

# Job Ready Guide Construction risk management

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Insuring you have the  
right insurance coverage

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# Are you fully protected?

In the past, many contractors protected their business by purchasing broad insurance policies. But the insurance landscape has and is continuing to change and these options are no longer as effective for managing risk. For one, insurance policies have become more restrictive as legal liabilities have increased. Some states are also limiting the amount of coverage available through traditional contractual risk transfer and additional insured endorsements.

How confident are you that you have the coverage you really need? Consider these examples:

- Policy exclusion could limit your coverage in critical areas such as construction defects and water intrusion.
- Course of construction insurance covered by the property owner may have insufficient limits or high deductibles, causing burdensome payments you have to make if something happens.
- Many insurance policies will not provide certain coverage unless it is clearly stated in the construction contract.
- Contractors are increasingly exposed to professional, pollution, and other new liability exposures.

In this Job Ready guide we'll discuss your exposure to risk and how a well thought out insurance program can help protect your business.

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“A general principle of risk management is whichever party can best control the risk, is the party that should be insuring it.”

# Common gaps in coverage

Learning that your insurance coverage is not adequate shouldn't happen after your construction company is faced with a claim. No one wants that kind of a surprise, or the resulting financial impact on the company. Consequently, it's important to work with your insurance agent to fully understand your coverage and where there may be gaps. Here are some main areas to watch out for:

## General liability

General liability policies in construction can vary greatly when you consider the volume of exclusions and endorsements that can be attached to the standard ISO commercial general liability (CG 00 01) form. For instance, modern general liability policies issued to contractors tend to exclude pollution and professional liability. These gaps can be filled with stand-alone pollution and professional policies. Other common and potentially problematic exclusions include residential work, roofing, water damage, action-over, and subcontractor warranties.

Most contractors are also often required to provide owners or up-stream contractors with waivers of subrogation and additional insured endorsements. It is important to know what type of additional insured endorsement is attached to your policy so you can meet contractual requirements. It is not enough to just look at the form number of the additional insured endorsement because different editions of the same form may have completely different coverage grants. In addition, many insurers are now offering custom forms that can vary in the amount of coverage granted (and many limit the coverage grant to what is required in the contract).

## Commercial auto

Also called "business auto," commercial auto policies grant coverage on the declarations page by using symbols. The most common symbol is the number 1, which stands for "any auto." Take note if the auto policy grants liability coverage on symbols 7, 8, and 9, as this is not the same as symbol 1.

Again, pollution is often an excluded exposure, yet many contractors have pickups with "slip tanks" in the bed or they haul materials that may be considered hazardous. This coverage gap can sometimes be resolved with an endorsement to the auto policy or with a stand-alone pollution policy. Also, similar to general liability, contractors must make sure the auto policy is endorsed properly to include additional insured endorsements, waivers of subrogation, employees as insureds, and drive other car, where necessary.

## Workers' compensation and employers' liability

Common gaps in this coverage tend to arise when contractors expand their geographical scope or work to areas subject to federal law (such as near navigable waterways, defense bases, etc.). Since workers' compensation is state-driven, make sure your agent is aware of all states where your company performs work. Waivers of subrogation may also be necessary, depending on the state.

### **Umbrella/excess liability**

Umbrella and excess policies are areas where contractors should pay special attention. You will want to know if your policy is a true umbrella policy that “drops down” to provide coverage in the event of an uncovered claim in the underlying policies. Or is it an excess policy that simply extends the limits of the underlying policies? Also, is the coverage granted on a “following form” basis that maintains the same coverage and exclusions of the underlying policies, or does it have its own coverage grants and exclusions which may or may not be the same as the underlying policies? Make sure you include as many of the underlying coverage as possible (don’t forget about employer’s liability).

### **Pollution liability**

Pollution policies may be written together with a professional policy or as separate policy. Depending on your operations, you may want to seek pollution coverage for your work sites, non-owned disposal sites, owned property locations, and transportation/vehicles. Also, be aware of how your policy responds to mold and water damage (some policies may exclude mold).

### **Professional liability**

Design-build projects are increasing in popularity, putting the design responsibility squarely on the general contractor’s shoulders. What many GCs may not realize, however, is that design accountability—and potential liability—remains even if they hire an outside architect or engineer to do the work. Professional liability insurance can help protect a GC when design errors and omissions lead to claims.

