

# What is Prior Acts Coverage?

**Prior acts...retroactive date...prior acts limitations date... tail coverage: what does this jargon have to do with insuring my law practice against malpractice claims? Actually, quite a lot. These phrases all describe a simple concept, vitally important to any practicing lawyer: how far back in time does my professional liability insurance policy cover me for services I have rendered to my clients? Whether a claim is covered will often depend upon the date or time period of the alleged wrongful acts or omissions.**

Lawyers Professional Liability (LPL) policies are generally “claims-made” policies meaning that coverage under the policy is triggered by the act of reporting the claim. So whether there is coverage will depend first on whether the lawyer has a policy in effect on the date when the claim is reported to the carrier (as opposed to “occurrence” policies — such as most auto policies — where coverage for a claim against the insured is triggered by the date of the accident).

## **The Importance of Prior Acts Coverage**

Most LPL policies are effective for a one year period and cover claims (as defined in the policy and otherwise not excluded) that are both: 1) made known to the insured and 2) reported within that policy year. Once that particular LPL policy ends there is no coverage under that policy for claims that were unknown to the insured or known but not reported in that policy year (subject to any policy

provisions that might extend the reporting period for a time after the policy ends). Any claims reported in the future would only be covered by a new policy, and if the policy is not renewed or replaced there is no coverage.

Moreover, under the language of a pure “claims-made” policy form (like MLM’s standard policy form) only acts or omissions occurring during the policy year are covered. But what about claims arising from past legal services rendered (i.e., acts occurring before the policy effective date)? After all, very few professional negligence claims arise, are made known to the attorney, and then are reported to the carrier all in the same year. That is where prior acts coverage comes in.

The Prior Acts Retroactive Date (PARD) contained in an LPL policy is the second date crucial to determining coverage (beyond the reporting date discussed above). Simply put, the PARD is the date back to which there is coverage for an attorney or a firm’s professional services under a policy of professional liability insurance — assuming the claim is otherwise covered. Claims arising from acts or omissions in professional services rendered before that date would not be covered. Without this “retroactive” coverage, LPL policies wouldn’t be of much value to practicing lawyers; few claims would be covered due to the usual time lag between when legal services are rendered and when a potential claim is made known to the attorney and reported to the insurer. <sup>1</sup>

As a rule, an attorney or firm that has been practicing for a time without LPL insurance cannot obtain prior acts coverage when they first buy a policy. Otherwise, some buyers might wait until they thought they might have claim exposure before purchasing a policy. An insurer offering prior acts coverage in such cases would be inviting more claims than normal (a concept known as “adverse selection” in the insurance industry).

*With each policy renewal, the prior acts coverage lengthens by a year. If continuously insured, the firm or attorney can build up coverage over the years.*

Therefore, when an attorney or firm first purchases an LPL policy the effective date of the policy (i.e., the day it begins) will also become the firm’s PARD. However, when the insured renews the policy the next year, the firm’s PARD will remain the same even though the effective date of this second policy has moved up a year. So, with each policy renewal, the prior acts coverage lengthens by a year. This will go on as long as the policy is continuously renewed and in this way a firm or attorney can build up coverage over the years with each new LPL policy. However, if the policy terminates and no replacement policy is immediately purchased, the prior acts coverage will likely be lost even if a new policy is purchased later (this is because insurers generally will not want to insure over significant chronological gaps — adverse selection again).

### **The Costs of Prior Acts Coverage**

As the prior acts coverage expands so does the statistical likelihood that the attorney or firm will experience a claim. To account for the increased claim exposure, LPL premiums increase for a period of years reflecting the increase in years of prior acts coverage being offered under each new policy. Eventually these “step” increases will stop since the increase in exposure diminishes as the years go on. It usually takes between six to eight years to reach this top “step” and the percentage yearly increase varies depending on how the insurer has structured its “rate groups.”

These rate group “step” increases occur irrespective of other factors that might cause a premium to increase from one year to the next: higher limits, lower deductibles, changes in areas of practice, claims, more attorneys added to the policy, or a change in the insurer’s filed rates. Also, this particular method of determining premium makes no distinction between an experienced attorney and a novice. Therefore, a newly insured attorney will be in “rate group one”, regardless of his or her years of practice (since these years are not being covered by the new LPL policy).

### **Tail Coverage**

Another form of LPL coverage that bears on the concept of prior acts coverage is the “extended reporting period endorsement (ERE) commonly referred to as “tail coverage.” An ERE is an endorsement to an LPL policy amending the policy to cover claims made

---

after an LPL policy has expired. An ERE is usually purchased by attorneys who are retiring or leaving the private practice of law, or by firms that are ceasing operations and who therefore no longer want or need an LPL policy to cover future legal services rendered since no such services will be performed.

Without this endorsement extending the policy period, all coverage will cease on the date the policy ends (since it is a “claims-made” policy). Accordingly, a claim reported after the policy expired would not be covered, even though there was a policy in effect at the time of the alleged error. So, where there is no longer any LPL policy in effect covering an attorney or firm an ERE will afford a form of prior acts coverage in future years for past services (of course this ERE will not cover claims arising from professional services performed after the policy terminated).

The terms of an ERE will vary among insurers and from state to state but it will usually cover claims arising out of alleged wrongful acts committed while the LPL policy was in effect and which would have been covered under that policy. It can also vary in length from one year to an unlimited term and it can be purchased for an additional premium.

## Lateral Coverage

An issue that often arises when a lawyer leaves a firm and joins a new one or opens a new practice is whether there will continue to be coverage under the old firm’s policy for that attorney. Many LPL policies provide coverage for former employed attorneys for

the work done at the insured firm. However, this coverage could evaporate if the old firm allows its LPL insurance to lapse or switches to a new insurer with a policy form that doesn’t provide such coverage. At that point, the former attorney could be without coverage for claims arising from work done at the old firm. So it’s very important that lawyers moving their practice carefully evaluate their potential claim exposure and weigh the possibility that their prior acts coverage could disappear. Some carriers, like MLM, will offer prior acts coverage to an attorney who is newly added to another firm’s policy or who is looking to purchase coverage for a new practice, even though the work is done at former firms. Other carriers limit their coverage to work performed on behalf of the insured firm.

It should be clear then that understanding prior acts coverage is essential to firms and attorneys who want to avoid unintended gaps in their LPL coverage. A lawyer that is contemplating transferring their practice or retiring should make certain he or she understands how to preserve his or her prior acts coverage if they wish to be protected from claims into the future for work performed in the past. If you are contemplating such a change in your practice, MLM can be of help; simply contact your regional sales director to discuss your options.

**For more information, contact Minnesota Lawyers Mutual at 800.422.1370, or log on to our web site at [www.mlmins.com](http://www.mlmins.com).**

<sup>1</sup> Some policies extend prior acts coverage in the body of the policy form and then limit it as necessary by endorsement; others, such as MLM's standard form, do the reverse by providing prior acts coverage by endorsement to the basic policy. Either way, the important thing is that prior acts be covered.