

Do I really need Employers Liability Insurance (EL) and what happens if I don't have it?

Employers Liability insurance (EL) is the most misunderstood cover that is available for the photographer today, so confusing are the rules and regulations that surround it even the Government are not sure! However, don't let that put you off, as the Health and Safety Executive (HSE) would be quick enough to prosecute you if they thought you should have it and you didn't and there was an accident with someone who was assisting you.

If you don't have EL cover and you should have then you could be taken to court and prosecuted - the maximum penalty being 14 years in jail and an unlimited fine although this would usually be as a result of an accident to someone who was assisting you. However, you could face a large fine and be disqualified from running a company just for having incorrect insurance. For that extra premium it really isn't worth it?

Do I really need it?

Firstly, if you are a husband and wife team, or your sons/daughters assist then you generally do not need EL cover. If you're in doubt, then usually a good way round it is to insure them jointly with you – that way all the cover applies to them as well as you. The exception to this is if you are a Limited Company with 2 or more working directors then you **MUST** by law have this cover even if you are a husband and wife team under the Employers Liability (Compulsory Insurance) Act 1969. There is an exception to this legal requirement which is a Limited Company with only **ONE** working person who is a director and owns fifty per cent or more of the issued share capital, i.e. there are no other persons whatsoever doing any work in the company.

It is also usual for Employers Liability to be required if you have work experience students or volunteers assisting you **even** if there is no payment.

Don't be fooled – you may only have a “friend” assist you, who is not getting any payment but if something happens to them, even if they don't try and sue you, the HSE may take up the matter or indeed the Police may decide to prosecute for negligence. Remember, EL is dealt with under criminal law - the same as murder, assault and arson!

Could I be held responsible if someone injures themselves whilst following instructions from me?

Absolutely yes! The easy way to define the differences between EL and Public Liability (PL) would be to use the example of a wedding. If you gather the bride, groom and all the family together and ask them to step back and one of them falls off a ledge and injures themselves that would be a claim under Public Liability. If the same thing happened with a student that you were training or an assistant the cover would be under EL.

What is the definition of an employee?

This is the million pound question and where the regulations get confusing, for example, someone that assists you to whom you pay a “day rate” would be classified as an employee even though you are not responsible for their tax and national insurance contributions!

You are responsible for the health and safety of your employees while they are at work. Your employees may be injured at work, or they or your former employees may become ill as a result of their work while in your employment. They might try to claim compensation from you if they believe you are responsible. The Employers’ Liability (Compulsory Insurance) Act 1969 ensures that you have at least a minimum level of insurance cover against any such claims.

In general, you may need employers’ liability insurance for someone who works for you if:

- **You deduct national insurance and income tax from the money you pay them;**
- **You have the right to control where and when they work and how they do it;**
- **You supply most materials and equipment;**
- **You have a right to any profit your workers make although you may choose to share this with them through commission, performance pay or shares in the company. Similarly, you will be responsible for any losses;**
- **You require that person only to deliver the service and they cannot employ a substitute if they are unable to do the work;**
- **They are treated in the same way as other employees, for example, if they do the same work under the same conditions as someone you employ.**

In general, you may not need employers’ liability insurance for people who work with you if:

- **They do not work exclusively for you (for example, if they operate as an independent contractor);**
- **They supply most of the equipment and materials they need to do the job;**
- **They are clearly in business for personal benefit;**
- **They can employ a substitute when they are unable to do the work themselves;**
- **You do not deduct income tax or national insurance. However, even if someone is self-employed for tax purposes they may be classed as an employee for other reasons and you may still need employers’ liability insurance to cover them.**

These are only guidelines – you have to decide yourself if your situation would fall into either of these categories although my advice would always be err on the side of caution if in doubt!

Can I buy EL Insurance on its own?

Generally no. Most Insurers will expect you to bundle this with PL cover as well – after all, you will need both! In many cases, responsible Insurers will not allow you to purchase **ANY** PL cover if they believe you require EL as well. Whilst you may find this as annoying, the Insurer is actually assisting you as they trying to prevent you breaking the law!

I have had different advice from 2 different Insurers which one is right?

There is no easy answer to this – they could both be correct! Neither Insurer will understand the exact circumstances that you work under. The thing to remember is unscrupulous companies may be saying “no” just to keep the premium low to make sure you insure with them! If you believe you need it, buy it – that is the best advice or if they say you definitely don’t need it – get them to put that in writing to you – they will only do that if they are completely sure!

What should I remember?

- 1) **If in doubt – buy it! Whatever the premium, is preferable to a jail sentence.**
- 2) **Students, work experience and models CAN be classified as employees even if you don’t think they are!**
- 3) **Take reasonable steps to try and protect your employees – try to avoid exposing them to circumstances that are likely to result in an accident.**

Further information can be obtained from the Health and Safety Executive and you are advised to check your own requirements by going to www.hse.co.uk or, for a quick guide to: <http://www.hse.gov.uk/pubns/hse40.pdf>

If you are EVER in any doubt regarding cover then call us on 0845 838 6933 so we can advise you.

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