

HOW TO QUALIFY YOUR SUBCONTRACTORS



Your business relies heavily on the quality and reliability of your subcontractors. While their workmanship and professionalism are key factors in determining the success of your projects, it is equally important to ensure that they have **proper insurance coverage to protect your business from potential liabilities**. Failing to vet subcontractors thoroughly can expose you to significant financial and legal risks. Below are the critical aspects to consider when evaluating your subcontractors:

1. QUALITY OF WORK

Before hiring any subcontractor, it is essential to review their qualifications, experience, references, and past projects. Ensuring that they meet industry standards and adhere to safety regulations will help prevent issues related to poor workmanship, project delays, and potential liability claims.

2. VERIFYING INSURANCE COVERAGE

Beyond assessing their work quality, you must ensure that subcontractors carry appropriate insurance coverage. **Relying solely on a Certificate of Insurance (COI) is insufficient**; you should request copies of their actual insurance policies to share with your insurance professionals and verify that they include the necessary coverages and endorsements.

Not only is a failure for your sub-contractors a potential financial and legal liability, but should they not carry any or the correct limitations, you will be required to pay for their costs/materials spent on your Liability and/or Workers Compensation Policy premiums at time of annual audit.

3. KEY INSURANCE REQUIREMENTS

To protect your business, subcontractors should carry the following insurance coverages:

- **General Liability Insurance** – Ensures protection against third-party bodily injury and property damage claims **(Recommended Minimum \$1,000,000 Per Occurrence / \$2,000,000 Per Aggregate)**
- **Workers' Compensation Insurance** – Covers injuries sustained by the subcontractor's employees while working on your project **(Recommended NY State Statutory \$1,000,000 Limits for Bodily Injury By Accident and Bodily Injury By Disease)**
- **Commercial Auto Insurance** – Covers any vehicles used for work-related purposes **(Recommended Minimum \$1,000,000 Combined Single Limit)**
- **Umbrella/Excess Liability Insurance** – Provides additional coverage beyond the primary liability limits **(Recommended Minimum \$5,000,000 Over Liability, Auto and Workers Compensation/Employers Liability)**

4. IMPORTANT POLICY CONSIDERATIONS

When reviewing subcontractors' policies, pay close attention to the following exclusions and provisions:

- **No "Action Over" or Labor Law Exclusions** – In states like New York, labor law claims can be costly. Ensure that subcontractors do not have policy exclusions that would leave you vulnerable to such claims. If your subcontractor's employees get hurt on the job, due to Workers Compensation regulations, they can't sue their employer, but they can sue your entity, and/or a property owner or project manager. Your entity will want to be able to cater the bodily injury claim (Action-Over it) back to your subcontractor. Ensuring they do not have this exclusion is vital for your subcontractors to tend to any lawsuits served to your entity.
- **Contractual Liability Coverage** – This ensures that the subcontractor's insurance covers obligations they assume under a contract, including indemnity agreements.

5. REQUIRED ENDORSEMENTS

A subcontractor's insurance should include specific endorsements to extend coverage to your business:

- **Additional Insured Endorsement** – Ensures that your company is listed as an additional insured on the subcontractor's policy.
- **Primary & Non-Contributory Endorsement** – Specifies that the subcontractor's policy will respond first to any claims and will not seek contribution from your policy.
- **Waiver of Subrogation** – Prevents the subcontractor's insurer from seeking recovery from your insurance provider for claims paid on their behalf.

6. HOLD HARMLESS & INDEMNITY AGREEMENTS

To reinforce the protections afforded by proper insurance coverage, subcontractors should sign a **Hold Harmless Agreement** that indemnifies your company against claims arising from their work. This contractual obligation ensures that the subcontractor assumes responsibility for their actions and liabilities, further reducing your exposure. You can work with a legal professional to prepare one.

SUMMARY

Thoroughly vetting your subcontractors is a crucial step in managing risk and protecting your business. By verifying their insurance policies, ensuring they have the necessary endorsements, and executing proper contractual agreements, you can safeguard your company from unnecessary liability and financial loss. Always work with an experienced insurance broker to review these documents and ensure compliance with industry best practices.

For assistance in evaluating subcontractor insurance policies and endorsements, feel free to reach out to our office.

IMPORTANT CONTRACTORS COVERAGE DEFINITIONS

Contractual Liability refers to the coverage provided under a general liability (GL) policy for liability that an insured assumes under a contract or agreement. This coverage typically applies when a business agrees to indemnify or hold harmless another party for certain risks. As it pertains to General Liability, coverage applies when the named insured assumes the tort liability of a third party through a contract or agreement, such as a hold harmless or indemnification clause.

Additional Insured Endorsement extends liability coverage to another party (e.g., a general contractor or property owner) under the named insured's policy, protecting them from claims arising from the named insured's work.

Waiver of Subrogation Endorsement prevents the insurer from seeking reimbursement from a third party (e.g., a subcontractor) for damages paid under the policy, even if that party was at fault.

Primary & Non-Contributory Endorsement ensures that the insured's policy pays first (primary) in the event of a claim and does not seek contribution from other applicable policies (non-contributory), typically benefiting an additional insured.

Hard Hammer Clause is a provision in a general liability policy that restricts or eliminates coverage for claims arising from the work of subcontractors if those subcontractors fail to meet the specific insurance requirements outlined in the policy or contract. If a subcontractor does not carry the required insurance limits or endorsements, the general contractor's policy may exclude coverage, leaving the general contractor responsible for defense costs and any damages.

Soft Hammer Clause is a provision in a general liability policy that reduces but does not fully eliminate coverage for claims arising from the work of subcontractors if they fail to meet the insurance requirements outlined in the policy or contract. If a subcontractor does not meet the required coverage limits or endorsements, the general contractor's policy may still provide some coverage, but with penalties such as increased deductibles, reduced policy limits, or a higher cost-sharing requirement.

An **Action Over** occurs when an injured employee, unable to sue their employer due to workers' compensation laws, sues a third party (e.g., a general contractor or property owner). That third party then seeks indemnification from the employer (subcontractor) under a contractual agreement. An **Action Over Exclusion** is a provision in a general liability policy that excludes coverage for liability arising from an employee's injury when a third party (e.g., general contractor) sues the insured (e.g., subcontractor) for indemnification. If a General Liability policy has an Action Over Exclusion, the subcontractor's insurer will not cover the claim, leaving the subcontractor personally responsible for legal costs and damages.

In the context of General Liability (GL) insurance, **Labor Law** typically refers to New York **Labor Laws** (NYLL) Sections 200, 240, and 241, which impose strict liability on contractors and property owners for workplace injuries, especially in construction. Injured workers often cannot sue their employer due to workers' compensation laws but can sue general contractors or property owners, triggering indemnity and action over claims.

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