Mechanical and HVAC contractors should also consider a professional liability policy if they are designing with building information modeling (BIM) and CAD. If you fall into this category, you are taking on more responsibility for how mechanical and electrical systems are put together. Consequently, you need professional liability coverage as well.

### **Builder’s risk**

Also called “course of construction,” a builder’s risk policy covers construction work that has been done to-date as well as on-site materials that will be incorporated into the project. General contractors, in particular, need to be careful about how they are insuring construction projects while they are in progress. Ideally the builder’s risk policy should cover the interest of the owner, general contractor, and all subcontractors on the project regardless of who was at fault. Unfortunately, depending on how the policy is set up and arranged, it doesn’t always do that.

In addition, many times owners want to use their own property policy for the builder’s risk coverage. But that may not give the contractor the type of coverage needed. If the owner holds the builder’s risk policy, make sure you understand exactly what the owner’s coverage provides. For example, the owner’s policy may have insufficient coverage limits or a high deductible that could put an unreasonable financial burden on your company if a claim is filed.

In most cases it’s best for the general contractor to provide the builder’s risk coverage because they are in the best position to control the risk. In these cases, the contractor would name the owner as an additional insured or loss payee.

**Other coverage to consider**

**Employment practices liability:** Employment practices suits are at an all time high and seem to increase every year. Every construction company that employs people has an exposure. Be sure your policy includes 3rd party coverage—and be aware of sub-limits for certain types of claims, like wage and hour claims.

**Crime coverage:** The amount of employee theft that occurs within the construction industry is often underestimated. There are some non-insurance loss controls that can be put in place to help control this exposure, but insurance can provide a little extra peace of mind. In many cases, the crime is very large by the time it is discovered and it is often perpetrated by employees that the company owners would least suspect.

**Cyber liability:** Internet use and online transactions are becoming the norm for most businesses, contractors included. It does not take much to have a cyber liability exposure. Simply accepting pre-qualification packets from subcontractors can create an exposure.

**Management liability:** This can include directors' and officers' coverage, fiduciary coverage, and travel coverage. The need for these different forms of coverage is not always obvious, but it is worthwhile to discuss with your agent.

# Reducing your loss exposure

The risks you face, your potential for loss, and how you want to handle risk management is unique to your company. An experienced insurance agent who understands construction can be a critical partner in helping you:

- Identify and analyze your loss exposures.
- Examine various loss control techniques.
- Implement the technique.
- Monitor the results.

Purchasing insurance is not the only way to handle a loss exposure. You could also transfer the risk contractually to another party, or retain the risk and either set aside money to fund it or leave it unfunded. Or you may feel the best course of action is to implement company processes or other measures that will reduce the probability and impact of a known risk, such as the following risk control techniques:

- Avoidance—the simplest technique; you simply don't do the work that creates the risk. For example, you may avoid all residential construction projects.
- Risk prevention—such as driver screening and equipment maintenance practices.
- Risk reduction—such as fire extinguishers on site, hard hats, seatbelts, and airbags.
- Duplication measures—such as an extra roller on a paving job in case of a breakdown.
- Diversification measures—such as subcontracting some work while self-performing other work.
- Separation measures—such as creating sub-assemblies away from the jobsite so there is less congestion on the site during construction and less material damaged in the event of a major loss at the site.

Most contractors will use a combination of the above risk control techniques to first limit their loss exposures, then combine their efforts with a robust insurance program and contractual risk transfer. Any risk that is ultimately retained may be funded or unfunded, but the hope is you are aware of the risks you still face outside of the contractual risk transfer and insurance program so you are prepared should something happen.

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# What to look for in an agent

When dealing with risk you should work with an insurance representative you trust will put your business interest above their own. Look for an agent that can be a true business partner who you feel comfortable sharing inside information with about your company's goals, operations, concerns, and history. Following are some key attributes to look for:

**Construction industry knowledge.** The risks and insurance needs of construction companies are highly complex and very different from other businesses. Choose an agent who specializes in the construction industry and ask for the names of other contractors they do business with.

