

# Risk transfer guide for business owners

Imagine you are the owner of a shopping center with multiple tenants, and you just had a new roof installed. One week after the construction is completed, the new roof collapses. When you arrive at the scene, you discover that your tenants have customers who were injured in the collapse. Who is responsible for the collapse? Who will pay for the injuries and medical bills of the injured? Who will compensate your tenants while the building is being repaired? How will you afford the costs of defending yourself if lawsuits are filed?

Liability is the legal responsibility of a person or business for wrongdoing that causes injury or harm to another, such as through omissions, negligence, or intentional acts (otherwise known as ‘torts’).

Questions of liability can arise when a service provider installs a product or performs services on your behalf, which then results in an injury or property damage. These questions can also come up when a service provider’s employee is injured on your premises. Liability should ideally lie with the party that has the most control over the hazards and exposures of the potential liability.

One way to avoid confusion about liability is to set up a contract with your service providers, where they agree to assume the risk. “Service providers” can include vendors, suppliers, installers, lease arrangements, maintenance providers, and others.

## [Frequently Asked Questions](#)



# Frequently asked questions

## What is risk transfer?

A strategy that involves the transfer of risk from one party to another. Risk is typically transferred down to the party in the best position to control or eliminate the loss or accident. Example: A retail store that transfers risk to an HVAC service provider who conducts service/maintenance work.

## How can risk be transferred?

Risk is transferred through a series of actions you take under the guidance of a qualified attorney. In this document you will learn about the 8 steps of implementing a contractual risk transfer program, common terminology, and the 6 essential minimum contract requirements.

## What if I have a Certificate of Insurance from my service provider/vendor/supplier? Is that enough?

Much like a contract, a Certificate of Insurance (COI) from a service provider, vendor, or supplier can be an important element of protecting your business in the event of a loss scenario. In no way is it a substitute for a properly signed, executed, and approved written contract. COIs do not provide, extend, or amend insurance coverage or guarantee coverage from a service provider, vendor, or supplier's insurance.



# Why is it important to transfer risk?

Below are three scenarios that illustrate how incidents involving service providers can lead to lawsuits against the business owners that hire those service providers to do work. Keep in mind that lawsuits and claims can't always be avoided, but risk transfer can help reduce any amounts paid under your policy, and that helps keep your premiums lower.

**Example #1: Laundromat, \$500,000 claim** A property owner has a tenant who operates a laundromat. A customer slipped on a patch of ice in front of the building, suffering a major leg injury. The laundromat was to have listed the property owner as an additional insured but did not do so. Liability insurance limits were also inadequate. Due to the seriousness of the injury, a claim was settled for \$500,000.

**Example #2: Parking Lot, \$3,750,000 claim** A property owner leased a parking lot next to their building to a company that parked vehicles on the lot when they were not in use. An employee of the tenant company stepped into a hole while loading a truck for the day's job. The material being loaded landed on the employee, resulting in severe injuries. The tenant's workers' compensation carrier paid the workers' compensation loss but then pursued the property owner's insurance company since the lease did not include a waiver of subrogation requirement. The claim settled for \$3,750,000, which included future lost wages and expected cost of future surgeries.

**Example #3: Warehouse, \$50,000 claim** The owner of a warehouse building hired an HVAC service provider to repair the AC system and replace some of the ductwork. A customer visited one of the tenants in the building and tripped over HVAC materials that had been left outside the building, cutting their arm. No contract was in place that could have held the building owner harmless. The building owner's insurance carrier is defending a suit from the injured party. The claim settled at \$50,000.

In all cases, properly transferring the risk via contract to the service provider may avoid:

- Liability for the loss
- Significant legal expenses
- The potential for increased insurance premiums



# Steps of contractual risk transfer

As a business owner, the last thing you need is work performed by a service provider resulting in property damage and/or bodily injury claims—only to learn the service provider is not adequately insured. By following the steps below, you can help make sure you're using proper risk transfer to keep your business protected.

