

How Employee Status Affects EL Cover

As an owner or manager, you have a clear obligation and responsibility to provide your employees with a safe working environment. If you fail to do so, it could result in a current or even former employee filing a claim against you. A successful claim can be costly—not just financially—but also to your organisation’s reputation. To protect yourself and comply with government regulations, you need employers’ liability (EL) insurance, which covers the cost of compensating employees that have been injured or fallen ill at work. Even if you only employ one person, you still need EL cover.

However, in addition to employees, you may also have volunteers, seasonal employees, contractors or other types of nonstandard staff that work for your organisation. Correctly classifying your employees—especially nonstandard ones—is crucial when estimating the level of EL cover you need. To help you avoid a costly employee misclassification mistake, review the following guidance.

What is EL Insurance?

Under the Employers’ Liability (Compulsory Insurance) Act (the Act), all organisations, with few exceptions, are legally required to have EL insurance if they employ full- or part-time employees.

The HSE enforces the Act and its inspectors can verify whether your organisation has the appropriate cover. During their inspections, they could ask to see your organisation’s certificate of insurance along with other insurance details. If you refuse or are unable to provide these documents, you could be fined up to £1,000. If you do not have the appropriate level of insurance, the HSE can fine you up to £2,500 every day.

In general, organisations are required to have at least £5 million of EL insurance, yet depending on your organisation’s particular risks and liabilities, you may choose to increase the amount of cover.

A comprehensive and effective EL policy should provide cover for the following types of employees:

- All permanent employees
- Contract, casual and seasonal employees
- Abroad employees that spend at least 14 days continuously in Great Britain or more than seven continuous days on an offshore installation
- Labour-only subcontractors

As the owner or manager of an organisation, you have an obligation and responsibility to provide your employees with a safe working environment. If you do not, it could result in a costly claim.

In addition, your policy should provide cover for the following positions even though they are unpaid roles:

- Temporary staff—including students and people on work placements
- Volunteers, advisors, referees and marshals

If you already have EL cover, any volunteers or unpaid employees will usually be covered by your policy. However, if you do not have EL cover, be sure to speak

Provided by CIAT Insurance Services

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with CIAT Insurance Services before taking on any unpaid or other nonstandard employees.

Do EL Policies Contain Conditions?

The exact terms of your policy will include the circumstances in which your insurer would pay the compensation for the claim. In general, this should cover incidents directly related to your business. However, there are some conditions which your insurer cannot impose. Your insurer cannot refuse to pay EL compensation due to the following reasons:

- Your organisation has not provided reasonable protection for your employees or volunteers against injury or disease.
- Your organisation does not keep specified records or cannot provide your insurer with information from those records.
- Your organisation has done something that your insurer has explicitly told you not to do, such as admit fault for the incident.
- Your organisation has not done something that your insurer has explicitly told you to do, such as report the incident.
- Your organisation has not met any legal requirements connected with the protection of your employees or volunteers.

However, this does not mean that you can ignore your legal responsibilities to protect the health and safety of your employees.

How Can I Mitigate the Risks of an EL Claim?

Even though you cannot prevent every accident from happening, your organisation can take beneficial steps to prevent ill health or injuries from striking in the workplace. These steps could include the following:

- Conduct a thorough risk assessment for each required task, piece of equipment and machinery, plant, vehicle and location. This should be completed at least annually or immediately after an accident occurs.

- Have all machinery, plant, equipment and vehicles regularly serviced by a certified engineer, technician or mechanic.
- Implement practical measures to ensure that your employees would be protected from any potential hazards.
- Report any incidents to the HSE. Your report should be thorough and include as many details as possible.

Does the Law Apply to my Business?

Whilst organisations are usually legally obligated to have EL insurance, there are some organisations that are exempt from the Act. The following types of organisations are exempt:

- Most public organisations, which include government departments and agencies, local authorities, police authorities and nationalised industries.
- Health service bodies, which include National Health Service trusts, health authorities, primary care trusts and Scottish health boards.
- Organisations financed through public funds, which include passenger transport executives and magistrates' courts committees.
- Family businesses that employ only family members. If a family business also employs non-family members, then they would be required to have EL insurance.
- Companies with no employees, such as a sole trader.

Do I Need EL Insurance for all my Employees?

Your organisation is required by law to have EL insurance for all individuals that you employ under a contract of service or apprenticeship. This contract can be spoken, written or implied. Regardless of what type of contract you may have, what is important is the nature of your relationship and the degree of control that you have over the assigned work. If your

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organisation incorrectly classifies an employee—either intentionally or unintentionally—there could be severe penalties and fines. Not only that, but you could be liable for the full cost of a costly EL claim.

You may need EL insurance for people who work for you if they meet one or more of the following criteria:

- You deduct national insurance and income tax from the money you pay them.
- You have the right to control where and when they work along with their work processes.
- You supply them with work materials and equipment.
- You have a right to any profit your workers make. However, you may also choose to share this with them through commissions, performance-related pay raises or shares in the company.
- You require that they only deliver the service and they are not allowed to employ a substitute if they are unable to do the work.
- They are treated in the same manner as other employees.

However, you may not need EL insurance for someone who works for you if they meet one or more of the following criteria:

- They do not work exclusively for you, such as an independent contractor.
- They supply most of their own equipment and materials for the job.
- They are clearly in business for their own personal benefit.
- They can employ a substitute if they are unable to complete the work themselves.
- You do not deduct income tax or national insurance. However, even if someone is self-employed for tax purposes, they may be classified

as an employee for other reasons and you may still need EL insurance to cover them.

In general, your organisation will not need additional EL cover for volunteers or for the following individuals:

- Students who work for you unpaid
- People who are not employed but are taking part in a youth or adult training programme
- A school student on a work experience programme

Verifying that you have correctly classified your employee's status is crucial to defining estimates for an EL policy. If you misclassify an employee, you risk obtaining an EL policy that leaves your organisation vulnerable to substantial employee compensation claims.

Protect All Your Workers No Matter Their Employment Status

Your organisation has an obligation to provide a safe work environment for those that work for and volunteer with your business. As part of that obligation, you need to have a robust EL policy. To learn more about this type of cover or how to avoid potential missteps, contact CIAT Insurance Services today.