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Industry Insights

Sexual Misconduct Liability: Mandated Coverage for Many Contractors and Vendors

Lindsey Fyfe • November 01, 2022

Contractors and vendors are, as a rule, all too familiar with the numerous criteria that must be met in bidding for or securing a contract awarded for services. Proof of sufficient insurance coverage is a common requirement that ensures the facilities where they work are protected in the event of wrongdoing. Mandates for coverage that ensure adequate protection are now common, of which Commercial General Liability (CGL) policies may be most familiar to contractors. Depending on who you do business with, however, additional insurance in the form of a Sexual Misconduct Liability (SML) policy– and affirmative evidence of one– may very well be required to secure the contract for services.

Why are SML mandates increasingly common?

These requirements make a world of sense in today's era of misdeeds and associated liabilities. Organizations that hire contractors who work with children and vulnerable adults (or have them on their premises regularly) are becoming increasingly sensitive to their potential exposure to allegations of sexual abuse. Such allegations can arise from the ancillary services provided by contractors and vendors, such as maintenance services, sports programs, camps, catering and transportation – including where services are being provided outside normal working or operating hours.

Even where the on-site potential for interaction with minors or vulnerable adults is perceived to be minimal, such as the provision of on-site maintenance, contractors will very often be required to provide evidence of SML coverage as a condition of being awarded the contract. This means that stand-alone SML coverage is becoming a business necessity for many contractors.

What kinds of organizations are now mandating SML coverage? Mandatory requirements for SML coverage have become more widespread, both geographically and in the number and range of organizations imposing them. Municipalities, counties and states as well as school boards, universities, and commercial enterprises are increasingly requesting standalone SML coverage and specifying the policy limits required. The range of activities that have mandatory requirements have broadened as well. These now encompass more than just contracted services like repair and maintenance (often for single/standalone projects), but also the use of the facilities of a municipality/university/school for leisure activities involving minors or vulnerable adults.

What's driving this call for SML coverage?

In many contractor cases, the requirement to have this coverage can be perceived as an exercise in checking boxes. The exposure can nonetheless be real, and organizations are well-advised to take real initiative to mitigate risk. Procuring the policy is not where an organization's responsibility ends: claims can arise from allegations of failure to supervise (where inappropriate conduct occurs between two minors or vulnerable adults). If the organization actively prepares for and seek to prevent sexual abuse or molestation, they can be protected in the case of a claim, while also encouraging an equitable environment.
Contractors and vendors have in fact been the source of many allegations in the past, with reported incidents taking place at camps, sports programs, religious institutions and healthcare facilities – which is precisely why SML policies will often be a requirement for contractors.

Why is General Liability coverage not always sufficient where issues of sexual molestation are concerned?

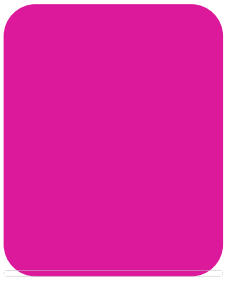
Stand-alone SML insurance affirms coverage for abuse allegations against the policyholder and those employed by them. It is important to stress, however, that claims can arise not just from allegations of abuse perpetrated by employees of the insured, but can arise from failure to supervise allegations– where inappropriate conduct has occurred between two minors or vulnerable adults. With that in mind, stand-alone coverage can extend to cover claims arising from a failure to supervise, negligent employment and even failure to investigate allegations.

CGL carriers are increasingly excluding sexual molestation from their policies due to the higher frequency of claims and severity of cases, and court awards and settlements have increased with this change in the landscape. Some CGL carriers do not exclude or limit, on the other hand, but instead are silent about SML coverage in their policy. Not having affirmative coverage is an increasingly risky approach because there may be issues about insufficient or exhausted limits under a CGL policy.

As this type of coverage becomes a necessity, it is imperative for companies, contractors, and vendors alike to have SML protection. Contractors and vendors looking to provide services to or use the facilities of organizations that mandate such protection should review

their coverage position with their insurance broker, and ensure they have adequate, affirmative coverage in place. There will be a continued need to satisfy the increased demands of those entities and respond in the event of allegations or a claim.

By Lindsey Fyfe & Nisar Siddiqui



Lindsey Fyfe

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