1. Interview attorneys specializing in contractual risk transfer and designate one firm to review every contract you enter into with third parties.
2. Complete a [“Business Owner’s Checklist: Minimum Contract Insurance Requirements and Limits”](#)
3. Appoint one or two individuals in your operation with authority to enter into contracts, and clearly define their responsibilities.
4. Additional Insured: Require proof of additional insured status from the organization you contract with.
5. Create and maintain a file for each service provider, making sure to:
  - Retain certificates of insurance (COI) for all service provider
  - Obtain new COIs when a service provider’s coverage expires
  - Create and maintain a system to monitor COIs and verify new ones are in place
6. [Know what questions to ask when choosing a service provider](#)
7. Communicate your risk transfer process and authority to employees
8. Schedule periodic reviews of routine contracts with the individual(s) responsible for maintaining them



# Certificates of Insurance

A certificate of insurance verifies that someone wanting to do business with you has adequate limits of insurance and that the insurance is in force and current. A certificate is for informational purposes only and is not an actual contract between two parties.

Any service provider you hire should be able to easily obtain a certificate of insurance by contacting his or her agent or broker. Always obtain the certificate before any work is performed. Most businesses require certificates before the service provider can even set foot on their property.

After obtaining the certificate, review it for the following information:

- The name of the insured
- The proper coverage(s) being provided
- The required limits
- The effective dates
- Your name as the certificate holder



# What you can learn from a certificate

Most certificates of insurance are issued on an ACORD 25 form, a standard form used by the insurance industry. Here's a brief description of each section of the form, with a sample to review (at right):

## Identification section


This section identifies the agent/broker, the insured and the insurance company providing coverage.

1. The date the certificate was issued by the agent/broker or insurance company.
2. The name of the insurance agent/broker. Their address, contact name and phone number should be listed in case you need to ask additional questions or confirm coverage.
3. The name of the insured.
  - Be sure to verify that it is an exact match to the name of the person or company you are hiring.
4. The names of insurers. One insurer often provides insurance for all coverages, but at times, different insurers are used for different policies.

## Coverages section

This section lists the names of the insurers by coverage provided. Make sure the insurers meet your minimum requirements for financial strength and are reputable carriers.

5. The insurer for a particular coverage, keyed to the corresponding letter in item 4.


**CERTIFICATE OF LIABILITY INSURANCE**
DATE **1** (YYY)

**THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.**

**IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).**

<b>PRODUCER</b>	<b>CONTACT NAME</b>		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b>	INSURER A:		
	INSURER B:		
	INSURER C:		
	INSURER D:		
	INSURER E:		
	INSURER F:		

**COVERAGES**      **CERTIFICATE NUMBER:**      **REVISION NUMBER:**

**THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.**

INSR LTR	TYPE OF INSURANCE	ADDL SUBR (NSC)	WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY						EACH OCCURRENCE
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
	GEN'L AGGREGATE LIMIT APPLIES PER:						MED EXP (Any one person) \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PROC-JECT <input type="checkbox"/> LOC						PERSONAL & ADV INJURY \$
	OTHER:						GENERAL AGGREGATE \$
	AUTOMOBILE LIABILITY						PRODUCTS - COMP/OP AGG \$
	<input type="checkbox"/> ANY AUTO						COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS						BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS						BODILY INJURY (Per accident) \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR						PROPERTY DAMAGE (Per accident) \$
	EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE						
	DED    RETENTION \$						EACH OCCURRENCE \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY						AGGREGATE \$
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N	N/A				PER STATUTE    OTH-ER
	If yes, describe under DESCRIPTION OF OPERATIONS below						E.L. EACH ACCIDENT \$
							E.L. DISEASE - EA EMPLOYEE \$
							E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks schedule, may be attached if more space is required)

<b>CERTIFICATE HOLDER</b>	<b>CANCELLATION</b>
	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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# What you can learn from a certificate

## Coverages section, continued

### 6. The type of coverage.

- Ensure that the person/company you are hiring has, at a minimum, the insurance requirements in your contract (i.e., general liability, workers compensation, business auto, umbrella coverage).

