

# Insurance Buyers' News



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Project Liability Coverage

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## Why You Should Consider an OCIP for Your Next Building Project

What is an OCIP and how can it help you with your construction project?

**A**n Owner Controlled Insurance Program (OCIP) is an efficient, cost-effective way to provide insurance for owners and contractors for a specific building project.

Construction jobs often have a lot of liability risks, including property damage or bodily injury to the public, construction errors and collateral damage to nearby structures. Anything can happen and when it does multiple parties typically get sued, from the framing and plumbing



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## Event Insurance and the Coronavirus

**T**he window has just about closed on availability of event cancellation insurance if due to the coronavirus, according to a story reported by *Reuters*. Insurance companies around the world are quickly excluding the epidemic for their policies.

At press time the virus had claimed over 1800 lives and infected more than 71,000 people, mostly in China.

Sporting events such as The Shanghai Grand Prix and major conferences such as the Mobile World Congress in Barcelona have already been canceled as a result of the virus.

Insured events that had epidemic coverage will be able to make claims provided the events

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sub-contractors to the general contractor to the project owner.

Under an OCIP all parties to the project are covered under the same general liability and workers compensation policies.

One of the biggest advantages to this arrangement is that since there is only one insurance policy for all parties, costs are kept down.

- ✱ There is less legal wrangling and litigation. Ordinarily it's typical for the various parties, all with their own insurance policies and lawyers, to end up litigating separately and between themselves to determine liability. This is not only time consuming; it eats up limits for defense costs and reduces the amount of liability coverage available to pay any judgment.
- ✱ The overall cost of a single policy vs. multiple policies, all with different limits and sometimes even terms and conditions, representing numerous parties, is typically far less expensive.
- ✱ Claims handling is faster and more efficient because it can be handled by a single administrator.
- ✱ Coverage among all parties is uniform.
- ✱ Owners can rest assured that all sub-contractors are covered; no need to name the owner and general contractor on all the sub-contractor policies or add them as additional insureds.
- ✱ In the event of a claim, legal defense is stronger, again because there is no need to complicate the defense with multiple sets of counsel.

The two main policies included in an OCIP are commercial general liability, to cover a wide range of liability risks including third-party property damage and injuries, and workers compensation.

Depending on the nature of the project several additional coverages may also be included:

- ✱ **Pollution Liability Insurance:** In the course of completing the project there may be chemical spills, emissions of toxic gases and fumes, and other pollution-related incidents. Pollution liability insurance would cover lawsuits and the legal costs brought about by any resulting illnesses and injuries as well as clean-up expenses.
- ✱ **Builders Risk Insurance:** This is basic property insurance on the structures under construction, covering typical property insurance perils such as fire, weather events, vandalism, and in some areas, flood and earthquake.
- ✱ **Professional Liability Insurance:** Sometimes the architects and engineers involved in a project also team up to purchase a single professional liability policy, for efficiency and premium savings.
- ✱ **Umbrella Insurance:** Depending on the scale of the project, the primary general liability limits may not be high enough to cover all potential risks. It may be necessary to purchase one or even more umbrella and excess liability policies.

### *This Just In*

were to take place in a country subject to travel bans or with limits on public gatherings.

Promoters who typically plan many years in advance often include epidemic coverage as part of their events coverage.

"As things stand at the moment, you would struggle to get coronavirus cover for any event, until we know where we are with this virus," said Rebecca Mitchell, contingency underwriter at ArgoGlobal to Reuters.

A broker at Lloyd's of London estimated that insurance companies are likely to lose more than \$100 million paying cancellation claims for the virus.

But losses could be much greater, especially if an event like the Tokyo Olympics were canceled. The impact on many Lloyd's syndicate members would be significant.



### What's Not Covered?

The only types of insurance not included in an OCIP are automobiles and personal property, such as tools and equipment, owned by the contractors themselves. They would be expected to provide their own insurance for these exposures.

## Is an OCIP Right for Your Next Project?

In the past, OCIP was typically reserved for very large projects. (One of the first uses of OCIP was the construction of the Bay Area Rapid Transit [BART] in the San Francisco Bay Area.) But it's now used for many much smaller and even residential building projects.

If you decide to purchase an OCIP, there are a couple of things to be aware of. First, sub-contractors should notify their workers compensation carrier of their participation in the OCIP. There's no need to pay double for workers compensation. Also, once the project wraps up, it's a good idea to buy some extended liability coverage, so that there is still coverage even if errors were made during construction that only came to light a year or so afterwards.

If you have a project coming up involving several contractors and sub-contractors, please give us a call to see if an OCIP would be a good fit. ■

# Traveling the Same Roads Together: AVs and Humans

## An Update on Safety and Autonomous Vehicles (AVs)

### Nuro

For the first time, regulators at the National Highway Transportation Safety Administration (NHTSA) have given permission to an AV manufacturer, Nuro, Inc., to deploy 5000 low-speed electric delivery vehicles without human controls like mirrors or steering wheels.