**Risk management expertise.** Does the agent know the key principles of risk management? Ask how the agent stays up on the methods for managing risk and what process the agent uses to help you identify and assess your loss exposure.

**Participation in construction associations.** Is the agent active in local construction associations such as the Construction Financial Management Association (CFMA) and the Associated General Contractors (AGC)? Do they attend meetings regularly? Involvement with construction associations is a good indicator of their knowledge and commitment to the industry.

**CRIS certification:** Agents with the Construction Risk and Insurance Specialist (CRIS) certification show strong dedication to serving the construction industry. To obtain and maintain the certification, agents must first pass five construction-focused risk management insurance courses, and then periodically update their knowledge through approved courses. You can verify that an agent or broker has the CRIS designation (or find an agent in your area who has one) at [www.CRIS-CE.com/CrisceCom/Directory](http://www.CRIS-CE.com/CrisceCom/Directory).

**CPCU certification:** Ethics and integrity play a key role in the partnership you build with your insurance representative. Recipients of the Chartered Property Casualty Underwriter (CPCU) certification abide by a code of ethics that requires them to put their clients first.

Once you've made your selection, review your agent's level of service annually. Does the agent keep you up to date on new legislation, regulations, or other factors that can impact your insurance coverage? A strong agent will be available year-round (not just during insurance renewal time) to review contracts and assist with risk analysis or to serve as a sounding board for your risk management ideas.



## Additional insured endorsements

An additional insured endorsement essentially adds your customer (project owner and/or prime contractor) and other parties required by the contract to your policy for claims arising out of the work you do for that customer (or for claims caused in whole or in part by your negligence—depending on the type of form you have). Whether you're requesting to be named as an additional insured on your subcontractor's policy or are adding your customer to your own policy, keep these things in mind:

1. Understand what's included in the additional insured form being used. Some insurance companies have created their own forms; others use a standardized form offered from the Insurance Services Office (ISO). Ask to see the form that will be used and have your agent explain exactly what it will cover.
2. Make sure the additional insured endorsement covers both completed operations as well as ongoing operations. Many times, additional insured endorsements will not give coverage for completed operations, leaving you (as the additional insured) or your customer potentially exposed to lawsuits filed after the construction project ends.
3. Clearly define the terms of the coverage in the construction contract. For example, many additional insured endorsement forms allow coverage for completed operations only if the written contract asks for that coverage. Coverage amounts may also be restricted to what is required by contract.
4. Don't rely on a certificate of insurance alone as proof of your additional insured status. The only way to confirm that you are adequately covered as an additional insured is to obtain a copy of the actual endorsement issued by the insurer.

# Summary

Insurance is meant to safeguard your company's resources from surprising losses. Working with a knowledgeable insurance agent to assure you have the right coverage will protect you financially, put you in a better position to take advantage of opportunities, and ultimately give you the confidence to handle whatever the future may hold.

## About the authors

**Joel Dietzman** is a construction insurance and surety agent with Anchor Insurance & Surety, Inc. in Portland, Oregon. He entered the industry after graduating from Washington & Lee University with a double major in mathematics and economics. He moved to the agency side of the business after working on the insurance company side for seven years. Joel has earned the following industry designations: CPCU (Certified Property Casualty Underwriter), CRIS (Construction Risk Insurance Specialist), AFSB (Associate in Fidelity and Surety Bonding), AIC (Associate in Claims), SCLA (Senior Claim Law Associate), and FCLA (Fraud Claim Law Associate). Joel currently serves on the board of the Utility Contractors Association of Oregon and SW Washington and is education chair for the Portland Chapter of the Construction Financial Management Association. He is also a past president of the Surety Association of Oregon. Joel has served on the local Associated General Contractors education committee and has taught classes for the local chapters of the Safebuild Alliance and American Society of Professional Estimators. He is also involved in numerous other construction associations including the Associated Builders and Contractors, Asphalt and Pavement Association of Oregon, and the National Association of Surety Bond Producers.

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## About Sage

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## About the Job Ready Guides

Sage keeps projects moving with the most job-ready, people-connected solutions for construction and real estate. Our Job Ready Guides are designed to help you tackle your business challenges with practical, actionable tools and resources to meet those challenges.

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