



# Insurance for Fitness Businesses





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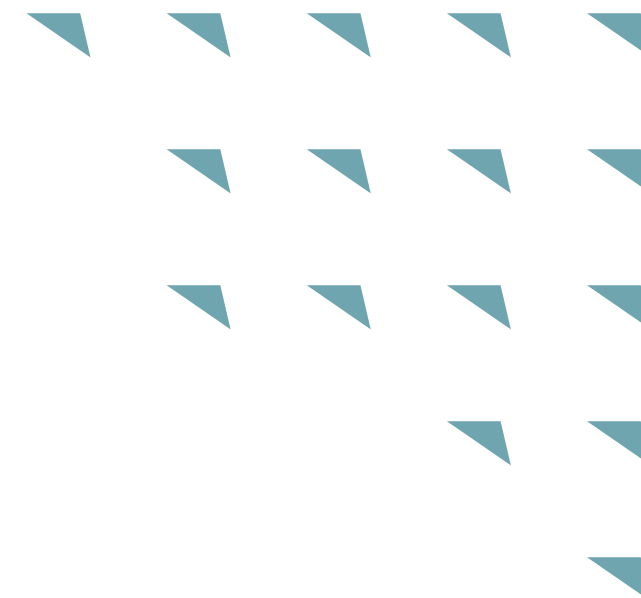
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## PART 1

# Introduction

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You can do everything right. Keep your clients happy. Treat your employees well. Have a sound business plan. Risks will always abound. And while these risks are always part of running a fitness business, taking the right precautions and putting the right insurance program in place can put you on the right path for long-term success.

Tie up any loose ends you may have. Talk to your insurance professional, and make sure you're ready for the worst-case scenarios.

Don't worry if you don't know where to start. This eBook is a good first step. Read each chapter and consider the risks and your gym's exposures. The path to peace of mind is education and action.

Cyber, D&O, crime, sexual molestation, professional trainer, and EPL insurances can be complex. But they don't have to be. We've broken down these insurance coverages so that they are easy to understand. You'll learn what they cover, what they don't cover, and how they can protect your gym or fitness studio from detrimental claims.

Part 2 Cyber

# Six Need-to-Know Cyber Insurance Facts

*"It's your responsibility to protect your customer information and data—even a minor security issue can have a major impact on your business."*

**With the rate of data breaches and security incidents on the rise, cyber insurance has become an essential tool for the fitness industry.**

It's your responsibility to protect your customer information and data—even a minor security issue can have a major impact on your business. That's why cyber insurance has become an essential part of any modern risk management strategy. This critical coverage is designed to be the barrier that protects your business from a wide range of technology-related risks.

Before you purchase a cyber liability policy, it is essential to understand how it works. Here is a checklist of cyber insurance facts you need to know:

## 1. Not all insurance policies are created equal

Most general liability insurance policies do not cover cyber, and if they do, it's usually on a very limited basis. Most attacks are not covered by standard property, crime, errors and omissions, or business insurance policies—hacking, identity theft, credit card fraud, and phone phishing are all crimes that traditional insurance policies do not address.

## 2. Cyber insurance can help you fulfill legal obligations

Any business that stores "personally identifiable information," including employee birthdates, social security numbers, or client information, is legally obligated to protect and secure that information. If your business requires you to store this type of client information, you are required to protect it!

## 3. Cyber insurance protects your bottom line

When a cyberattack occurs, many businesses must interrupt their operations. Cyber insurance helps to recover lost income from downtime. On average, cyberattacks cost businesses about \$200,000.<sup>1</sup> Not all businesses can recover from these types of losses.

## 4. No cyber policy? No signature.

Cyber insurance is fast becoming a priority, and many organizations are requiring that their vendors have a policy before entering into an agreement. Businesses, vendors, and customers will all benefit from cyber insurance coverage. With so many organizations affected by cybercrime, companies want to have peace of mind and thus prefer to do business with those who have coverage.

## 5. It can save small businesses

Small and midsize businesses tend to be most vulnerable, as they often don't have the infrastructure and capital to recover from a breach effectively. About 43% of online attacks target small businesses, and about 60% of businesses go out of business within six months of the attack.<sup>2</sup>



43%

of online attacks target small businesses.

## 6. It can protect you when outsourcing

Even if you outsource network security, data management, and payment transactions, as the original data owner, you will likely be named in third-party lawsuits in the event of a breach. Cyber policies offer third-party coverage that insures for the liability of the policyholder to third parties, including clients, arising from a data breach or cyberattack.

