

ASK SAVA: Are You Protecting Yourself Enough in Business?

Question: "I work from home, and I guess I haven't been really thinking of myself as a 'business', just as a consultant. In my type of business, what can I do to protect myself from the possibilities of an unhappy client?" M.D., Mystic, CT

Answer: If you're about to take the plunge and start your own consulting firm, the foremost thought in your mind is probably finding clients and keeping them happy. While that's certainly important, you also need to consider the importance of being properly insured. For example, if you're running the business out of your home and counting on your homeowner's insurance to cover your business equipment, you might be surprised to find that your policy doesn't offer adequate coverage – if any at all.

Small business and 'homepreneur' trends in this country have increased over the past fifteen years. More than half of all U.S. businesses are home-based, with about 6.6 million providing at least half of their owners' household income and together employing more than one in ten private sector workers. In the last fifteen years, small business has created some 65% of the net new jobs in the private sector. This trend will continue to accelerate over the next decade. Aging baby boomers are flocking to home-based businesses, some due to financial flexibility, for others, the financial need has driven the decision. Fueled by technology and enabled by low costs, businesses of all kinds are finding 'there is no place like home.'

Typically, many of these small businesses don't realize the need to protect themselves. Case in point is one of our personal insurance customers who was talking with one of our agents about her home-based marketing consulting business, and how the last year was so challenging for her. When asked what type of business insurance she had, she reacted, "What do you mean, business insurance, I don't have any. I guess I don't really think of myself as a 'business', probably because it is home-based."

In the business of marketing consulting, some days the old saying, "what can go wrong, will go wrong," holds true. While most engagements go according to plan, those that don't can result in a disappointing client- or worse, a lawsuit. When our customer heard about that possibility, she wanted to know what she could do to protect herself.

To protect against the high cost of a legal defense or judgment, many marketing consultants and agencies buy errors & omissions (E&O) coverage. If you're like many others in your field, you've heard about this type of insurance but may not understand exactly what it is, what it covers and how it's different from other kinds of consultant business insurance.

It's not just a consultant in marketing, computers or management that needs E&O for protection, but freelance writers, claim adjusters, dog groomers and hair salons, fitness experts, motel managers, recruiters...you name it, everyone offering 'professional services' needs the protection.

E&O insurance is designed to be used when a client alleges that you were negligent or made a mistake in the course of your work, causing a financial loss for your client. General liability insurance does NOT include legal disputes that involve allegations of professional negligence or failure to perform professional duties. General liability covers you in the event of physical damage, but generally not for intangible property or for loss of business which then causes a client to lose money.

For complete protection, your small business needs separate professional liability coverage, which for a marketing consultant would include allegations of:

- ~ libel or slander of a client's rival, or a rival company of your own
- ~ inaccurate professional services or results
- ~ inaccurate test results that lead to a monetary or business loss for the client
- ~ results obtained in surveys or product testing that lead your client to manufacture a hazardous product
- ~ data misinterpreted by the consultant or staff
- ~ unethical information-gathering by consultant or staff
- ~ delayed service or product launch that affects your client's sales or production projections
- ~ faulty execution in printing, interactive coding or advertising that resulted in errors

When such cases are covered, professional liability coverage would pay for your legal defense, plus any court-ordered financial compensation for your client. If you choose to try to correct the problem yourself, your insurance won't pay for any time or additional costs you incur.

It's a good idea to talk to your agent or broker to clarify exactly what's covered by your errors and omissions policy, or more importantly, what's not. For some uninsurable risks, you may need a contract with your client that outlines both your rights and how specific conflicts can be resolved should they arise.

What if you are a hair salon employee and one of your regular clients wanted a color change, and it turned out not exactly the right color and she developed a scalp rash? Would E&O provide protection if she decided to sue you? You can't always control every aspect of your relationship and work with every client. There are often elements beyond your control that can negatively affect your work, but you would be held accountable.

Some case studies are good examples; such as a Medical Billing Company that received a lawsuit from a client for failing to submit and collect medical billings for patient care to insurance companies on a timely basis, or a Computer Consultant that was assisting a client with their credit card processing from one vendor to another. It was alleged that the insured failed to follow their own guidelines and procedures during the process and mishandled sensitive account information. Or a Safety Consultant's professional liability claim resulted when the claimant alleged the insured's critical inspection report was not comprehensive enough to have prompted the client to take precautionary measures to avoid an explosion that resulted in one fatality and one severe injury.

If your professional relationship goes bad and communication breaks down, there's not much you can do to prevent your client from seeking legal recourse. Even if the lawsuit has no merit, you'll probably waste a lot of time and money fighting it in court. E&O Insurance can give you peace of mind from knowing that if a client makes a claim, you won't have to worry how you'll keep your business afloat as you work to prove your case.

If you are a business owner and have not looked into E&O insurance, there's no cost to contact an insurance agent for quotes. A qualified E&O insurance agent can help you determine what type of insurance is best for your contract requirements and your business.

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Next week, we address the questions on Distracted Drivers.

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