

# Managing Risk



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## Central Carolina Insurance Agency

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Property Insurance

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## Do You Have Flood Coverage?

Unless you have a separate flood policy, the answer is generally “no.” You can buy a special flood policy to cover this risk. They generally have a 30-day waiting period, so plan ahead if you might need coverage this rainy season.



**S**tandard business property policies do NOT cover damage caused by “flood, surface water, waves, tides, tidal waves, overflow of any body of water or their spray, all whether driven by wind or not; mudslide or mudflow; water that backs up from a sewer or drain; or

water under the ground surface pressing on, or flowing or seeping through foundations, walls, floors or paved surfaces; basements, whether paved or not; or doors, windows or other openings.” So unless you have flooding caused by sprinkler leakage, your policy won’t pay. (The business property policy does

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## This Just In

**J**ob bias charges hit a record high in fiscal year 2010, reported the U.S. Equal Employment Opportunity Commission (EEOC). All major categories of workplace discrimination charge filings in the private sector (which includes state and local governments) increased. These include discrimination under Title VII of the Civil Rights Act of 1964, as amended; the Equal Pay Act; the Age Discrimination in Employment Act; the Americans with Disabilities Act; and the Genetic Information Nondiscrimination Act (GINA).

Historically, race had been the most frequently filed charge since the EEOC became operational in 1965. Last year, however, retaliation under all statutes surpassed

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cover “loss or damage by fire, explosion or sprinkler leakage.”)

The National Flood Insurance Program (NFIP) offers flood insurance to individuals and businesses in “participating communities.” These may be towns, cities, unincorporated county lands and tribal or native authorities that have chosen to participate in a floodplain management program.

Although mortgage lenders might not require you to carry flood insurance if your property is in a moderate-to-low risk area, nearly 25 percent of all NFIP flood claims occur in these areas. Most commercial buildings in a moderate-to-low risk area qualify for preferred rates. Preferred-rate premiums start as low as \$567 per year for both building and contents coverage, while contents-only coverage starts at \$162 per year. Businesses can buy up to \$500,000 of insurance to protect a building and up to \$500,000 to protect its contents.

### High-Risk Properties

Federally regulated or insured lenders require mortgage holders in high-risk areas to buy flood insurance. In these areas, you can only buy standard rated policies, with separate building and contents coverage. You can also buy flood coverage through private insurers. If you need flood coverage to meet the requirements of a federally insured loan, verify that the insurer is “admitted,” or licensed to do business in your state. Make sure the policy guarantees coverage at least as broad as the Standard National Flood Policy and that the insurer will provide thirty days’ notice to the insured and lender before canceling the policy.

A difference-in-conditions (DIC) policy may also provide flood coverage. Most DIC policies exclude coverage for floods, but these non-standard policies can often be tailored to cover unusual risks. DIC policies generally make most sense for larger insureds. We can help you find the flood coverage you need. Please contact us for more information. ■

race as the most frequently filed charge, while allegations based on religion, disability and age increased. In its first year of enforcement, the EEOC received 201 charges under GINA.

All laws enforced by the EEOC make it illegal to fire, demote, harass or otherwise “retaliate” against applicants or employees for filing a charge of discrimination, complaining about job discrimination, or for participating in an employment discrimination proceeding (such as an investigation or lawsuit). For example, an employer cannot refuse to promote an employee because she filed a discrimination complaint with the EEOC, even if the EEOC later determined no discrimination occurred.



# Employers' Liability: What Is It, and Why Do You Need It?

Workers' comp policies usually include a special section for employers' liability. What additional coverage does it provide and why do you need it?

**Y**our workers' compensation policy covers the costs associated with an employee's work-related injury or occupational disease. It pays for the worker's medical costs, rehabilitation costs, lost wages and any settlement for permanent disability. The fundamental premise of workers' comp is that employers agree to take responsibility for work-related injuries whether or not the injury was the employer's fault. In return, employees give up their right to sue for damages.

Workers' comp is designed to be "no-fault" and the "exclusive remedy" for work-related illness and injury. Nonetheless, some work-related claims fall outside of workers' comp coverage. The employers'

liability section of the workers' comp policy adds coverage for these types of claims. Without this coverage, employers would have a significant coverage gap, because commercial general liability policies specifically exclude coverage for work-related injury and disease.

