

What All Young Attorneys Need to Know about Professional Liability Insurance

By W. Brian Ahern

Malpractice is an aspect of practicing law most attorneys would prefer to not think about; however, having proper professional liability insurance coverage from the day you begin your law practice is extremely important. The following Q&A is designed to help you better understand professional liability insurance and to determine what types of coverage might be best for you.

What does professional liability insurance cover?

A professional liability policy covers attorneys' legal liability that results from professional services and personal injury which arise out of the delivery of legal services.

What are the various types of legal services that are covered under a professional liability insurance policy?

Some of the services covered under a professional liability insurance policy may include providing legal advice for a client; acting as a mediator, arbitrator, notary public, or a title agent; or, acting as an administrator, conservator, executor, guardian, trustee, receiver, or in any similar fiduciary capacity if such services are performed in connection with and incidental to attorneys' practice of law.

What types of personal injury are covered under a professional liability insurance policy?

Personal injury under a professional liability insurance policy encompasses malicious prosecution, abuse of process, defamation, false imprisonment, and wrongful eviction.

How much liability coverage should I have?

Several factors affect how much liability coverage you should have.

Your specific area(s) of practice can be a factor as certain areas have higher frequency of claims than others. For example, attorneys for personal injury plaintiffs and real estate attorneys often have the highest number of claims.

You also should consider the monetary value of your firm's cases and consider the potential damages if a claim arose from your biggest case. Your personal assets and those of your partners also may determine your coverage limits. Typically, younger attorneys have accumulated fewer assets and may need less coverage. However, over time this will change, and your coverage should be expanded accordingly.

If you or your firm are a law corporation or limited liability partnership, check your state bar and government regulations. In California, the "Law Corporation Rules" of the State Bar of California require certain limits based on a firm's size and structure.

An experienced insurance broker can help you determine how much coverage you need and help you find the most favorable premiums.

What should I know about my professional liability insurance policy?

Your professional liability insurance policy will include several terms that are important to understand, such as:

Claims Made and Reported: For a claim to be covered, it must be asserted against the insured party and a written notice must be received by the insurance company within the policy term (or stipulated reporting period) in which the firm first became aware of the claim.

Full Prior Acts Coverage: Provides coverage for a claim that resulted from services rendered since the named insured's inception date. The "inception date" is normally the date a firm first purchased professional liability insurance if it has been continuously insured.

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Retroactive Date Provisions: Precludes coverage for claims that are caused by wrongful acts that took place before the retroactive date, which is usually the date that the firm first purchased a policy when first starting or the time that there was a lapse in coverage, even though claims are made against the insured during the policy period.

Extended Reporting Periods (ERPs): Give an insured the right to report claims after a policy has expired or been canceled. These vary in price and range from one to seven years and in some cases (good for estate planning firms) to an unlimited time frame.

Discovery Provisions: “Notice of potential claim,” “awareness,” or “incident reporting provisions” allows an insured to trigger coverage under a policy for potential claims. These provisions are designed to allow the insured the opportunity to report any act, error, omission, or circumstance that the insured has a reasonable basis to believe may turn into an actual claim.

What claims should I report under my professional liability insurance policy?

Report all claims. Failure to report claims could result in denial of coverage as virtually all policies have the following exclusion: “Any claim arising out of acts, errors, or omissions that occurred prior to the effective date of this policy if, on or prior to such date, any insured knew or had a reasonable basis to believe either that a professional duty had been breached or that a claim would be made.” Make sure you report all potential claims to include any request to sign a tolling agreement (see the policy for a specific definition of a claim or potential claim).

How do I obtain a professional liability insurance policy?

Young attorneys who are tasked with obtaining professional liability insurance may find the process daunting. It can be beneficial during this process to work with an insurance brokerage company that has access to multiple insurance carriers and can help you determine what type of coverage you need. An insurance brokerage company also will be able to compare insurance rates and help you through the application process. In addition, you should check with your local bar association as many local bar associations offer special professional liability insurance policies specifically for attorneys who have only practiced a few years.

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