Tradespeople &
Professionals

Declaring your employees and subcontractors

Overview

We have used the information detailed in your Statement of fact and your Quote summary to provide this insurance. Those documents should be read alongside this guidance document to ensure that you have declared all the people working in your business in the most accurate way.

What does employers' liability and public liability cover?

Employers' liability insurance protects your employees if they're injured or contract a disease whilst they are at work. Employers' liability insurance is compulsory for nearly all employers.

An employer is responsible for the health & safety of their employees and must ensure that they operate a safe place and system of work. If they don't and an accident occurs, they will be liable to compensate the employee for their injuries.

Public liability insurance covers you against claims from members of the public, for injury or damage to third party property caused by your work. It does not cover injury to employees.

Why does this matter?

Confusion can arise when you use subcontractors. Some subcontractors will be working under your direct control and supervision and will meet the definition of an employed person, requiring to be covered under employers' liability insurance. Other contractors operate independently and will not be classed or covered as employees.

If you use subcontractors as part of your workforce, you need to make sure that you have disclosed them correctly. You might find a claim is refused if you don't have Employers' liability cover.

The section below titled "Labour-only or bona-fide?" will help you to determine how contractors are to be classed and insured.

Declaring your employees and subcontractors

You have a legal duty to declare all material facts that could affect our decision to insure you before you take out your policy. That includes accurately declaring:

- The number of employees you have.
- Whether you use subcontractors or self-employed workers on terms that make them similar to employees. These workers should be disclosed as ***employees*** or ***labour-only subcontractors***.

Labour-only subcontractors are treated by the law as being no different to regular employees. The legal liability for the negligence of the labour-only subcontractors, or for injury to them, will usually fall on you, the employer, regardless of whether you agree with this or not. You will need to include them on both your Employers' and Public liability insurance.

If you don't declare these accurately, it could mean you're not paying enough premium for your cover and your claims could be reduced proportionately. As an example, if you've only paid 80% of the premium you should have paid, we will only pay 80% of the claim. In extreme cases, where our acceptance limits have been exceeded, failing to declare all employees can lead to claims not being paid at all.

What is a 'bona-fide' subcontractor?

A 'bona-fide' subcontractor is an independent subcontractor who would not be regarded by the law as your employee. The legal liability for their actions, or injury to their staff, would usually remain with them and they should have their own insurance in place to cover these risks.

Labour-only or bona-fide?

To help you with disclosure, we are providing the following general guidance.

If the subcontractor falls into the left-hand column below, the individuals would meet the policy definition of an 'employed person' and should be declared as an employee or as a labour only subcontractor. If the right-hand column mostly applies, then the individual, or firm, would be considered as an independent, or bona-fide, subcontractor.

A **labour-only** subcontractor:

- Is directed and supervised by you.
- The quality of their work is your responsibility.
- Generally use the materials and equipment supplied by you (although they might have own personal tools).
- Is paid by the hour, day, week or month.
- Has no authority to employ others.
- Includes agency workers; CIS (Construction Industry Scheme) subcontractors; work gangs; temporary labourers and CSCS (Construction Skills Certification Scheme) card holders.
- Includes persons 'borrowed' from another business.

NB. The number you should disclose to us should be the maximum number of such persons that you will have actually working for you, across all sites, on any given day in the period of insurance.

A **bona-fide** subcontractor:

- Is an independent business.
- Is brought in to complete a specific, more specialist, job that you can't do.
- Makes own decisions over how the job is done.
- Has responsibility for correcting unsatisfactory work.
- Provides their own materials, tools and equipment.
- Invoices you for the job.
- Has authority to employ and pay their own workers.
- Has their own insurance for them and their employees.

NB. The number you should disclose to us should be the total number of such individuals or firms used. Note that we will also want to know the total amount of annual payments you make to bona-fide subcontractors and this figure should not be more than **33.33%** of your annual turnover.

Typical examples of subcontractors.

Trades such as electricians or plumbers who are hired as subcontractors, work independently without supervision, often using their own tools and materials, and have their own insurance for injury or damage. These are considered as bona-fide subcontractors and will be covered by your public liability insurance.

Some subcontractors supply labour only, such as construction workers who work under the Construction Industry Scheme and have their tax deducted by the 'employing' contractor. These contractors are generally regarded as employees in liability claims and will be covered by employers' liability insurance. These persons should be disclosed as employees or labour-only subcontractors.

Example 1

A firm of general builders are building a two-storey extension at a customer's house. They ask a subcontractor to carry out the pointing work on the new walls. They supply the subcontractor with a ladder and the materials and agree an hourly rate with them. The subcontractor works most of the time for the firm and only occasionally works for other builders. The subcontractor falls off the ladder and suffers a broken leg.

In this case, it looks like the subcontractor is only supplying their labour. The fact that they work almost exclusively for the firm and are on an hourly rate is consistent with being an employee rather than a bona-fide subcontractor.

The policyholder needs to have employers' liability cover and accurately declare the use of labour-only subcontractors.

Example 2

A firm of general building contractors is building a new house. They employ a roofing subcontractor to add a pitched roof onto the house. They agree a price for the work with the subcontractor, who provides all their own scaffolding and equipment. The firm supplies the materials, but the subcontractor supplies all labour and decides when to do the work and how the job is done. One of the roofers slips on the rung of a ladder whilst climbing the scaffolding and suffers a broken wrist. He makes a claim against the insured as the main contractor.

This claim is unlikely to be covered under employers' liability as the firm doesn't employ the roofer – he is employed by the roofing company who are a bona-fide subcontractor supplying all their own equipment. The firm has no control over the injured worker's activities or training.

Any injury claim would be rejected and redirected to the roofing company as employers of the claimant.

Disclaimer. This guidance has been prepared for general information only and is not legal advice. We have tried to ensure that the information in this guidance is accurate, but it is provided without responsibility to or reliance by you. The information in this guidance is focused on the position in England (unless otherwise stated) and different considerations may apply elsewhere. Nothing in this guidance will affect the rights and obligations under any insurance policy you may have with AXA Insurance.

This document is available in other formats.

If you would like a Braille, large print or audio version, please contact your insurance adviser.

www.axa.co.uk

CLTR0001G-A (10/24) (1509109)

AXA Insurance UK plc Registered in England and Wales No 78950.
Registered Office: 20 Gracechurch Street, London EC3V 0BG.
A member of the AXA Group of Companies. AXA Insurance UK plc is authorised by the Prudential Regulation Authority and regulated by the Financial Conduct Authority and the Prudential Regulation Authority. Telephone calls may be monitored and recorded.