Employers' liability is a common law or tort liability, and insurance companies handle those types of claims in the same way they adjust general liability claims, including managing and paying for defense. Since states do not require employers' liability insurance, you do not have it unless your workers' compensation policy explicitly states it includes this coverage in a separate section. Unlike workers' comp, employers' liability has a defined limit of liability, starting at \$100,000 per injury.

## When Coverage Applies

Insurance authority IRMI cites several examples of when employers' liability coverage applies:

**Wrongful death:** The family of a deceased worker may file a common-law claim seeking damages in addition to the death benefit paid by workers' comp.

**Consequential bodily injury:** A family member may file a lawsuit for his or her own injury (for instance, a heart attack) that was caused by learning about or dealing with the injured employee.

**Loss of consortium:** The spouse of an injured worker may sue for loss of consortium, which means the spouse has lost the services — such as sexual relations or the ability to do household chores — of his or her spouse. Damages can be awarded even if the spouse is receiving disability payments.



**Third-party liability:** If an employee is injured while using equipment that malfunctioned, he or she may sue the manufacturer of the equipment for negligence. The manufacturer may in turn sue the employee's company to recover damages. Depending on the specifics of the claim, either the employers' liability or a general liability policy can provide coverage.

**Employees excluded from workers' comp:** In some states, seasonal and temporary workers can be excluded from workers' comp. In other states some small employers do not have to buy comp. In those situations, an employers' liability policy can provide protection from employee lawsuits for bodily injury and illness.

### Monopolistic States

In states with monopolistic workers' comp funds (North Dakota, Ohio, Washington and Wyoming), employers need to purchase a separate employers' liability policy. Organizations headquartered in other states but that have offices in these states need to buy an endorsement to their employers' liability policy to avoid having a coverage gap for employees in those states.

### Not Employment Practices Liability

Do not confuse employers' liability with employment practices liability (EPL) insurance, which protects employers from employee claims that their legal rights have been violated. EPL protects an organization when employees file claims for wrongful termination, sexual harassment and discrimination. It does not cover bodily injury.

Some employers that have not bought EPL insurance attempt to use their employers' liability to provide coverage for EPL claims. However, in most cases the insurance does not apply. Even when states define workers' comp "injury" to include mental injury, the broader workers' compensation definition does not necessarily transfer to the employers' liability portion of the policy.

If you have any questions about your employers' liability coverage — and how it complements your workers' comp coverage — please give us a call. ■

## Weight Discrimination on the Rise

The majority of American adults are overweight or obese, yet studies have found that weight discrimination is increasing. One recent study found it was as prevalent as racial discrimination. Is weight discrimination the new frontier in employment law?

The study mentioned above used a subjective measure, individuals' perceptions of being discriminated against for their weight. But studies using more concrete measures, such as pay and position, have found evidence of weight discrimination as well. A 2010 study led by Timothy A. Judge of the University of Florida found a strong pay bias in favor of thinness in women. Women who weighed 25 pounds less than the norm for their group earned an average of \$15,572 more per year. Those who weighed 25 pounds more than the norm earned \$13,847 less than average.

Another study, "Weight Discrimination and the Glass Ceiling Effect Among Top U.S. CEOs," found that weight did have a glass ceiling effect for women. Using photographs of CEOs of *Fortune*-ranked companies, researchers estimated that overweight and obese women were significantly underrepresented in the group, with approximately 22 percent overweight and 5 percent obese.

The study found that being overweight did not have the same impact on career advancement for men. "Compared to the general population, overweight men are *overrepresented* among top CEOs [emphasis added]..." However, as with women, obese men were underrepresented at 5 percent of the CEO group.

The authors concluded that "weight discrimination occurs at the highest levels of career advancement and...the threshold for weight

discrimination is lower for women than for men.” The University of Florida study found that, “Very thin men, conversely, are punished relative to their average weight peers, and men are rewarded for gaining weight until the point of obesity. For American men, gaining 25 lbs. produces a predicted increase in wages of roughly \$8,437 per year at below-average weights and a predicted increase of approximately \$7,775 per year at above-average weights.”

### Current Law

No federal laws prohibit discrimination on the basis of weight. However, individuals have used other nondiscrimination laws as the basis of weight discrimination claims. Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, color, religion, sex or national origin, has been used in cases where weight standards are applied differently or have an adverse impact on a protected class.

