



MISSISSIPPI SMALL BUSINESS
DEVELOPMENT CENTER

(662) 915-5001
mississippisbdc.org

Small Business Insurance Guide

TABLE OF CONTENTS

- I. Introduction
- II. Factors to Consider in Purchasing Insurance and Best Practices
 - What Do You Have, and What Do You Need?
 - Best Practices
- II. Insurance Options for Small Businesses
 - Business Interruption Insurance
 - Property-Related Insurance
 - Workers' Compensation Insurance
 - Liability Insurance
 - Business Owner's Policy
- III. Premises Liability and Best Practices
 - Premises Liability Overview
 - Best Practices

I. Introduction

With all the insurance options available, purchasing an insurance policy for your small business may be a daunting experience. However, when an unexpected situation arises, having an insurance policy can make the difference for your small business. This guide is intended to give a broad overview of common insurance policies available for small businesses and help you navigate determining the best options for you and your business.

This guide will walk through determining what insurance policies you might consider for your small business, some "best practices" in purchasing an insurance policy, an overview of common insurance policies for small businesses, and a discussion of premises liability and best practices.

II. Factors to Consider in Purchasing Insurance and Best Practices

What Do You Have, and What Do You Need?

What insurance to purchase for your small business depends greatly on what your business involves. For example, your needs may depend on if facilities or physical property are associated with your business, if your business engages in the manufacturing, sale, or distribution of goods, if your business involves the rendering of professional services, if your business has employees, if you use company-owned cars in your business, etc. Before you purchase an insurance policy, consider what is involved in your business to determine what your insurance needs consist of.

Additionally, depending on your situation, you may be contractually required to have insurance. For example, many leasing companies require those who lease their property to have renters' insurance, and many banks and lenders require mortgage insurance. Be sure to consider if any of your business's contracts include obligations concerning insurance coverage. You may be in violation of the contract if you fail to have contractually obligated insurance coverage.

Best Practices

1. Determine what is and isn't covered by the insurance policy

When approaching purchasing an insurance policy of any kind, it is important to be crystal clear with the insurance agent about what you want and intend the insurance policy to cover and make sure you have your agent explain to you the policy's exclusions, i.e., what isn't covered. As much as possible, these communications should be written and easily accessible in the event that a dispute arises concerning your insurance policy's coverage. Unfortunately, failing to effectively communicate your needs and expectations or failing to understand the exclusionary language of your policy can result in out-of-pocket expenses.

2. Noticing the insurance company — the importance of following policy reporting procedures

When purchasing an insurance policy of any kind, it is important to have the agent explain the reporting requirements and procedures for noticing the insurance company. When something does arise, it is critical that you follow all reporting requirements and procedures contained within your policy, including when to provide notice to the insurance company and to whom you should give notice. Failure to do so may limit the policy's coverage or prevent you from getting coverage at all.

3. Importance of record-keeping

Because most insurance policies will require your business to provide proof of losses, it is important to keep accurate and complete records of all assets, valuations, and associated losses when an issue does arise. Keeping records, receipts, invoices, etc., and photographing damages can help build your claim for insurance coverage. Failure to keep accurate records of your business assets and operations, or failure to document damages, may result in delays or disputes concerning the insurance coverage and payout.

4. Mitigating Losses

In addition to other possible duties, insurance policies may require policyholders to take steps to prevent further damage from occurring due to an event that the policy may cover. For example, suppose there is a leak in the warehouse and property is being damaged. In that case, you may be required to prevent more property from being damaged by the leak by moving the property to another area or patching the leak. It is important to have the insurance agent explain to you exactly what your duties are as a policyholder if a situation arises.

II. Insurance Options for Small Businesses

Business Interruption Insurance

Why Consider Business Interruption Insurance?

Many unpredictable and unforeseen circumstances can affect the function of your business and subsequently impact the duties and obligations associated with your business. Especially considering the COVID-19 pandemic's adverse effect on the functioning of businesses nationwide, you may want to consider business interruption insurance in the event that an unexpected event outside of your control impedes the regular function of your business.

