

OCCURRENCE VS. CLAIMS-MADE POLICIES

By Associates Insurance Agency



WHAT TO KNOW ABOUT COMMERCIAL LIABILITY

Commercial liability insurance is essential for businesses of all sizes and sectors. Such coverage can offer financial protection for legal defense costs and potential judgments and settlements if a business is held responsible for incidents, errors or wrongful acts that harm another party. When purchasing liability policies, however, businesses should keep in mind that not all coverage is structured the same. The way these policies respond to claims depends on how they are written and the specific mechanisms used to activate coverage.

In particular, liability policies are generally formatted in one of two ways: occurrence or claims-made. While occurrence policies are triggered when the event that causes a claim takes place, claims-made policies are generally triggered when the claim is first made against the insured and reported to the insurer during the policy period. The structure of a liability policy can significantly impact coverage availability, gaps and long-term protection. As such, it's imperative for businesses to be able to distinguish between policy formats.

This article outlines key differences between occurrence and claims-made policies, highlights their pros and cons, and offers related risk management considerations for businesses.

OCCURRENCE POLICIES

Under an occurrence policy, coverage applies to any insured event that takes place during the policy period, regardless of when the associated claim is filed. The claim could be reported weeks, months or even years later and still be covered by the policy that was in effect at the time of the event. If a business has since canceled its coverage or switched insurers, the insurer that issued the policy in place when the event occurred would still be responsible for handling the claim.

Because a claim can be filed even after the policy has expired, **occurrence coverage provides built-in protection for claims reported after the policy period and eliminates the need for tail coverage endorsements.** Yet the claim will still be subject to the coverage limits of the policy that was in force when the insured event took place. Common examples of liability policies that typically utilize occurrence coverage include commercial general liability, auto liability, and certain types of umbrella and excess liability insurance.

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CLAIMS-MADE
COVERAGE CAN
CREATE TAIL
EXPOSURES,
LEAVING A
BUSINESS
VULNERABLE TO
OUT-OF-POCKET
COSTS



CLAIMS-MADE POLICIES

Under a claims-made policy, coverage applies to any claim reported during the policy period, as long as the insured event that gave rise to the claim occurred on or after the policy's retroactive date, which is a cutoff that represents the earliest date an event can take place and still be eligible for coverage. In most cases, the claim must both be made against the insured and reported to the insurer during the policy period (or within a specified reporting window).

Any claims-made policy that lacks a retroactive date may provide full prior acts coverage, meaning coverage applies to any claim filed while the policy is active, regardless of when the related event took place.

With this type of policy, coverage generally ends as soon as the policy expires or is canceled. For this reason, claims-made coverage can create tail exposures, leaving a business vulnerable to out-of-pocket costs for claims filed outside the policy period or stemming from events that occurred before the retroactive date. To reduce these exposures and bridge coverage gaps, claims-made policies are often supplemented with specific endorsements.

For example, extended reporting period (ERP) coverage permits claims to be filed for a set amount of time—usually several years—after the policy expires, as long as these claims result from events that happened during the original policy period. Additionally, prior acts coverage protects against claims arising from events that occurred before the current policy's effective date but after the retroactive date, helping businesses maintain continuous protection when switching insurers.

Common examples of liability policies that typically utilize claims-made coverage include directors and officers liability, professional liability, employment practices liability and cyber insurance. These policies are also more prevalent in certain industries, such as health care, professional services and environmental operations.

PROS AND CONS

Occurrence and claims-made policies each come with unique advantages and disadvantages:

- **Occurrence policies**—The terms and conditions of these policies are often easier to understand, reducing the likelihood of coverage misunderstandings and confusion amid the claims process. These policies are also known for providing long-term tail protection without the need for ERP or prior acts endorsements, minimizing related coverage gaps. However, occurrence policies often require businesses to pay higher premiums upfront, driving up initial coverage expenses. These policies also offer minimal flexibility in adjusting coverage limits for earlier events.
- **Claims-made policies**—These policies come with more complex terms and conditions, potentially leaving businesses unsure of when coverage applies. Without careful management of retroactive dates, policy endorsements and continuous coverage, businesses could encounter substantial out-of-pocket costs. Some industries even make claims-made policies the default option, meaning businesses may be unable to explore other coverage formats. Nonetheless, these policies usually offer lower premiums than their occurrence counterparts. Furthermore, claims-made policies provide greater flexibility in updating coverage limits for earlier events.



CONCLUSION

Occurrence and claims-made policies differ in several ways. By understanding the specific characteristics of each liability policy format, businesses can be confident in knowing when and how their coverage will apply and eliminate ongoing exposures.

Contact us today for additional insurance guidance and solutions.

813-988-1234

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MANAGE BOTH
COVERAGE
FORMATS AND
REDUCE
ASSOCIATED
RISKS

RISK MANAGEMENT CONSIDERATIONS

Since businesses often carry multiple types of liability coverage in their larger insurance portfolios, they will likely have both occurrence and claims-made policies. With this in mind, it's critical for businesses to understand how to best manage both coverage formats and reduce associated risks. *Here are some best practices to consider:*

- **Maintain continuous coverage.** Especially with respect to claims-made policies, businesses should ensure coverage continuity by noting retroactive dates before switching insurers or canceling coverage and purchasing endorsements as needed to limit tail exposures.
- **Meet contractual requirements.** Businesses should be aware that some commercial landlords, suppliers or vendors may require them to secure various types of liability coverage and, in some cases, utilize specific policy formats as a condition of their contractual agreements. It's best for businesses to carefully review contract language and ensure their insurance portfolios comply with related requirements.
- **Consult the experts.** Businesses don't have to navigate the commercial liability insurance space alone. They should work with trusted insurance professionals to determine their particular coverage needs and avoid potential gaps in protection during policy transitions.