



# Making Claims Clear Employer's Liability or Public Liability and Declaring Your Employees

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

An employer is responsible for the health and 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 property caused by your work. It does not cover injury to employees.

## **Why does this matter?**

A problem arises when you employ a subcontractor. Some subcontractors may be classified as employees by law and should be covered by employers' liability insurance, while others operate more independently and will be covered by public liability insurance. If you use subcontractors as part of your workforce, you need to ensure that you have the right policy. You might find a claim is refused if you don't have employers' liability cover.

## **When might a subcontractor be classified as an employee?**

The case of Lane v Shire Roofing (1995) provides guidance on whether a person is an employee or an independent contractor. Consideration needs to be given to:

- How much control do they have over their work?
- Are they able to make their own decisions about how the job is done?
- Are they providing their own tools and equipment?
- Do they hire their own helpers?
- Can they set the price for the job?
- Can they make a profit or loss from the work?
- Are they free to work for somebody else?

When assessing whether an individual is classified as an employee or a subcontractor, multiple factors must be considered. While control over how the work is performed is usually the primary consideration – a comprehensive evaluation of these elements can help to clarify the nature of the working relationship.



## Typical examples of subcontractors and employees

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. They are 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.

Away from construction, some sectors, such as road transport, have been hiring people under a "contract of service." These contracts hold the person out to be an independent contractor but then restrict the type of work that can be done. Often, persons hired under these contracts will be considered employees in law.

## How AXA defines an employee

AXA's Employers' Liability policy defines an employee as anyone under your control or supervision who is:

- Under a contract of service or apprenticeship with you.
- Employed on a labour-only basis.
- Self-employed.
- Hired or borrowed from another employer.
- A voluntary helper.
- On a work experience or training scheme.

## Declaring your employees

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.
- How much they are paid.
- Whether you use subcontractors or self-employed workers on terms that make them similar to employees.
- If you don't, it could mean you're not paying enough premium for your cover, and your claims could be reduced proportionately. For example, if you've only paid 80% of the premium you should have paid, it is likely we will only pay 80% of the claim. In extreme cases, failing to declare all material facts can lead to claims not being paid at all.



### Case Study: Contract for Services

An electrical retailer operates a fleet of branded vans for appliance deliveries, staffed by a crew of two hired under a contract for services. This contract requires them to rent the van from the retailer, wear company uniforms, and follow a delivery schedule set by the firm. The vans are equipped with trackers to monitor delivery progress.

The crew is paid for their working hours only, does not receive holiday or sick pay, and must cover their own fuel and any vehicle damage. Although the contract states they are self employed and have no employment rights, the crew is likely to be classified as employees due to the retailer's control over their work, provision of equipment, and tracking of vehicle movements.

**The policyholder needs to have employers' liability cover and accurately declare the delivery drivers as employees.**

### Case Study: Bona Fide Subcontractor

A general building contractor hires a roofing subcontractor to install a pitched roof on a new house and supplies the materials. The subcontractor provides labour, their own scaffolding and equipment and controls the work schedule methods.

When a roofer slips on a ladder and breaks his wrist, he claims against the insured as the main contractor.

This claim is unlikely to be covered under employers' liability, as the contractor does not employ the roofer; he is employed by the roofing company, which is a bona fide subcontractor supplying their own equipment.

The main contractor has no control over the roofer's activities or training. As a result, any injury claim would be redirected to the roofing company as the employer of the injured worker.

**An injury claim would be rejected and redirected to the roofing company as employers of the claimant**

### Case Study: Labour-only Subcontractor

A general builders' firm hires a subcontractor to do pointing work on a two-storey extension, providing a ladder and materials while agreeing on an hourly rate. The subcontractor mainly works for this firm and occasionally for others.

After falling off the ladder and breaking a leg, it appears the subcontractor is supplying only their labour. Given their almost exclusive work for the firm and 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.**

### Get in Touch

Please review this document alongside our **Making Claims Clear – Employee or Subcontractor** guide. For any questions, please contact your AXA representative or broker.

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