Policy Coverage

In general, business interruption insurance covers losses that arise from certain events that affect your business's function, like a natural disaster, for example. Business interruption insurance can cover associated expenses, including lost profits, loan payments, employee wages, temporary operating locations, etc. If you are a landlord and a situation arises in which your tenants are relieved of their rent-payment obligations, business interruption insurance may help to cover the associated loss. It is important to make sure any gap in business operations that may result in losses is covered by an insurance policy. By purchasing your own policy or by requiring others, like tenants, to have their own insurance coverage, you can reduce the risk of business interruption losses. Again, what circumstances and losses are covered by business interruption insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

Property-Related Insurance

1. Commercial or Business Property Insurance

When to Consider

If you have property associated with your business, like a building, inventory, equipment, etc., you may want to consider a commercial or business property insurance policy.

Policy Coverage

In general, commercial or business property insurance covers expenses and losses that arise out of theft, damage, or destruction of your business's property, including the building, furniture, inventory, etc. Commercial property insurance can cover associated expenses, including repair, replacement, etc. Again, what circumstances and losses are covered by commercial property insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

2. Commercial Auto Insurance

When to Consider

If you have company-owned vehicles used in your business, you may want to consider a Commercial Auto Insurance policy. Similar to personal car insurance, some states require commercial auto insurance for company-owned vehicles.

Policy Coverage

In general, commercial auto insurance covers expenses associated with an accident, including litigation expenses, medical expenses, and property damage, etc., and may cover things such as vandalism, theft, etc., of a company-owned vehicle. It is important to note that commercial auto insurance does not cover claims arising from a personal vehicle used for business purposes. Again, what circumstances and losses are covered by commercial auto insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

3. Hired and Non-Owned Auto Insurance (HNOA)

When to Consider

If you or your employees use personal vehicles for work purposes, you may want to consider an HNOA policy. Personal car insurance policies may be limited to claims relating to personal use of a vehicle, and commercial auto insurance policies may not cover personally owned vehicles used for work purposes. Therefore, an HNOA policy may fill the gap in coverage.

Policy Coverage

Given the limitations in a personal car insurance policy and commercial auto insurance, an HNOA policy may fill the gap in coverage. An HNOA policy may cover expenses arising out of accidents and situations in which a hired or borrowed vehicle is in an accident or damaged during the course of business. For example, suppose your employee is dropping off a check at the bank and is in an accident. In that case, an HNOA policy may fill the gap if their personal car insurance policy does not cover the associated expenses. Again, what circumstances and losses are covered by an HNOA policy will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

Workers' Compensation Insurance

When to Consider

If your business involves having employees, it is strongly encouraged you have workers' compensation insurance. If your business has five or more employees, Mississippi law requires you to have workers' compensation insurance. Defining who qualifies as an "employee" for purposes of workers' compensation is broad and generally defines an employee as someone who engages in work regularly under an express or implied contract.

Policy Coverage

In general, workers' compensation insurance covers expenses that arise when an employee is injured, becomes ill, or dies in the course of their job or a circumstance arising out of their employment, regardless of fault. Workers' compensation insurance can cover associated expenses, including medical expenses, lost wages, rehabilitation, or benefits to family members of an employee killed during their job.

Benefits of Workers' Comp

Having workers' compensation provides benefits to both employers and employees. One benefit to employers is that the payout under a workers' compensation claim is limited by statute in most circumstances. Therefore, unlike going to court under a civil action like negligence, the recovery associated with an employee's injury or death under workers' compensation cannot exceed the statutorily determined amount. Without workers' compensation insurance, you could be at risk of a much higher payout for the injury or death of an employee on the job. However, it is important to note that an employee's recovery under workers' compensation covers injuries and deaths without regard to fault. Therefore, even if the injury were sustained solely because of the employee's actions, you may be liable to pay workers' compensation. One benefit to employees is that workers' compensation insurance provides relatively quick financial assistance to those injured on the job or to the family of an employee who died on the job. Without workers' compensation insurance, employees may be subject to lengthy waits before receiving financial assistance for medical bills, supplemental income, etc.