Some individuals have used the Americans with Disabilities Act (ADA) in weight discrimination claims, claiming their weight is a disability. However, barring an underlying physiological disorder, being overweight or obese generally does not qualify as an ADA-protected disability.

The U.S. Equal Employment Opportunity Commission (EEOC) says:

*Being overweight, in and of itself, generally is not an impairment... [if weight] is “within ‘normal’ range and not the result of a physiological disorder”.... Thus, for example, a flight attendant who, because of avid body building (which resulted in a low percentage of body fat and a high percentage of muscle), exceeds the airline’s weight guidelines does not have an impairment... Similarly, a mildly overweight flight attendant who has not been clinically diagnosed as having any medical anomaly does not have an impairment....*

*On the other hand, severe obesity, which has been defined as body weight more than 100% over the norm, ...is clearly an impairment.... In addition, a person with obesity may have an underlying or resultant physiological disorder, such as hypertension or a thyroid disorder. A physiological disorder is an impairment.*

The Americans with Disability Act Amendments Act of 2008 (ADAAA) broadened the ADA’s definition of disability to cover individuals who are perceived to have a disability, even though they do not. Many experts thought that this would open the door to more weight discrimination cases. However, EEOC regulations implementing the ADAAA say:

*When determining whether an individual is covered by this part of the definition of the term “disability,” ...the record at issue must be a record of an impairment that substantially limited a major life activity.*



*A record of a condition that is not an impairment, or of an impairment that was not substantially limiting, does not satisfy this part of the definition.*

Therefore, overweight or obesity does not put an individual into a protected class, unless the condition has resulted in a substantial limitation of a major life activity.

Among the states, only Michigan prohibits discrimination on the basis of weight. The Council on Size and Weight Discrimination reports that the cities of San Francisco and Santa Cruz, Calif. also specifically outlaw discrimination on the basis of weight, while the District of Columbia outlaws discrimination in employment based on “personal appearance,” which could include weight.

Generally, employers can use employment criteria that would otherwise be discriminatory if they are bona fide occupational qualifications (BFOQs). To determine whether a personal characteristic is a BFOQ, ask yourself if an individual really needs it to perform the essential functions of the job. With jobs that require physical fitness or use of certain equipment, you are safer asking an applicant to demonstrate his/her ability to perform that job function than to impose specific height or weight requirements.

What about the personal appearance of employees in the public eye? Can you discriminate in favor of slim employees, since most people find them more attractive? Employers can legitimately require employees to meet certain standards of grooming and dress, but requiring them to be a certain size could lead to charges of discrimination. Regardless of the current state of the law, in today’s diversity-conscious society, wise employers avoid weeding out qualified individuals on the basis of weight, or any other personal characteristic.

For more information on protecting your business from employment discrimination and other employment practices liability claims, please contact us. ■

## Don’t Let the Bedbug (Claim) Bite!

**N**early one in five U.S. extermination firms reported finding a bedbug infestation in an office building in 2010—up from fewer than 1 percent in 2007.

From a compliance standpoint, bedbugs give employers little cause to worry. Most bedbug bites will not create an OSHA “recordable injury,” since most insect bites do not cause lost work time and do not require treatment beyond simple first aid.

Although bedbug bites will not cause medical problems for most people, but some individuals can experience allergic reactions or asthma. If one of your workers needs to seek medical treatment due to bedbug bites that occurred at work, he or she could have a workers’ compensation claim.

Although most bedbug-related liability lawsuits to date have involved landlords or hotels, one employer, Fox News, was successfully sued by an employee after the company failed to remediate the problem, despite repeated reassurances that it had.

With the increase in prevalence and attention from media and attorneys, bedbugs could present a growing problem for employers. Wise employers—particularly those in crowded urban areas—will be on the lookout for symptoms of bedbug infestation and take immediate steps to eradicate them.

### Dealing with a bedbug Infestation

Adult bedbugs are ¼ to 3/8 inch (4-5mm) long, brown in color, with a flat, oval-shaped body; while young bedbugs (called nymphs) are smaller and lighter in color. They feed on human blood. Although they are not known to transmit disease, their bites can be painful and itchy. Eliminating clutter and covering mattresses and upholstered furniture with protective coverings can reduce the number of places for bedbugs to hide. Finally, if you see bedbugs or bedbug bites, hire a pest management professional. Many pesticides can be hazardous if used improperly. ■

