

Employers' Liability Insurance:

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Who is covered - the myths

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There is a common misunderstanding among employers that employers' liability insurance (EL) covers their staff. Unfortunately, most employees and subbies also think they are covered by EL if they are injured at work. This is not correct.

EL actually covers the employer against paying compensation should they be found to be responsible for an employees' injury or illness. In law, the term employee also includes labour-only sub-contractors, office holders and volunteers.

We are forever hearing people say, 'I don't need personal accident insurance because I am covered at work.' In fact the boss is covered and employees and subbies are not. This is a harsh reality-check but there is so much confusion on this issue.

People often think that EL is a form of sick pay cover that will replace income. This is not correct. To receive payment the injured party would have to take action and claim against the employer. By action we mean a written case stating what the employer did wrong and why they are responsible. Of course, this will normally mean a report and investigation by the Health and Safety Executive, which is never fun. Remember: EL is insurance to defend or settle a claim if the employer is 'found to be responsible'.

Claims can often take months or years to settle, which is not ideal if you have a mortgage and a family to support. So what does 'found to be responsible' mean? There is no exact legal definition as it depends on many things, but the following examples show the complexity of this issue.

In our first example a claim against an employer was rejected. Someone was injured by a chainsaw hitting a metal flagpole that a tree had grown around. The flagpole was left from the Queen's Silver Jubilee celebrations in 1977. The chainsaw hit the

metal pole and kicked back, causing a severe injury. Although this went to court, the claim was dismissed because the employer had taken all reasonable precautions to protect their subbie. Here you see that sometimes the risk goes hand-in-hand with the job and the employer could not have anticipated that there would be a metal pole 'inside' the tree – hence they were not responsible for the injury.

Conversely, we have a case where the claim was settled. Here we have someone walking around a work site texting his girlfriend. Concentrating on his phone, he tripped over and lost part of a finger in some machinery. Here the claim was paid – much to the employer's annoyance. But why? Surely it was his own stupid fault as he wasn't concentrating. No. It was the employer's fault as he did not have a written 'No Mobile Phones' policy. The insurer knew they would lose if it went to court, so they settled beforehand.

Yes, this does make your blood boil, but this is the world we live in. Every time you switch on the TV you see an advert asking 'Have you been injured at work? Ring Super Bad Solicitors now! Keep limping a bit longer and we will make you rich.'

So what is the point of having employer's liability insurance? Well, it's the law, and not having it is a criminal offence. Yes, criminal. Not a slap on the wrist. The fine for not having EL is up to £2,500 per day. This makes the cost of cover look cheap!

EL is there to settle a claim if you are found to be responsible. Equally significantly, the insurer will also defend a claim. In the litigious world we live in, this is becoming increasingly important. Somebody cuts themselves on a thorn bush and you put a plaster over it. The next thing you know you are being sued for compensation due to the severe lacerations to their arm and post-traumatic stress.

Where appropriate the insurer will automatically defend you. So what options do employers or employees

have? To improve the situation the industry needs to understand what EL actually is, so people do not rely on it. At the APF Show recently we discussed this with arborists. Virtually everybody thought they were covered at work. Most were shocked when they realised that they weren't.

One forestry contractor, who had several employees, argued with me for ages and then took my card. He discussed it with his insurer and came back and apologised – which I really appreciated. He had told his team for ages they were covered through him and was concerned about how wrong he was.

So this is about education, and this should start at the arb colleges. However, very few even cover insurance, let alone spell out the reality of not having the right cover. The Arb Association needs to play an active part here and start making sure insurance is on the syllabus.

The other essential part of the solution is all employers, employees and subbies must consider personal accident insurance. As the Welfare State tightens, this is becoming essential.

By far the best type of cover is an individual policy - specifically tailored to you or your staff, rather than group cover. This enables the insurance to be fine-tuned to your specific circumstances and budget. 'One size fits all' does not really work.

If there is one golden rule it is to speak to a company that specialises in insuring tree surgeons. Make sure you or your staff have considered personal accident insurance before they pick up a chainsaw.

For more information on personal accident insurance please feel to call us on 01732 373864 or view the article written for this magazine last year at www.tsins.co.uk/guide/.