



Common reasons for repudiation

Employer's Liability or Public Liability and declaring your employees

Making claims clear



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At AXA, we want to make dealing with us simple and trouble free, so you can get back on your feet as soon as possible after a loss.

We know the last thing you need when you make a claim is to find any surprises in your policy conditions or get tied up in legal language.

We've put this guide together to help you understand which insurance policies cover your employees and contractors, when subcontractors can be classed as employees and why it's vital that you declare your employees accurately.



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. EL 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 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 classed as employees by the law and should be covered by employers' liability insurance and others operate more independently and will be covered by public liability insurance. If you use subcontractors as part of your workforce, you need to make sure 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 classed 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 over how the job is done?
- Are they providing their own tools and equipment?
- Do they hire their own helpers?
- Can they set the price of the job?
- Can they make a profit or loss for the work?
- Are they free to work for somebody else?

If the answer is yes to most questions, they are likely to be classed as an independent or “bone Fides” subcontractor.

If most answers are no, they are likely to be an employee.



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. More often than not persons hired under these contracts will be considered at law to be employees.

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. As an example, if you've only paid 80% of the premium you should have paid, the insurer 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.



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

An electrical retailer uses a fleet of liveried vans to deliver appliances to their customers. The vans are operated by a crew of two hired under a contract for services which says they must hire the van from the retailer, wear the company uniform and make deliveries based on a schedule provided by the firm. The vehicle is fitted with a tracker to tell the firm and their customers how the deliveries are progressing.

The crew are paid for the hours they work only and do not receive holiday or sick pay. They must provide their own fuel and are responsible for any damage to the vehicle. The contract states that they do not have employment rights and are self-employed. One of the crew suffers a back injury while lifting a washing machine.

Despite the contract for services, the crew are likely to be classed as employees as the retailer is controlling their work, providing all their equipment, and are tracking the vehicle's movements. Setting the hourly payment rate and providing a uniform is consistent with the crew being employees.

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

Example 3

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.



Get in touch

If you have any questions about this document, please get in touch with your usual AXA contact or your insurance broker.





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