimination – Whilst there are no age discrimination cases yet in the UK at the time of writing this bulletin, the following case from the Republic of Ireland highlights some of the issues employers will face. A company that had advertised a position requiring “2-3 years post qualification experience” were recently ordered to pay €10,000 by the Republic of Ireland Equality Officer. The case came about when an applicant with 20 years experience was turned down for being too senior. The applicant claimed that the requirement for only 2 or 3 year's experience ruled out older people.

Tax Protection - An incorrect return discovered by the Inland Revenue in a firm's accounts triggered a Full Enquiry. Accountants appointed by the legal expenses insurer made technical changes to the accounts and showed where some areas of additional taxes needed paying. No further interest or penalties were charged. The accountant's additional fees of over £5,000 were paid by their insurance.

Tax Protection - A hotel became subject to a Full Enquiry because of fluctuations in their gross profit rate of business. After negotiation it was concluded that the hotel should make several changes to their procedures and pay additional tax of £2,500 which our policyholder was pleased with. The accountant's costs of negotiating the case amounted to £14,500.

Tax Protection - The Inland Revenue issued a letter to a sports shop advising them that they owed £4,500 in unpaid PAYE and National Insurance Contributions. After appointing a Tax Consultant the dispute was resolved in the shops favour by implementing a simple procedural change. The Tax Consultants fee amounted to £1,925 and was paid by insurers.

Tax Protection - A shoe shop underwent an inspection by the Inland Revenue at their premises. A dispute concerning VAT arose from this meeting. The shop was displaying children's shoes alongside ladies and there was no way of knowing which were for ladies and which for children. The Revenue informed the shop that children's shoes could only be sold as zero rated if they were only sold to children. The tax consultant negotiating on the shops behalf confirmed that Custom and Excise had quantified an assessment and the amount should be appealed against. The total costs of settling the case amounted to £5,339, were met by insurers.

Legal defence - When a policyholder failed to report an accident to the Health & Safety inspector, they faced prosecution. Solicitors appointed by the legal expenses insurer to represent them advised admitting their guilt, but pleaded mitigation on their behalf. The policyholder was let off with a caution and their insurer paid the solicitor's fees.

Legal Defence - A respected manufacturer of playground toys had proceedings brought against them following the collapse of one of their swings in which a child had sustained minor injuries. The company entered a guilty plea but claimed mitigation on the grounds that the equipment had met British Safety Standards, they had investigated and corrected the problem and had employed a full time member of staff to check this particular piece of equipment. With the assistance of the appointed solicitor the case was settled with a small fine of £2,500.

Legal Defence - Another area which has recently come under the spot light is the environment, with business under increasing pressure to behave in an environmentally friendly manner at all times. In the last year the Environment Agency carried out 7,000 enforcement actions and in addition they obtained 4,300 successful prosecutions with fines of £2.8m imposed. The largest fine was £250,000 for river pollution.

Legal Defence - Following the fracture of an overhead pipeline, a quantity of vegetable oil was discharged on to a towpath and nearby canal. Although the company concerned were aware of the fracture and had covered the oil on the towpath they had not been aware that the canal had been polluted until they were advised. When they subsequently received a summons alleging they had polluted a canal contrary to the Water Resources Act 1991, they acknowledged their negligence and entered a plea of guilty. An extensive plea in mitigation was made and resulted the company being fined £1,500 (the minimum amount for a first offence). The solicitors costs incurred in the case totalled £2,650 were paid by insurers.

Property Protection - During the course of construction work on a neighbouring property water penetrated a shop keeper's premises causing substantial damage. The appointed solicitor entered into lengthy negotiations and an initial offer of £17,500 was rejected. Further negotiations resulted in an offer of £25,000 being accepted. Legal costs

incurred in handling this lengthy and complex case amounted to £12,000, fortunately picked up by insurers under their policy.

Property Protection - The owner of a newsagent's shop, brought an action against North West Water Authority claiming that his business had suffered a loss of profit as a result of the sewage work being carried out near his premises. The appointed solicitor entered into negotiations with the Water Authority an offer of £8,500 was made in respect of compensation which was accepted by the newsagent, the legal costs amounted to £4,000.

Bodily Injury Cover - Our policyholder's employee tripped and fell badly on a third party premises, sustaining a serious fracture to his ankle. The policyholder contacted insurers to make a claim of negligence against the third party. Medical reports obtained from the orthopaedic surgeon concluded that the employee would never again have full use of the ankle and would always experience some degree of pain. The third party refused to accept liability and the case went to court. The case was won and a £13,000 compensation payment was ordered. Legal costs of £3,500 were met by insurers.

Enhanced employment related risk management products

Larger businesses often need more than the standard commercial legal expenses protection. Some providers have responded by bringing out products combining legal expenses cover with risk management tools. These involve a specialist employment consultant auditing their business to ensure that they are following best practice, combined with enhanced commercial legal expenses cover providing greater protection against a wider range of employment related disputes. This risk management principle builds on the efforts by insurers to minimise claims against their policyholders by the provision of legal helplines and on-line support.

How Rowlands & Hames can assist you

Quotations are relatively inexpensive for standard Commercial Legal Protection and can often be added to an existing commercial policy. All new policies incorporate an initial exclusion period for claims of 90 days (increasing to 180 days for redundancy claims) in the first period of insurance to avoid claims that the Insured knew were forthcoming.

If you wish to obtain a Commercial Legal Expenses quotation and/or discuss your company's particular situation please contact your usual Account Director who will be pleased to assist.

Please contact Rowlands & Hames by telephoning 01253 594211, via email to mail@rowlands-hames.co.uk or via our website at www.rowlands-hames.co.uk.

Rowlands & Hames would like to thank DAS Legal Expenses Insurance Company for their assistance in preparing this bulletin.

Please contact Rowlands & Hames for further information.

Rowlands & Hames Insurance Brokers Ltd.
277 Dickson Road, Blackpool, Lancashire, FY1 2LG
Tel: 01253 594211 Fax: 01253 358481 Email: mail@rowlands-hames.co.uk

www.rowlands-hames.co.uk

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