### Would You be Covered?

- ▶ Your IT manager discovered that a file, which was not a part of your website, was being used to steal payment and credit card information.
- ▶ An investigation determined that an employee was stealing credit card information and processing fraudulent transactions, and that your business was not compliant with current industry security standards.
- ▶ You experience a 48-hour system failure during your busy season, resulting in an inability to process credit card sales and customer order cancelations, as well as disruptions in time-management, job tracking, supply ordering, and communications systems.

If you have cyber insurance, these situations would be covered with minimal out-of-pocket expenses.





## Cybercrime by the numbers

16,856

Number of businesses that experience cyberattacks each year. That's 46 attacks every day—or nearly two attacks an hour<sup>3</sup>

47%

Percentage of American adults affected by data breaches in the past year<sup>4</sup>

556 million

Number of cybercrime victims per year<sup>5</sup>

\$575 billion

Annual cost of cybercrime to the global economy<sup>6</sup>

\$100 billion

Annual cost of cybercrime to the U.S. economy<sup>7</sup>

### PART 3 D&O

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

*"Into this highly litigious environment comes increased enforcement ... leading to individual directors and officers being named as defendants in civil actions."*

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

Recent legal actions and precedents have placed added risks and 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 his/her 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

The median D&O claim in 2019 was \$11.5 million.<sup>8</sup>

The total aggregate settlement value for all D&O lawsuits was \$2.029 billion in 2019.<sup>9</sup>

1 out of every 11 U.S. exchange-listed companies was sued for a securities claim in 2019.<sup>10</sup>

2019 was the third year in a row that the U.S. had more than 400 filings for class action lawsuits nationwide.<sup>11</sup>

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.

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.



PART 4 Crime, Sexual Molestation, and Professional Trainer

# Prepare for the Worst-Case Scenarios

*"While it's crucial to mitigate risks to prevent them from happening, it's also imperative to have the proper coverage in place to ensure you're protected."*

**Crime, molestation, and professional trainer liabilities are common but often overlooked risks facing gyms, fitness centers, and studios.**

It's essential to be aware of these worst-case scenarios and safeguard your business from accusations or claims. While it's crucial to mitigate risks to prevent them from happening, it's also imperative to have the proper coverage in place to ensure you're protected. Crime, sexual molestation, and professional trainer insurance endorsements can give you the protection you need at the most vulnerable times. Read below to learn what they are, what they cover, and where the gaps lie.

Help protect your organization from the unthinkable situations.

Type of Insurance	Crime	Sexual Molestation/Abuse	Professional Trainer Liability
What It Is	Provides protection against losses due to theft and certain types of fraud	Protects companies against sexual molestation and abuse claims	Protects your business from negligent professionals' performance
What It Covers	<ul style="list-style-type: none"><li>Employee theft</li><li>Forgery or alteration</li><li>Computer fraud</li><li>Funds transfer fraud</li><li>Money orders and counterfeit currency fraud</li><li>Robbery or burglary of safes</li></ul>	<p>The following arising from abuse or sexual molestation:</p> <ul style="list-style-type: none"><li>Bodily injury</li><li>Property damage</li><li>Personal or advertising injury</li></ul>	<ul style="list-style-type: none"><li>Alleged or actual negligence</li><li>Bodily injuries from bad or negligent training</li></ul>
What It Doesn't Cover	<ul style="list-style-type: none"><li>Acts committed by business owners or partners</li><li>Loss committed by employees before covered by insurance</li><li>Loss from virtual currency</li></ul>	<ul style="list-style-type: none"><li>Knowledgeable acts of sexual misconduct or abuse</li><li>Willful violation of laws</li><li>Reporting incidents too late after occurrence</li></ul>	<ul style="list-style-type: none"><li>Intentional mistakes</li><li>Illegal activity</li><li>Employee disputes</li><li>Claims covered by other policies</li><li>False advertising</li></ul>



## Scenarios:

### Crime:

- Employees break into a gym's main office, steal and forge checks, and cash thousands of dollars in forged checks.
- Employees charge multiple fraudulent charges on business credit cards.

### Sexual molestation:

- Students accuse their trainer of harassment during one-on-one personal training sessions.
- A student accuses her instructor of inappropriate contact during a class.

### Professional trainer liability:

- A student suffers a back injury after class and sues for improper instruction.
- A personal trainer at the gym didn't ask about his client's previous injuries. He instructed her to complete exercises that caused further damage to her knees.

