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What is Directors and Officers liability?

In a constantly changing world it is important that Institute for Outdoor Learning (IOL) members are kept abreast of risks that exist and covers available that address those risks. It is therefore important that members are aware of Directors and Officers cover, otherwise known as D&O cover.

This is an area of insurance that in the past may have been commonly purchased by larger organisations. However nowadays it is now becoming more important to smaller firms. The Directors and Officers of any business are responsible for how it is run; as a consequence they can have a legal case brought against them if a third party suffers financially as a result of their actions.

While the following list is not exhaustive, the parties that can bring actions against a company director or officer may include:

- Employees bringing actions for sexual harassment, wrongful termination, age, sex or race discrimination, non payment of wages due or breach of minimum wage legislation.
- Company creditors, receivers, liquidators and administrators involved in insolvency and seeking personal debt recovery from directors.
- Government/regulators regarding alleged breach of regulations such as health and safety, competition law, wrongful trading and failure to disclose information.
- Customers in regards to contractual disputes.
- Investors - banks or equity partners who have funds in the business.
- Other contractual parties.

Who is classed as a director or an officer?

Anyone who is a director or officer of a business (also a charity, trust or any institution run by a board or committee) is at risk. Part-time and non-executive directors are exposed to the same risk as full time directors. Even if not called a director, individuals can be



regarded as a 'de facto' or shadow director should they fulfil the role and duties of a director. A business owner may appoint a Board of Directors, not call him or herself a director, but actually still run the business – perhaps in an effort to avoid potential director type liabilities. This does not work and the liability still applies!

Do not be thrown by the term 'director'. Partners can still find themselves in difficult situations and it is of no concern to an employee with a grievance whether you are a limited company or partnership. The term 'officer' is less well defined. A Company Secretary would typically be viewed as an officer of the company and previous case law has held that an officer is '*someone managing the affairs of the company as a whole*'. If you have a controlling influence or a directing force in any way you may be deemed an officer.

Liability

IOL members should be aware that the level of personal liability that befalls a director or officer is unlimited (unlike a limited company) and as such their personal assets are at risk.

It is also important to understand that a director or officer may not be able to rely on financial assistance from the business should they be sued. D&O cover is designed to respond in lieu of the company in such circumstances. It would also respond where a business may not otherwise want to support the director or officer concerned (obviously what s/he had done wrong would be the key to this decision); likewise the business may not be legally able to indemnify the directors and officers, or be permitted to do so by its Articles of Association.

Cover

A D&O policy provides protection and peace of mind by indemnifying directors and officers against legal costs and civil damages for claims made by reason of any wrongful act committed - or allegedly committed - by them in their role as a director or officer of the company. It also covers the company when it indemnifies its directors and officers.

Coverage can further extend to defence costs arising out of criminal and regulatory actions. D&O insurance does not enable directors or officers to engage in acts they know

to be wrong, but cover extends to 'wrongful acts' which may include certain acts, omissions, misstatements to name but a few.

As a less well-known cover, IOL members will undoubtedly wish to take advice as to how D&O insurance is relevant to their business. IOL members who would like more information can contact the Customer Service Team on 01452 511400.

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