### 7. Additional insured column.

- Verify that a “Y” appears to indicate you have been added as an additional insured for ongoing and products/completed operations. A best practice is to ask for copies of the additional insured endorsement to ensure that coverage complies with your insurance requirements.

### 8. The policy number. Identifies the number of the policy in force between the policy effective date and expiration date listed in the next two columns on the form.

### 9. The policy coverage dates.


- Check these to ensure they cover the period in which work will be performed. If a policy is set to expire before the job is completed, request another certificate for the renewal policy.

### 10. Coverage limits.

- Make sure the limits held by the service provider meet the limits you require.

### 11. Description of operations/locations/vehicles.

- Make sure you understand the meaning of any comments made here and how they may impact your project’s insurance program.


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DATE (MM/DD/YYYY)

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<b>PRODUCER</b>	<b>CONTACT NAME:</b>	
	<b>PHONE (A/C, No, Ext):</b>	<b>FAX (A/C, No):</b>
	<b>E-MAIL ADDRESS:</b>	
<b>INSURER(S) AFFORDING COVERAGE</b>		<b>NAIC #</b>
<b>INSURED</b>	<b>INSURER A:</b>	
	<b>INSURER B:</b>	
	<b>INSURER C:</b>	
	<b>INSURER D:</b>	
	<b>INSURER E:</b>	
	<b>INSURER F:</b>	

<b>COVERAGES</b>		<b>CERTIFICATE NUMBER:</b>		<b>REVISION NUMBER:</b>	
<small>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, CONDITIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</small>					
NO.	TYPE OF INSURANCE	IND. WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)
<b>6</b>	<b>COMMERCIAL GENERAL LIABILITY</b> <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR  <small>GEN'L AGGREGATE LIMIT APPLIES PER:</small> <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC <small>OTHER:</small>  <b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> NON-OWNED AUTOS <input type="checkbox"/> HIRED AUTOS  <input type="checkbox"/> UMBRELLA LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE <small>DED RETENTION \$</small>  <b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> <small>ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)</small> <input type="checkbox"/> Y <input checked="" type="checkbox"/> N/A <small>If yes, describe under DESCRIPTION OF OPERATIONS below</small>	<b>7</b>	<b>8</b>	<b>9</b>	<b>10</b>
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<small>DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)</small>					
<b>CERTIFICATE HOLDER</b>			<b>CANCELLATION</b>		
			<small>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</small>  AUTHORIZED REPRESENTATIVE		

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# What you can learn from a certificate

## Certificate holder section

This section lists the names of the insurers by coverage provided.

### 12. Identification of certificate holder.


- Make sure your company's name appears here.

### 13. Notification procedures if the policy is canceled.

- Ask to see the policy provisions or endorsements regarding how notice will be given, to whom, and how many days of advance notice will be provided. Make sure they meet your contract requirements.

### 14. Signature of authorized representative.

- Make sure the certificate is signed here by the agent or other individual representing the person or company you are hiring.


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DATE (MM/DD/YYYY)

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PRODUCER	CONTACT NAME:	
	PHONE (A/C, H/S, Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
	INSURER F:	

