

D&O Insurance: What It Does and Does Not Cover

Protect your directors and officers
in an era of growing scrutiny

*The stakes have never been higher
for today's directors and officers.*

Recent legal actions and precedents have placed added stresses and risk exposures on directors, partners, and officers. In addition to increased public scrutiny, directors and officers can now find themselves responsible for the day-to-day actions taken by the companies they serve. Into this highly litigious environment comes increased enforcement by the SEC, Department of Justice, and other regulatory agencies, leading to individual directors and officers being named as defendants in civil actions.

It's a new era of scrutiny requiring a modern approach to executive risk.

D&O insurance

Directors and officers liability insurance (D&O) is designed to protect your organization's directors and officers from a broad array of claims related to their duties as executives. It provides an essential layer of coverage that encompasses:

Breach of fiduciary duty

Directors and officers can be held legally responsible for the company defaulting on its outstanding loans.

Failure to comply with workplace laws

A seemingly simple and routine wrongful termination action can quickly escalate and entangle directors and officers.

Theft of intellectual property

Hiring an executive from a competing firm can open a company up to allegations of unfair competition and trademark infringement.

Misrepresentation

The intentional or even unintentional under or over reporting of a company's financial and human capital can result in the abrogation of contracts.

Employment practices and HR issues

A manager failing to enforce employee conduct rules regarding sexual harassment or discrimination can lead to a large claim.

Shareholder actions

A shareholder can sue an officer or director if their actions resulted in direct harm or loss.

Incorrect disclosures

Public companies must provide correct disclosures about their financials, results, and management compensation, and uphold all other SEC disclosure requirements.

Misrepresentation or omissions in a prospectus

An incorrect or misleading statement in a prospectus can drive investors to make decisions on false information and result in a civil liability for directors and officers.

Making decisions beyond authority

An individual director cannot make major company decisions on their own without special authority—decisions need to be made and approved by the board of directors.

In addition to knowing what D&O covers, it's essential to know what it doesn't cover. The following are not covered under a D&O policy:

- **Fraud**
- **Illegal wages or gains**
- **Fines and penalties**
- **Intentional non-compliant acts or behavior**
- **Bodily harm or property damage**
- **Claims made under a previous policy**
- **Claims covered by another insurance company/policy**

Trust the Process

D&O is not a one-off job, but an ongoing process. Because of the increased risk of today's regulatory environment, companies must work with directors and officers to make sure current policies cover specific and changing risk profiles. Often, directors and officers will employ private counsel to represent them throughout the internal evaluation process to ensure that their interests are well represented. This outside counsel will then work with in-house legal departments—as well as other relevant stakeholders—to assess the individualized and total risk.

This process should be added to the annual schedule of internal business policy reviews. The goal should be the adoption of D&O policies that fit with both the company's existing policies and the legal obligations to the directors and officers.

The median D&O claim in 2019 was \$11.5 million.

The total aggregate settlement value for all D&O lawsuits was \$2.029 billion in 2019.

1 out of every 11 U.S. exchange-listed companies was sued for a securities claim in 2019.

2019 was the third year in a row that the U.S. had more than 400 filings for class action lawsuits nationwide.

Get the Big Picture

Acquiring D&O coverage is an important part of a company's big-picture risk mitigation strategy. However, unlike other more standardized insurance products, D&O insurance policies are highly negotiated—requiring a high degree of review from all levels of an organization's management and counsel. Additionally, D&O insurance must work with other coverage vehicles as part of an overall risk management program. It's a multidisciplinary approach that requires the expertise of a seasoned insurance professional.

The ABCs of D&O

A typical D&O policy is comprised of Side A, Side B, and Side C.

Side A

Covers directors, officers, and employees for defense costs, settlement fees, or judgments in the event that the company or not-for-profit cannot indemnify them, such as a company that has declared bankruptcy.

Side B

Covers the company or organization for directors', officers', and employees' losses when it does indemnify them.

Side C

Coverage is also known as "entity coverage" because it financially protects the corporation in its own right.

About Buck & Affiliates

Founded in 1982, Buck & Affiliates provides a diverse suite of insurance solutions with a strong regional focus and customized approach. The firm also provides extensive risk management services to augment its insurance offerings. Buck & Affiliates is part of Alliant Insurance Services. Learn more about Buck & Affiliates' innovative insurance solutions at buckaffiliates.com.

About Alliant Insurance Services

Alliant Insurance Services is one of the nation's leading and fastest growing distributors of diversified insurance products and services. In the face of increasing complexity, our approach is simple: bring on the best people and invest more deeply in the industries and clients we serve. We operate through a network of specialized national platforms and regional offices to offer a comprehensive portfolio of services to our clients. Our goal is to ensure that they get the most innovative products—and innovative thinking—in the industry.

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