The small, seat-less car, with gull-wing cargo doors on each side is about half the size of a regular vehicle.

Nuro will focus on delivery services for restaurants, grocers and others, such as Domino's Pizza and Walmart. The vehicles will travel over pre-mapped areas and be monitored at all times by humans via remote control.

The major concerns about AVs of course is how they interact with humans, whether as drivers or pedestrians. In March 2018 a pedestrian in Tempe, Arizona was run over and killed by an Uber when she was jaywalking.

What does the future hold for humans and AVs as they travel down the same roads?

### Some Fear AVs Will Actually Cause Reckless Driving

Naturally, the impact of Autonomous Vehicles (AV) on safe driving has become an important concern. Researchers at the Data Science Institute at Columbia University have looked at the problem. They see it in terms of making humans think they can drive less



safely around AVs because their expectations are that AVs will drive more safely.

Sharon Di, assistant professor of civil engineering and engineering mechanics, recently told people at the Transportation Research Board's 99th Annual Meeting in Washington, D.C., that "Human drivers perceive AVs as intelligent agents with the ability to adapt to more aggressive and potentially dangerous human driving behavior. We found that human drivers may take advantage of this technology by driving carelessly and taking more risks, because they know that self-driving cars would be designed to drive more conservatively."

"We know that human drivers will take more risks

and develop [a morale hazard] if they think their road environment has become safer," Di notes. "It's clear that an optimal liability rule design is crucial to improve social welfare and road safety with advanced transportation technologies."

### Travelers

Travelers Insurance Co., which wrote the first car insurance policy in 1897, thinks that an important way to control risk in an environment where AVs are increasingly present on the roadway is to continue using our existing insurance model and make sure that both driver-based and vehicle-based operators carry insurance.

"With the increasing adoption of semi-autonomous vehicles and the potential for fully autonomous vehicles, several policy-related questions and challenges are beginning to emerge," said Michael Klein, Executive Vice President and President, Personal Insurance at Travelers. "It's important that the insurance industry play a central role in policymaking discussions to develop a uniform legal and regulatory framework for autonomous vehicles. Ensuring that a clear risk transfer mechanism is in place will help facilitate the development of autonomous vehicles and the improved safety we expect they will bring to our roads."

While research suggests the adoption of autonomous driving technology will lead to fewer accidents, collisions that do occur will likely result in costlier repairs and raise difficult questions relating to driver and manufacturer liability, victim

compensation and data collection. The general risks that come with vehicle ownership, autonomous or not, will remain, including risks related to weather and theft.

Travelers released a white paper recently that addresses many of the issues surrounding AVs. Among other things, Travelers recommends that to facilitate an effective auto insurance system, the insurance industry should:

- ✱ Develop a model state law relating to autonomous vehicle insurance that builds on the current state-based regulatory and oversight structure.
- ✱ Require vehicle owners — including personal, ridesharing and company-owned vehicles — to purchase and maintain adequate insurance.
- ✱ Provide for sufficient coverage to account for the more expensive technology used in autonomous vehicles.
- ✱ Establish strong cybersecurity requirements for autonomous vehicles, including appropriate data-sharing protocols.
- ✱ Utilize insurers' extensive consumer communication programs to help educate customers and the public on autonomous vehicle safety.
- ✱ Ensure representation of the insurance industry in policymaking and stakeholder forums.

We will continue to keep our customers updated on developments in this important area of automobile risk and safety. ■

## Why You Need Employment Practices Liability Insurance

Whether you're dealing with existing employees or prospective employees during the interview process, every time your business interacts with people it faces the risk of an employment claim.

Some of the typical claims brought against employers allege:

- ✱ Discrimination (based on sex, race, age or disability, for example)
- ✱ Wrongful termination
- ✱ Harassment
- ✱ Other employment-related issues, such as failure to promote

Numerous federal laws specify the types of claims that your business may potentially face:

- ✱ Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, national origin and sex. It also prohibits sex discrimination based on pregnancy and sexual harassment.
- ✱ The Equal Pay Act of 1963, which prohibits



employers from paying different wages to men and women who perform essentially the same work under similar working conditions

- ✱ The Civil Rights Act of 1966, which prohibits discrimination based on race or ethnic origin
- ✱ The Immigration Reform and Control Act of 1986, which prohibits discrimination based on national origin or citizenship of persons who are authorized to work in the United States
- ✱ The Americans with Disabilities Act of 1990, which prohibits discrimination against persons with disabilities
- ✱ The Bankruptcy Code, which prohibits discrimination against anyone who has declared bankruptcy
- ✱ Equal Employment Opportunity Act of 1972, which prohibits discrimination against minorities based on poor credit ratings
- ✱ The Age Discrimination in Employment Act, which prohibits discrimination against individuals who are age 40 or older

Unlike large corporations which have high employment practices insurance coverage limits, large human resource departments and legal staff, small and new businesses are the most vulnerable to employment claims.

