



# D&O Insurance





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## PART 1

# Introduction

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The stakes have never been higher for today's business owners, directors, and officers in the fitness industry. From associating with clients to vendors and employees, gym and fitness business leaders are susceptible to myriad risks.

Recent legal actions and precedents have placed added stresses and risk exposures on business owners, partners, directors, and officers. In addition to increased public scrutiny, these individuals now find themselves responsible for the day-to-day actions taken by the organizations they serve.

Into this highly litigious environment comes increased enforcement by the SEC, Department of Justice, and other regulatory agencies, leading to individual gym and fitness business owners, directors, and officers being named as defendants in civil actions.

## Part 2

# What D&O Does and Does Not Cover

*"A seemingly simple and routine wrongful termination action can quickly escalate and entangle business owners, directors, and officers."*

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Directors and officers (D&O) liability insurance is designed to protect business owners and the 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 business owners, directors, and officers.
- ✓ **Theft of Intellectual Property:** Hiring an executive from a competing firm can open up a company 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 a director or officer 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 or policy**









## PART 3

# The D&O 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.”*

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Not every insurance professional is a D&O expert. When you start looking for the best D&O policy, keep in mind to speak with a seasoned professional who knows your business, understands your industry, and creates a plan that can protect you, your business, and your employees.

## 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 ensure current policies cover specific and changing risk profiles. Often,

business owners, directors, and officers will employ private counsel to represent them throughout the internal evaluation process to ensure that their interests are represented well. 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.





## Part 4

# The Big Picture

*"D&O insurance must work with other coverage vehicles as a part of an overall risk management program."*

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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 a 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 business owners, directors, officers, and employees for defense costs, settlement fees, or judgments in the event 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 owners', 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 5

# D&O Scenarios

*"Companies have been protected from large lawsuits because they had the proper D&O coverage."*

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After learning about D&O insurance—what it covers, what it doesn't cover—you may still be wondering, "When am I actually going to need D&O insurance?" Companies have been protected from large lawsuits because they had the proper D&O coverage. Unfortunately, at the same time, many have not been protected because they were lacking coverage. Below are a few scenarios that take a deeper dive into how D&O insurance can protect your company.

**Scenario 1:**

A gym's owner decides to auto dial and text people to offer promotions and memberships.



The gym is sued due to the telephone act.



The gym's underlying coverages excluded this risk, but they would have been covered if they had D&O insurance.

**Scenario 2:**

A partner from a fitness center made a decision that breached the contract with one of their vendors without approval from the other partners.



The fitness center and the individual partner were sued for allegedly wrongfully handling vendor relations and breaching their contract.



D&O insurance policy protects the partner and the 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](https://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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