



# Employer's Liability and Its Implications for Workplace Management

Many types of insurance policies touch the topic of employers and employers' responsibility to the public and their employees. We go through a few kinds of liability employers have and focus on an employer's liability for the actions of their employees. Some precautions can be taken to minimize mistakes that can lead to a claim as a result of an employee's actions. This white paper helps clarify the topic for employers and educates them on best practices for reducing their risk.

## What is Meant by "Employer's Liability"?

You may have heard many similar terms when searching for liability insurance as an employer – employer's liability, EPLI, employment practices, or workers' compensation. While these may seem like the same or similar types of insurance, there are some distinct differences you should be aware of. Let's start off with some basic definitions.



- **Employer's Liability** - For the purposes of this article, this kind of liability is what is generally contained within a general or professional liability policy. Essentially, as an employer who carries GL/PL insurance, you are also accepting responsibility for the actions of your employees as it relates to the course and scope of their employment. Under a legal doctrine, this is sometimes referred to as "respondeat superior" (Latin for "Let the superior answer").
- **Employment Practices Liability Insurance (EPLI)** - The EPLI policy is designed to protect employers against lawsuits brought against them by their employees. For example, wrongful termination, breach of contract, sexual harassment, ADA violations, etc.
- **Workers' Compensation** - Workers' Comp or Workman's Comp is required in most states and covers the company and employees when there is a work-related

accident, injury, or death. It also protects the employer if an employee sues them because of an on-the-job injury.

This paper focuses on the first type of liability – Employer’s Liability. **It’s important to remember that this is part of a general liability or professional liability insurance policy.** When we use this term, it means the inherent liability you have as an employer. When you ask your employees to do a job, then they are representing your business. Once they are off the clock or are no longer performing actions for the business, their actions are their own responsibility.



### Who Qualifies as an Employee?

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To start off with, let’s get specific about what types of workers qualify as “employees”:

- Part-time W-2 workers
- Full-time W-2 workers
- Seasonal and leased W-2 workers

The following do NOT qualify as employees:

- Independent contractors with a 1099
- Subcontractors
- Temporary workers

Your liability only extends to the first group of employees. Anyone not qualified as an employee should be required to have their own liability insurance in place before doing any work with or for you (HG.org, 2019).

### Not Just the Big Corps

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When people think of employers having liability for their employees, they often think of large corporations like banks, software companies, and large construction companies. However, it’s often the small- and medium-sized businesses that get hit the hardest when their employees cause damages.



In the health, beauty, and wellness industries, this is especially important to remember. Often, businesses like yoga studios or salons only have a few employees, but their liability can be high.

For example, say a [yoga studio owner](#) did everything right in hiring yoga instructors. One evening during a class, the instructor leaves an audio system power cord lying across the floor. A student trips over it, causing them to break their arm when they fell. Even though it was that specific instructor's responsibility to set up the audio equipment and keep the power cords away from the walking areas, they were performing their duties as an employee. This would trigger the employer's general "slip and fall" liability insurance to cover the student's bodily injury claim.

## Hire the Right People

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So what are an employer's responsibilities when it comes to hiring employees? The first and most important aspect is ensuring that the employee is qualified and fit to perform the duties for which they are hired.

If you're looking for a [hairdresser](#) to work in your [salon](#) as an employee, then you should implement some hiring practices that ensure the person is qualified. For example, make sure they have a valid state license to work as a hairdresser (if required by your state), and ensure that the hairdresser has graduated from an accredited cosmetology school. Without those basic qualifications, any lawsuit being brought as a result of their



services as your employee could be considered negligent hiring practices. Being negligent in verifying references can not only result in increased liability for your business, but it can open the door to more accidents and harm being caused to clients or the general public.

## Negligent Hiring and Negligent Retention

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Certain legal theories say that someone who is injured by your employee can "sue you for failing to take reasonable care in hiring your workers ('negligent hiring') or in keeping them on after learning the worker poses a potential danger ('negligent retention')" (NOLLO.com, 2019). Some states have even allowed this to apply to workers' criminal acts while working, such as sexual assault, robbery, and battery.

The employer could be sued for negligent hiring if they hired someone as a massage therapist and didn't do a background check, only to find out after an attack that the employee had prior sexual assault convictions.

In the case of negligent retention, an employer could be held responsible if they knew that an employee had stolen a customer's property before but didn't terminate that employee's employment. If the employee again stole a customer's property, the customer could sue the employer for negligent retention.

Remember that negligent hiring and negligent retention only apply if the employer acted carelessly, that is, if the employer knew or should have reasonably known the employee wasn't fit for the job but didn't do anything about it.

## How to Lower Risk

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It's not all doom and gloom with an [employer's liability](#). There are some very easy steps to take to ensure you reduce your risk of claims resulting from employee actions.

- Take special care when vetting employees who will be working with children, the elderly, or the disabled or who will be visiting people's homes.
- Perform background checks and verify references provided on the employment application or resumes. Look particularly for any criminal history or inaccurate employment dates, even check driving records if your employee will be driving as part of their job duties (such as traveling to a client's home).
- Perform regular employee reviews and gather data from customers on how their experience went with the employee. Take immediate action if any criminal incidents occur or if there is doubt about someone's safety.
- Set up regular training sessions so your employees are up to date on the latest safety practices for your industry. Ensure they are clear about workplace hazards that could injure customers as they spend time at your business.



## Conclusion

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In summary, when it comes to your liability as an employer, you can take simple steps to prevent increased liability from your employees' actions. Remember that you are taking responsibility for their work as well as your own. Through proper hiring practices and regular training, you can reduce your risk of a lawsuit or claim while also building client trust.

For more information on liability insurance as an employer in the health, beauty, and wellness industries, visit [AlternativeBalance.com](https://www.alternativebalance.com).

## References

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