In addition to carrying employment practices liability insurance, taking these steps can also reduce your risk:

- 1 Develop an employee handbook detailing your company's workplace policies



and procedures, including attendance, discipline and complaints. The employee handbook should also contain an employment at-will statement and an equal employment opportunity statement.

- 2 Create a job description for each position that clearly defines expectations of skills and performance.
- 3 Conduct periodic performance reviews of employees and carefully note the results in the employee's file.
- 4 Develop a screening and hiring program to weed out unsuitable candidates on paper before calling them to interview in person.
- 5 Use an employment application that contains an equal employment opportunity statement along with a statement, that if hired, employment will be "at-will." This means their employment can be terminated at any time, for any reason or for no reason at all, with or without notice. Also ensure that your employment application does not contain any age indicators,

such as date graduated high school, as this could increase your risk for age discrimination claims.

- 6 Conduct background checks on all possible candidates.
- 7 Institute a zero-tolerance policy regarding discrimination, substance abuse and any form of harassment. Make sure you have an "open door" policy in which employees can report infractions without fear of retribution.
- 8 Create an effective record-keeping system to document employee issues as they arise, and what the company did to resolve those issues.
- 9 Review potential loss exposures with your insurance agent and purchase adequate employment practices liability insurance.

For more information on EPLI, please contact us. ■

*[Adapted from Nationwide Insurance]*

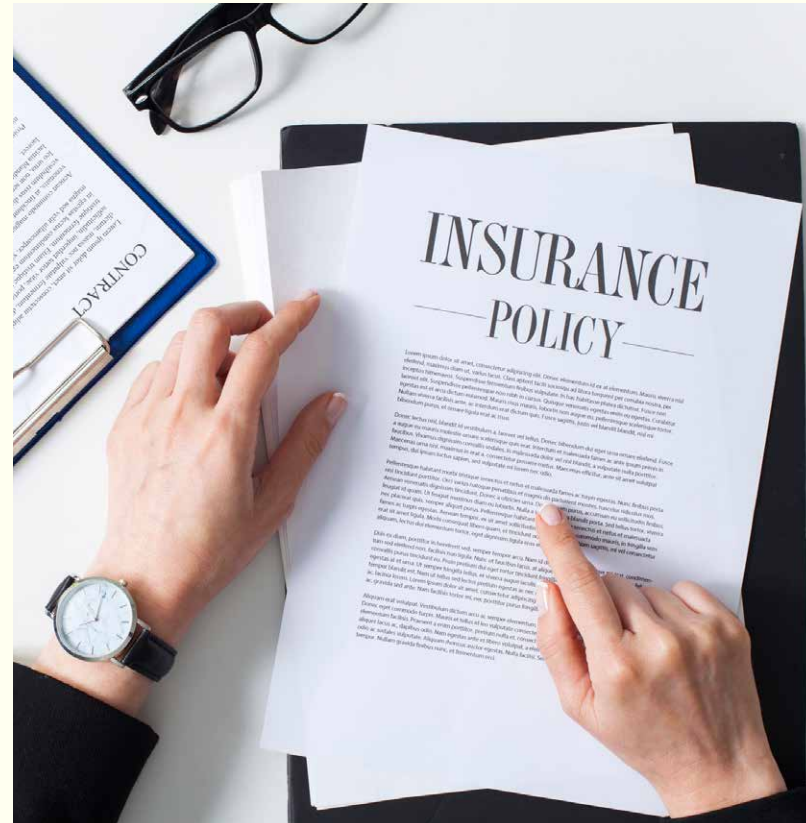
# How Is EPLI Underwritten?

Underwriters use a variety of metrics to determine scope and cost of EPLI coverage, including,

- ✱ The number of people you employ
- ✱ Whether you've had prior suits lodged against your company
- ✱ The percentage of employee turnover
- ✱ Whether you have established rules and practices in place, such as an employee handbook that clearly addresses sexual harassment.
- ✱ Whether you have procedures in place that allow employees to report harassment and other forms of discrimination, and to do so without fear of retaliation.

Depending on the size of your company, EPLI can be offered as an endorsement to a Business owners policy (BOP) or a general liability policy. Also, a specific stand-alone policy can be written in conjunction with a BOP.

EPLI coverage is usually written on a claims-made basis. This means the incident resulting in the claim had to occur during the coverage period. Because employment claims often come months or even years after the alleged incident, your company might be vulnerable if your insurance coverage was dropped or if tail coverage (liability insurance that extends beyond the end of the policy period) wasn't purchased. ■



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