



TYSERS
UK CORPORATE RISKS



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Insurance & Risk Management Solutions

CLIENT BRIEFING: NO. 29

RULES TO CHANGE REGARDING EMPLOYERS LIABILITY INSURANCE

This change in legislation affects the display and retention of Employers Liability Insurance Certificates. A "hard copy" no longer needs to be displayed if an electronic copy is accessible to the workforce, but for many businesses the old method will remain the most simple and practical way to continue to comply

As from the 1st October 2008, employers will be allowed to display their employers' liability certificate in an electronic format, so long as it remains readily accessible by all employees. In addition, the requirement for employers to retain copies of their certificates for 40 years will be removed. (although we recommend that you continue to do so). These changes come under the Employers' Liability (Compulsory Insurance) (Amendment) Regulations 2008 (the "2008 Regulations"), which amend certain provisions of the Employers' Liability (Compulsory Insurance) Regulations 1998.

Employers are currently required to insure against liability for injury or disease to employees arising out of their employment, and can be fined up to £2,500 for every day without appropriate cover. One or more copies of the current certificate must be displayed at each place of business and be "reasonably protected" from being defaced or damaged. Most organisations currently display copies of their certificates in staff kitchens or other communal areas. There is a penalty of up to £1,000 for failure to display and provide a copy of a certificate to an inspector on request.

Under the 2008 Regulations, employers are still required to display their certificate of insurance in each place of business, but this requirement will now be satisfied if the certificate is made available in an electronic format. The requirement to protect certificates from damage has been removed, with the aim of reducing the costs of compliance to businesses. A review by the Department of Work and Pensions (DWP) has estimated that the requirement to retain and display the certificates costs around £71m and the 2008 Regulations have arisen from the DWP's goal of reducing the administrative burden on businesses by 25%. For smaller businesses of course, posting a hard copy of the certificate on a notice board may remain the most cost-effective option, and the 2008 Regulations continue to allow them to do so.

The 2008 Regulations also remove the requirement for employers to retain their employer liability certificates for a 40-year period.

Difficulty arises in abandoning this requirement when considering 'long-tail'



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industrial disease claims, where illnesses may not become apparent or be diagnosed for many years. The 40-year requirement to retain insurance policies was introduced to make it easier for workers to raise claims for industrial diseases such as asbestosis and mesothelioma. It can already prove problematic to trace policies which pre-date the introduction of compulsory employers' liability insurance cover or where companies have ceased to trade. Nevertheless, the Government has not provided for a national database of all employers' liability policies, on the grounds that it would increase costs to business and would therefore be counter-productive.

In any case, it is arguable that it is in employers' best interests to retain insurance information; if no insurance records can be found the employer will be responsible for payment of the claim. The Government responded to the DWP's 'Review of Certain Provisions within the Employers' Liability (Compulsory Insurance) Regulations 1998', stating that: "strongly worded guidance will ensure that business is aware of its continuing liability and encourage the retention of records to ensure that any future claim can be met".

Should you require any additional information, please speak to your usual Tyser contact.

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