PART 5 EPLI

# Five Steps To Reduce Costly Workplace Claims

*“The fitness industry is a potential hotbed of employee lawsuits ranging from sexual harassment to discrimination and wrongful termination.”*

**Making the right hire is imperative to your success.**

Each employee is an extension of your business and ambassador for your gym or studio. However, even if you complete numerous interviews, conduct background checks, vet your staff, and optimize your team, you remain susceptible to immense risks. One of the most significant: employment practices liability (EPL). And even if you are not found liable, an accusation can be highly detrimental to your long-term stability.

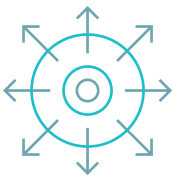
The fitness industry is a potential hotbed of employee lawsuits ranging from sexual harassment to discrimination and wrongful termination. Even if a suit is unwarranted, you may still be obligated to pay thousands of dollars in legal fees or settlements. Fortunately, there are several straightforward ways to protect your business. Here are five basic steps you can take to reduce your risk of costly workplace claims.



## 1. Document

If your company doesn't have an employee handbook, create one. What it contains depends on your company's size, unionization status, industry, and professional vs. service composition, among other factors. Some key things to include are:

- An equal employment opportunity policy
- A no-harassment policy
- An internal procedure for employees to follow if they have a workplace complaint
- An employment-at-will policy
- A code of ethics
- A social media policy
- A Family and Medical Leave Act policy



## 2. Distribute

If a claim arises, an employee handbook can provide evidence that your company has made a good faith effort to follow policies that promote fairness and equity among employees. After you've created your handbook, be sure to do the following:

- Give all employees a copy of the handbook
- Require they sign a notice of receipt



## 3. Train

Supervisors and managers should periodically receive instruction on workplace issues such as:

- Managing difficult employees
- Employee complaints
- Terminations
- Reassignments
- Procedures to handle complaints about harassment or discrimination in the workplace



## 4. Create high visibility

Clearly communicate all zero-tolerance policies with your employees that involve:

- Substance abuse
- Harassment
- Discrimination
- Other workplace exposures

Sound policies promote fairness among employees and may serve as a defense in a lawsuit.



## 5. Check your coverage

Employment practices liability insurance (EPLI) is an essential policy that will protect your gym or studio against employee lawsuits. Despite the high probability of a suit occurring, many fitness businesses choose not to purchase EPLI because they believe their workplace exposures to employee suits are covered under other policies they have. They're not. EPLI provides:

- Valuable protection against claims for allegedly wrongful employment practices
- Expert support for legal and claims representation

Deductibles, differences in coverage provisions, and exclusions can greatly affect the cost of coverage and need to be tailored to an individual company's needs.





# Seven Reasons Why You Need EPLI

*"Employees win 70% of the cases that go to trial."*

According to the Small Business Administration, 53% of small businesses are involved in at least one lawsuit at any given time and all industries are susceptible.<sup>12</sup> Businesses with 100 or fewer employees are more likely to be sued than larger companies.<sup>13</sup> If you're still on the fence about whether or not you should get EPLI for your gym or fitness center, below are seven reasons why you should seriously consider getting the coverage!

53%  
of small businesses  
are involved in at least  
one lawsuit.

1. You are three times more likely to be sued by an employee than to have your business destroyed by a fire.<sup>14</sup>
2. Even though most lawsuits settle, employees win 70% of the cases that go to trial.<sup>15</sup>
3. Small businesses account for 40% of employee lawsuits and administrative charges; this is more than for mega-corporations.<sup>16</sup>
4. If you have one employee, some employment laws will apply to your gym or fitness center. Once you have at least 15 employees, all the employment laws will apply to your gym or fitness center.<sup>17</sup>
5. The average EPL claim is \$70,000; this is 26% higher than it was three years ago!<sup>18</sup>
6. The U.S. EEOC manages more than 90,000 claims per year. It secured \$505 million for victims working in both private sectors and governments in 2019.<sup>19</sup>
7. General liability and business owners' insurance do not protect you from employee lawsuits! Your fitness center or gym is liable if an employee sues.





# EPLI Checklist: What It Covers

*"The average cost of an EPL claim that goes to court is \$217,000."*

EPLI protects employers against various employee claims from sexual harassment to wrongful termination and retaliation. The average cost for an EPL claim is about \$70,000 if it settles and around \$217,000 if it goes to court. Don't put your company in a vulnerable position. An EPLI policy can protect your organization from large and potentially nuclear claims.

