

Risk Control Bulletin

Insurance Requirements and Hold Harmless Agreements for Contractors

RISK CONTROL



Every year, thousands of people are killed or seriously injured on construction job sites. Like any employer, you are required to provide a safe work place and can be held liable for the conduct of your subcontractors. Therefore, it is important to protect your organization from these losses by entering into appropriately worded hold harmless agreements with your subcontractors that is also worded in your favor and requires your subcontractors to have and maintain proper insurance.

Hold Harmless Agreement

Hold Harmless Agreements (sometimes referred to as indemnification agreements) are non-insurance contractual agreements used to transfer risk from one party to another. They are often incorporated into construction contracts, service contracts, purchase order agreements, lease agreements, and consulting agreements. Courts will generally uphold hold harmless agreements if they clearly reflect an agreement by both parties to transfer liability, provided the transfer is not against public policy, statutes, and/or court decisions.

The American Institute of Architects (AIA), the Associated General Contractors of America (AGC), the American Subcontractors Association, Inc. (ASA), and the Associated Specialty Contractors (ASC) have developed hold harmless agreements that are currently being used throughout the construction industry. You should consult your own, competent legal counsel before signing any written contract, as the law varies between jurisdictions and your specific circumstances are unique.

Insurance Requirements

Since there's always a chance that a court may strike down a contract's hold harmless provision, it's prudent to back up hold harmless agreements by requiring your subcontractors to have various forms of liability insurance and Workers' Compensation insurance. The required insurance must remain in force as appropriate. Though not a guarantee that you are covered, the minimum insurance provisions have been spelled out in the "Sample Insurance/Indemnification Riders" which follows. It is critical that your subcontractors be required to submit certificates of insurance that document they have appropriate insurance coverages in effect and that you will be notified if coverage is canceled. You should consult your own in-

surance advisor and competent legal counsel to determine what particular protections are appropriate for your specific circumstances.

Since there are many ways that owners, general contractors and prime contractors can end up in litigation arising out of acts or omissions of subcontractors. One way to increase your protection is to, you should require subcontractors to add your organization as an additional insured on a primary and noncontributing basis to their Comprehensive General Liability (CGL) policies. This is achieved through an endorsement. It can be used to complement an existing hold harmless agreement and can help protect a party from liability arising out of another party's negligence. This endorsement activity is often confirmed on certificates of insurance in the "Description of Operations/ Locations/Special Items" section. Consult your own insurance advisor and competent legal counsel for specifics.

Putting the Hold Harmless and Insurance Requirements to Work for You

Whether your organization uses purchase orders, contracts or even verbal contracts, you should consider your subcontractors should be required to incorporating insurance requirements the provisions in your written agreements with subcontractors and requiring your subcontractors to the "Sample Insurance/Indemnification Rider" and to submit certificates of insurance. These requirements can be included as line items or as specifically referred to attachments or addenda depending on the circumstances. Consult your insurance advisor and legal counsel regarding your specific circumstances.