

As a business owner, you encounter many situations that expose you to loss. You control many of these situations by hiring the best employees available, purchasing quality raw materials, and producing a quality work product, to name a few. Purchasing insurance protection is also a method of protecting your business.

It is also important to protect yourself by entering into contractual agreements that are favorable to you. One way is to manage the agreements you enter into with contractors or subcontractors you hire.

**Set clear expectations by using written construction contracts.** For purposes of risk transfer these three steps should improve your protection:

**A. Obtain Certificates of Insurance from all subcontractors.**

- Harleysville requires that you obtain certificates of insurance from all subcontractors prior to them beginning of any work for you.
- The certificates should show adequate limits:  
**General Liability** – equal to or greater than your own general liability limits or at least \$1,000,000.  
**Workers Compensation** – equal to or greater than your own WC limits or at least \$100,000/\$100,000/\$500,000  
**Auto** – equal to or greater than your own automobile liability limits or at least \$500,000.
- If the subcontractor's limits are lower than these, or if the subcontractor does not have valid insurance, their payroll may be added to your payroll as if he/she were your employees. This will increase the cost of your insurance.

**B. Require additional insured coverage for yourself on your subcontractors' general liability policy.**

- Request written confirmation that your subcontractor has named you as an additional insured on their general liability policy before the subcontractor is allowed to begin the work.
- The additional insured status provided to you by your subcontractors must be on a primary and non-contributory basis, and include coverage for completed operations.
- The best confirmation is a copy of the policy's endorsement naming you as additional insured.

**C. Include hold harmless and indemnity agreements.**

- Written agreements are more reliable than oral agreements. Written agreements should become your standard business practice when granting a job to a subcontractor.
- Written agreements must contain a hold harmless and indemnity agreement. The written agreement must also include a waiver by your subcontractors of their WC immunity to the extent allowed by law. Your attorney can assist you with standardized wording that will set clear expectations between you and your subcontractor.
- The written agreement must hold you harmless. Your subcontractor will be responsible and pay on your behalf for bodily injury, property damage, or other economic loss resulting from the subcontractor's negligence.

This information may not address all hazardous conditions at your location and does not warrant workplace safety or compliance with federal, state or local laws.

- The written agreement must contain an indemnity agreement that states your subcontractor will reimburse you in the event of an accident or loss.
- You *should never* agree to accept liability for accidents caused by the actions of your subcontractor.

What can happen if written contracts with indemnity agreements are not in place:

In a recent Harleysville claim, the General Contractor (GC) hired a subcontractor to perform concrete work. There was some negligence on the part of the concrete contractor. During the time that the concrete work occurred, another worker was injured on the job. The injured worker or claimant, sued the GC. The GC is seeking contractual indemnity and additional insured status from the subcontractor. However, the subcontractor thought they were working on a time and material basis. A written agreement was never agreed to or signed and there were no discussions about obtaining AI coverage for the GC. The concrete contractor did not obtain an additional insured endorsement to the policy; contractual indemnity was never secured by the subcontractor in favor of the GC. In this situation, the GC is likely to be paying the entire claim. The general contractor is left holding the bag and will be responsible for paying the claim, even though the concrete contractor was responsible for the negligence because they did not use written contracts.

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