Below is a checklist of claims that EPLI covers and brief descriptions of the types of scenarios that would qualify:

- ✔ **Sexual harassment:** An employee sues their employer for dismissing repeated complaints of sexual harassment.
- ✔ **Discrimination (based on gender, race, age, or disability):** A manager doesn't promote an employee because she is 60 and promotes a 35-year-old employee instead.

- ✔ **Deprivation of career opportunity:** An employer doesn't allow one of its supervisor employees to enroll in a course that gives helpful advice and tips to managers.
- ✔ **Retaliation:** An employee gets a demotion after reporting a beloved manager's racist comments.
- ✔ **Wrongful discipline:** An employee is put on probation because of rumors of alleged misconduct that were not actually true.
- ✔ **Failure to employ or promote:** An employer doesn't hire a candidate after learning she has a disability.
- ✔ **Wrongful termination:** An employer fires an employee after she makes a sexual harassment complaint against her co-worker.

- ✔ **Breach of employment contract:** An employee sues his employer for breaching his contract and not giving him his due pay.
- ✔ **Negligent evaluation:** An employee sues an employer for an employee evaluation that was excessively negative, incorrect, and didn't accurately reflect his higher level of performance.
- ✔ **Unfair hiring practices:** A large tech company doesn't hire employees that are of a certain faith.
- ✔ **Mismanagement of employee benefit plans:** A top financial firm gets sued for breaching their fiduciary duty in managing employee 401K plans.
- ✔ **Defamation among other wrongful employment-related issues:** An employee doesn't get a bonus because of several false rumors her co-workers spread.

- ✔ **Wage and hour (Fair Labor Standards Act) violations:** A manager required employees to "work off the clock" in order to avoid paying overtime.
- ✔ **Wrongful infliction of emotional distress:** A supervisor continually physically threatens an employee because of their different religious beliefs.





# Costly EPL Scenarios

No company flies under the radar when it comes to employment practices liability. Whether you're a small local business or a large multinational corporation, EPL claims can be both onerous and costly. Here are some real-life examples of just how costly they can be.

### Scenario 1:

A former worker at a 150-employee manufacturing plant alleged discrimination during his four-year tenure with the company, though he never reported his concerns to the company.

An investigation revealed that some of the allegations were valid.

After six mediation attempts, the claim settled for \$500,000 and incurred \$70,000 in defense costs.<sup>20</sup>

### Scenario 2:

An employer terminated an employee from his job at a 400-employee retail company a few days after his spouse made an inquiry about medical benefits. Her husband had suffered severe injuries after being involved in a fight at work.

The company maintained the termination was because of his role in the fight rather than the request for information about medical and workers' compensation benefits.

The employee filed charges for wrongful termination in violation of the ADA and FMLA, disability discrimination, and retaliation. After arbitration, the plaintiff received \$4 million.<sup>21</sup>

### Scenario 3:

A 45-year-old boss terminated a 65-year-old human resources executive after an independent consultant found that the individual had created a threatening work environment.

The employee filed a lawsuit alleging age discrimination and retaliatory termination.

After the case settled, the employee received \$1.15 million. Defense fees exceeded \$220,000.<sup>22</sup>

### Scenario 4:

A former nurse alleged that her employer retaliated against, suspended, and ultimately terminated her because she had complained to management about wage and hour issues.

According to the hospital, they suspended the nurse for abandoning a patient, and terminated her because she allegedly took a broken piece of medical equipment without authorization.

The plaintiff received \$750,000 for defamation. Defense expenses were more than \$1 million.<sup>23</sup>

Source:

<sup>1, 2</sup> CNBC.com  
<sup>3</sup> IBM  
<sup>4</sup> Ponemon Institute  
<sup>5</sup> Symantec  
<sup>6, 7</sup> Intel Security and the Center for Strategic and International Studies  
<sup>8, 9, 10, 11</sup> [dandodiary.com](http://dandodiary.com)  
<sup>12, 13</sup> [eeoc.gov](http://eeoc.gov)  
<sup>14, 15, 16, 17, 18, 19</sup> [colinsgrp.com/site/epli](http://colinsgrp.com/site/epli)  
<sup>20, 21</sup> Great American Insurance Group  
<sup>22, 23</sup> The Travelers Indemnity Company



### **About Buck & Affiliates**

Founded in 1982, Buck & Affiliates provides a diverse suite of insurance solutions with a strong regional focus and customized approach. Buck & Affiliates has built out a large presence in the health and fitness industry with a national portfolio of gyms and fitness studios. 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' fitness insurance solutions at [buckfitnessinsurance.com](http://buckfitnessinsurance.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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