Workers' Comp. and Independent Contractors

The policy underlying workers' compensation insurance is to increase coverage for workers injured on the job. The classification of independent contractors for purposes of workers' compensation differs from the classification of independent contractors for other benefits or tax reporting. The determination of whether an employer's workers' compensation benefits are available to an independent contractor injured on the job rests on an analysis of several factors. If your business hires independent contractors, you may be subject to workers' compensation payouts if they are injured on the job, and they are not sufficiently distinct and independent from your business and do not have workers' compensation through their employer, and in other circumstances.

Liability Insurance

1. General Liability Insurance

When to Consider

If your business involves interacting with customers, having others come on to the premises, others routinely pass by the premises (like the sidewalk), the premises are accessible by others, your business involves going to other locations to perform business activities such as catering, etc., you may want to consider general liability insurance for your business.

Policy Coverage

In general, general liability insurance covers claims made by others against your business for things including personal injury, damage to property, etc. General liability insurance can cover associated expenses, including litigation expenses, medical costs, repair, replacement costs, settlements, etc. Even if you did nothing wrong, general liability insurance could help cover costs associated with defending against the claim. Again, what circumstances and situations are covered by general liability insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

2. Product Liability Insurance

When to Consider

If your business involves the manufacturing, repair, sale, or distribution of products to customers, you may want to consider product liability insurance for your business.

Policy Coverage

In general, product liability insurance covers claims made by others against your business that result from a product you made, repaired, or sold being defective and causing bodily injury or damage to persons' property. Product liability insurance can cover associated expenses, including litigation expenses, medical costs, repair, replacement costs, settlements, etc. Even if you did nothing wrong, product liability insurance could help cover costs associated with defending against the claim. Again, what circumstances and situations are covered by product liability insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

3. Professional Liability/Errors and Omissions Insurance

When to Consider

If your business involves rendering professional services such as accounting, valuation, etc., or you frequently engage in contracts with your customers, you may want to consider professional liability insurance, also known as errors and omissions insurance.

Policy Coverage

In general, professional liability insurance covers claims made by others against your business that result from negligence, misrepresentation, breach of contract, undelivered services, mistakes, or errors associated with professional services. Professional liability insurance can cover associated expenses, including litigation expenses, breach of contract damage awards, settlements, etc. Even if you did nothing wrong, professional liability insurance could help cover costs associated with defending against the claim. Again, what circumstances and situations are covered by professional liability insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

4. Employment Practices Liability Insurance

When to Consider

If you have employees associated with your business, you may want to consider employment practice liability insurance. Further, some operating agreements may provide that the business is responsible for defending claims brought against its officers or managers.

Policy Coverage

In general, employment practices liability insurance covers claims made by employees against your business that result from claims concerning wrongful acts associated with employment practices, including discrimination, wrongful termination, harassment, breach of employment contract, negligent supervising and training, and others. Employment practices liability can cover associated expenses, including litigation expenses, damage awards, settlements, etc. Even if you did nothing wrong, employment practices liability insurance could help cover costs associated with defending against the claim. Again, what circumstances and situations are covered by employment practices liability insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

5. Liquor Liability Insurance

When to Consider

If your business involves the manufacturing, distributing, or selling alcohol, even if it's only beer, you may want to consider liquor liability insurance.

Policy Coverage

In general, liquor liability insurance covers claims made by others against your business for things like injury and property damage caused by an intoxicated person after being served alcohol at your business. Liquor liability insurance can cover associated expenses, including litigation expenses, damage awards, settlements, etc. Even if you did nothing wrong, liquor liability insurance could help cover costs associated with defending against the claim. Again, what circumstances and situations are covered by liquor liability insurance will depend on the specific policy, so it is critical to have the agent explain to you exactly what is covered by the policy and the exclusions.