COVERAGES	CERTIFICATE NUMBER:	REVISION NUMBER:																																						
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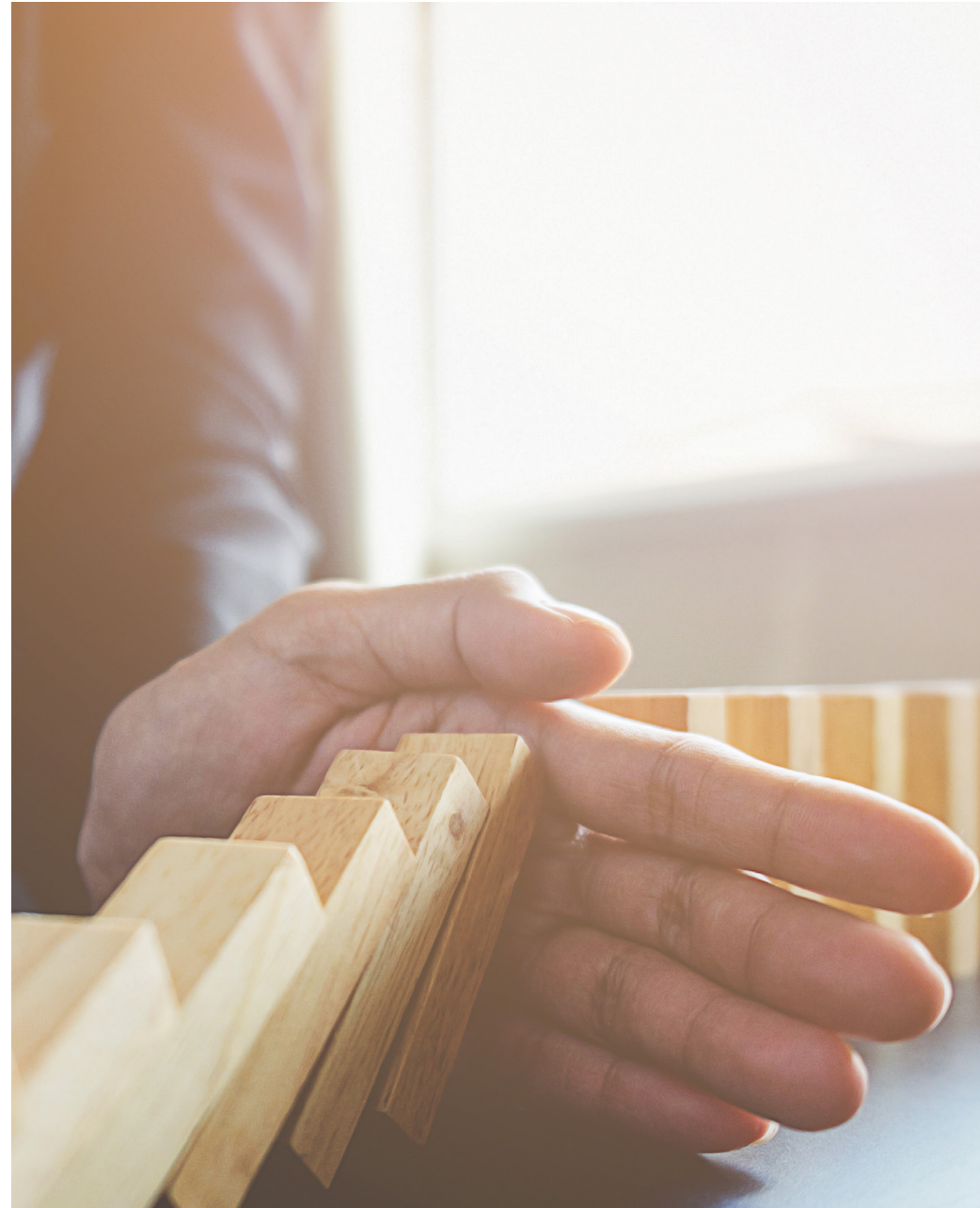


# Using written contracts to execute risk transfer

Written contracts are necessary to transfer risk. In a contract, one party assumes the liability for another. With good risk transfer language in place, the business owner is much more likely to be defended, indemnified financially and held harmless should there be an insurance claim or lawsuit. Without good risk transfer procedures in place, your company or insurance carrier may be responsible for monetary awards.

The following are examples that illustrate how written contracts can be used to execute risk transfer. Nationwide® suggests that you view these as the essential minimum requirements of any agreement you sign with a service provider. Keep in mind, however, that this information is provided solely to help you gain an understanding of risk transfer methods. You should enter into a contract only after seeking the counsel of a qualified attorney. These examples should not be viewed as a substitute for legal advice. Also, state law may vary on the enforcement of these provisions.

