

Frequently Asked Questions

Why do I need malpractice or professional liability insurance?

This is the insurance coverage that allows lawyers to sleep soundly at night! While not required by most bar associations, malpractice insurance is widely recommended for all practitioners.

Carrying professional liability insurance is the responsible thing for lawyers to do for their clients in the event a mistake is made. It also protects the financial assets of the firm. Even if you believe your clients would never sue you, you want to be covered for the costs of defending third party claims. And while you may not intend to ever make a mistake, many non-meritorious or frivolous claims are filed for which defense can be costly and time consuming. You may also be liable for the acts of other attorneys and/or staff. Most carriers exclude criminal and fraudulent acts, however, coverage is provided for innocent partners of the wrongdoers who may be subject to allegations of negligent supervision.

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What is a Claims-made policy?

Most legal malpractice insurance policies are “claims-made” policies. A Claims-made policy differs from an Occurrence policy in that it only covers claims that are reported to the insurance carrier while the policy is in force. A Claims-made policy will respond to claims that arise out of incidents only if they occur subsequent to a prior acts date. The prior acts date may be the date of policy inception, or may be retroactive to the first day of practice or to your first Claims-made policy. An Occurrence policy covers incidents that occur during the policy year, regardless of when the actual claim is reported to the insurance carrier. When you purchase your Claims-made policy with full prior acts coverage, you are covered if a claim comes in during the policy year regardless of when the act which gave rise to the claim occurred. For instance, if you wrote a will 2 years ago and made an error which is not discovered until the will is probated — rather than having to determine where your coverage was 2 years ago, you may rely on your current policy to respond to the claim.

What is Prior Acts Coverage?

Sometimes referred to as “nose” or “career” coverage, prior acts coverage is decided upon at the time you purchase a professional liability policy.

It determines how far back an insurance company will cover your acts for any future claims that arise while the policy is in force. The prior acts date should be the date you began continuous Claims-made professional liability insurance coverage. If there have been gaps in coverage a company may not agree to go back prior to such gaps.

What does Prior Acts Coverage cost?

Your first Claims-made policy will start out at a lower rate since there would be no prior acts to cover. As you see more clients and your exposure increases, so does the premium — for the next several years until you are at a “mature” rate level. If an attorney who is changing from one Claims-made policy to another wants to cover any future claims arising from previous legal work, he or she would purchase prior acts coverage at a more mature rate level, and a higher premium, than a first year attorney. For example, if he or she wants prior acts coverage for 9 years of previous exposure, they would be at a mature rate level and pay a premium of approximately twice that of a first year rate level. If there is no prior acts date shown on a claims-made policy, it means you have “full prior acts” coverage.

What happens when I cancel my Claims-made policy?

If you cancel your professional liability policy, your coverage for all acts performed subsequent to the prior acts date indicated on your policy ceases. Depending on your situation, you may need to purchase an Extended Reporting Period Endorsement. Sometimes referred to as “tail” coverage, this endorsement would extend your coverage for some specified optional period. The Reporting Period Endorsement would only respond to claims arising during the specified period from incidents that occurred between the prior acts date and the cancellation date. Carriers differ in the length of Extended Reporting Period Endorsement they will offer and as to whether they will reinstate the limits of liability or reduce the limit to whatever you have left on the expiring policy.

How long should my Extended Reporting Period Endorsement be?

You will have to analyze your practice type, the statute of limitations for your type of work, and, if you are in a discovery state, how long it takes to discover a loss and make a claim for a covered incident.

If I leave a firm to start my own practice, do I need to purchase full prior acts or should I rely on former lawyer coverage on the old firm’s policy?

You need to consider whether you want to rely on the continued existence of the former firm and its continuing to insure with a carrier that provides coverage for former attorneys.

What limits of liability should I carry?

You will want to choose the limits of coverage that best suit the work you do. One of the best ways to determine this figure is to review the files in your office, both open files and recently closed files. Determine the maximum value of the file, i.e., if the work is transactional, determine the amount of the transaction, and then add in items such as potential interest. If the case is a personal injury matter, evaluate the maximum damages. Remember to consider all of the lawyers in the firm in order to choose the appropriate limits as all lawyers in the firm share the limits on the policy. Keep in mind that you will also have an “aggregate limit” of coverage which is the maximum amount available to pay all claims which arise within that policy year. One claim could exhaust not only your per claim limit, but also your aggregate limit for that policy year, leaving you at risk for personal exposure should other claims arise during the same policy year.

How do I determine an appropriate deductible figure?

You simply need to decide what you can afford to pay in the event that a claim is made against you. Generally, the difference in premium for a lower deductible is not significant. Don’t buy a higher deductible assuming that you won’t have a claim — even a frivolous claim can generate defense costs. You should also inquire about a loss-only deductible (also referred to as First Dollar Defense) which will apply only if your defense is unsuccessful and a payment is made to the claimant.

What does “defense within limits” mean?

Some policies provide that amounts spent on defense will decrease the limits available to pay any settlement or verdict. Therefore, when purchasing limits with this type of policy, you need to consider not only the amount of any potential verdict on the files in your office, but also what defense costs might be incurred in order to arrive at the appropriate policy limits for your practice. If you are changing from a policy that offers limits in addition to or outside of the limits of liability to a policy with “defense within limits” you should consider buying higher limits.