Business Owner's Policy (BOP)

A Business Owner's Policy plan is similar to a "bundle" deal and can include various insurance coverages. A BOP may cover things such as business interruption insurance, liability insurance, and business property insurance. BOPs can be a more efficient policy to have as opposed to purchasing individual policies. Still, it is critical to determine whether your business needs all the coverage provided and if your business qualifies for the policy depending on the associated eligibility requirements. Additionally, a BOP may not cover everything your business needs, so it is important to look at what insurance coverage your business needs and sit down with the agent to determine exactly what is covered by the BOP and the exclusions.

III. Premises Liability and Best Practices

Premises Liability Overview

In general, a claim of premise liability is when a person injures themselves on property your business owns or controls, i.e., the premises, and claims that you were ultimately at fault for the injuries they sustained.

1. What is Negligence?

Negligence occurs when a business breaches the duty of care it owes to others. In a business context, you have control over the property associated with your business, i.e., the premises. Therefore, you have a duty of care to those on your premises.

2. What Duty of Care Is Owed?

- **Invited Persons**

When folks are invited onto the premises for the mutual benefit of the business and the person, the business has an affirmative duty to keep the premises safe for them. For example, as a restaurant, you have an affirmative duty to make sure there are no pools of water on the floor that a person could slip and fall on. If you recently mopped the floor, you have an affirmative duty to alert persons on the premises to the dangerous condition by placing signs indicating that the floor may be wet.

- **Uninvited Persons/Trespassers**

If a person is on the premises without your consent, you have a duty to warn trespassers that they are approaching dangerous conditions. Suppose your property is such that children may be lured onto it, for example, an abandoned building. In that case, because children are naive and may be unaware of risks associated with trespassing, you must take extra precautions to protect children from the dangerous conditions.

3. Negligence and Premises Liability

If a person asserts a claim of premises liability for an injury they sustained on your property, they must show that the business had actual knowledge of the dangerous condition and failed to act reasonably, or that the dangerous condition existed long enough that it is reasonable to treat the business as having knowledge of the condition. For example, as a restaurant, it is important to act reasonably to ensure the premises are safe for those on your property. If you do not take reasonable measures to ensure the property is kept safe, you have breached your duty of care to keep the premises safe and may be liable for negligence.

Best Practices

1. Develop a System of Regular Inspections and Record-Keeping

It is important to ensure that you act reasonably in response to potentially dangerous conditions on your property. For example, as a restaurant, it is important to take reasonable steps to ensure that no pools of water are on the floor of your establishment. This could be achieved by establishing a regular documentation and reporting system for checking the property for potentially hazardous conditions. Having these systems in place, and the associated documentation, can help build your case that you did not breach your duty of care, i.e., you were not negligent. Suppose a person slips on a pool of water, but you have documentation the area was checked for hazardous conditions only a moment earlier. In that case, having that documentation could weigh in your favor in finding you did not act unreasonably and are therefore not liable for the injuries sustained.

2. Training on how to Respond Appropriately to Injuries on the Premises

It is important to train employees on how to respond to an injury on the premises. When someone sustains an injury on the premises, your prompt response is critical. While responding with empathy is one thing, other responses can strengthen the person's claim that you were negligent if you admit fault or responsibility by saying things like, "I'm so sorry," or "this was all my fault," or "oh, I saw that a moment ago and meant to clean it up."

Additionally, encouraging injured persons to seek immediate medical care may help the injury from becoming exacerbated. If a person seeks immediate medical care, the medical records may help establish the actual extent of the injuries.

3. Accident Reports and Relevant Records

As is reasonable, you should have an accident report filled out by any witnesses and by the injured person themselves as close to the time of the accident as possible. Accident reports can help reduce the risk that the facts of the situation will become skewed over time. Additionally, it is important to preserve any relevant records, including regular inspections, video camera surveillance tapes, etc. Even if the injured party is okay and everything seems fine, it is important to hold on to information that may be relevant should a situation arise later.