1. [Hold harmless/indemnification agreements](#)
2. [General Acceptance provision](#)
3. [Additional insured coverage](#)
4. [Requirements that the contracts apply to subcontractors of your service provider](#)
5. [Waiver of subrogation](#)
6. [Safety program requirements](#)



# Using written contracts to execute risk transfer

## 1. Hold harmless/indemnification agreements

Hold harmless/indemnification agreements generally specify that the party performing the work (i.e., your service provider) will hold you (i.e., the business owner) harmless for any losses that may arise as a result of work they perform. A contract might be upheld by a court if it contains what is sometimes called “saving language.” This is a phrase that usually refers “to the fullest extent permitted by law.” Also, in some states your service provider’s obligation to their injured workers is limited to workers’ compensation benefits. A waiver of the workers’ compensation immunity requirement bars your service provider from using this defense when their employee is injured on your job.

## 2. General Acceptance provision

Any work order, contract or similar document should contain or reference a hold harmless/indemnification provision and an insurance requirement/additional insured status provision. These provisions should specify that the act of beginning the work will be considered acceptance of the terms of the contract, work order, or similar document. Regarding service work which may be done throughout the year, it should be expressly stated in writing that these requirements remain in effect until otherwise agreed in writing.



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## 3. Additional insured coverage, minimum insurance requirements and limits

Additional insured status should be in place for ongoing operations and completed operations on your service provider's general liability (GL), auto and umbrella policies on a primary and non-contributory basis, to ensure that the service provider's insurance pays first. Consult our [Business Owner's Checklist: Minimum Contract Insurance Requirements and Limits](#) to see what Nationwide recommends as minimum insurance limits for your service providers.

As an additional insured on your service provider's policy, you as the business owner have some reassurance that you'll receive notice if the policy is non-renewed or canceled. Whereas a certificate of insurance (COI) is simply a snapshot of coverage in place on a specific date.

Please consult with your agent to make sure your service providers have adequate insurance coverages and limits.



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## 4. Requirement that the contract apply to your service provider's subcontractors

It's important to state in the contract that all obligations and requirements of the contract apply to any parties or subcontractors hired by the service provider. Losses are often caused by parties/persons hired by your service provider.

## 5. Waiver of subrogation

The service provider should agree to waive any and all rights of subrogation against you, the business owner. Waivers of subrogation for GL, auto, umbrella and workers' compensation policies must require the service provider to waive their insurer's right to be reimbursed by you should a loss occur that was a result of your negligence.

## 6. Safety program requirement

Anyone performing work or services on your premises should follow all appropriate environmental, safety and health regulations. Including this requirement in your contract should alert your service provider that safe work practices are expected.



## Glossary of risk transfer terms

**Additional insured:** A person or organization that enjoys the benefits of being insured under an insurance policy, in addition to the named insured on the policy.

**Certificate of insurance (COI):** A document used to provide a snapshot of information on specific insurance coverage.

**Contract:** A written or spoken agreement intended to be enforceable by law; a promise or set of promises that are legally enforceable.

**Hold harmless:** One party's (the indemnitor's) promise not to seek reimbursement from another party (the indemnitee) for liability to a third party.

**Immunity:** Protection or exemption from something.

**Indemnification agreement:** An agreement in a contract where one party (the indemnitor) agrees to assume the liability of another party (the indemnitee) such as for loss and/or payment of defense costs.

**Indemnitee:** A party that is protected by another party in a contract; a person or organization held harmless in a contract.

## Glossary of risk transfer terms

**Indemnitor:** An individual or company that agrees to assume responsibility or obligation to pay claims or damages of another party.

**Lessee:** The party who rents property; the tenant.

**Lessor:** The party that owns a property and rents it out to another; the landlord.

**Primary and non-contributory:** A requirement that the service provider's policy must pay first before your policy.

**Service provider/subcontractor:** A person or company that undertakes a contract to provide materials or labor to perform a service or do a job. Examples include vendors, copackers, suppliers and common carriers.

**Waiver:** A signed contractual provision that enables a party to avoid liability.

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