

YOUR RISKS

Personal liability

This affects you and your fellow directors, officers and even employees have an unlimited personal liability for decisions and actions you make on behalf of your company.

These can be civil, criminal and regulatory in nature.

Civil claims include historic common law duties which have now been set in law predominately under the Companies Act 2006. Put simply these give rights to others including shareholders, investors, employees, customers and creditors to take legal action against you if they believe you have acted negligently or not in the interests of your company.

Criminal or regulatory claims are those that impose a personal liability on you for your actions and numerous government regulators have the power to investigate or prosecute you. In the most serious of cases, you can be imprisoned.

Even if you have done nothing wrong, you will need to incur significant legal costs in obtaining the necessary legal expertise to defend you.

Your company's risks

As a business you are responsible for the actions of your directors, senior staff and employees. As such, most claims made involve the company, either as the sole target or jointly with one or more individual.

Key risks to your business include the following:

Employment claims

This is by far the most common type of management liability claim, including claims for unfair dismissal and sexual, racial, gender or age harassment or discrimination. Whilst the number of employment tribunals has dropped in the last couple of years since the introduction of tribunal fees, there are still approximately 100,000 tribunals per year. (Source Employment Tribunal Statistics 2004/2015). With an average cost of £20,000, such claims can be extremely financially damaging as well as draining management resource and potentially damaging to your company's reputation.

Regulatory investigations and prosecutions

Red tape is a fact of business life and a common concern to business owners. With the complex regulatory landscape affecting all UK companies it is easy to see why there has been an increase in investigations and prosecutions. Actions can come from government led regulators or more industry specific. A small sample of active regulators includes the following, all of whom have the power to close your business or impose financially crippling fines:

- Health and Safety Executive
- Her Majesty's Revenue and Customs
- The Environment agency

- Local Authorities
- The Financial Conduct Authority
- The Care Quality Commission
- Serious Fraud Office
- The Information Commissioners Office.

Shareholder/Investor claims

Typically such claims are made against both your business and you as a director. Common allegations are that some of the directors have acted in a way that prejudices the rights of another director forcing them to leave the business and alleging that the value of their shares has been significantly reduced. An employment claim often follows.

Employee and third party fraud

Almost one in five small businesses has suffered from loss as a result of fraud by an employee at some point during their history (source Action Fraud). This can cause significant loss and in some cases can even destroy a business. It is those on the inside of your business who can often do the most damage, due to their access to your key assets and familiarity with your processes and ways around them.

Third party fraud losses are even greater with one in four businesses having experienced fraud costing UK companies billions of pounds per year. It can happen to any size of business in many different ways including the following which could easily cost your business hundreds of thousands of pounds:

Cybercrime

Caused by inadequate firewall protection. Bank accounts are accessed and standing order payments set up to pay money into fraudster's bank account.

Non-internet identity fraud

For example, a fraudster purports to be one of your suppliers.

Procurement fraud

Collusion between corrupt employees and suppliers on purchase invoices.

Contract disputes

Minor disputes can escalate, damaging relationships or even threatening the survival of your business. No matter how hard you try to avoid it, one of these days you and your business may unfortunately end up in court over a contract dispute. Contract disputes can be extremely complicated and involve large sums of money and can arise from any contract you agree to whether purchase, supply of services or goods, property disputes or disputes over other agreements.

Data protection breaches

If you hold and process information about your clients, employees or suppliers, you are legally obliged to protect that information.

Failure to do so can lead to claims from the Information Commissioners Office or the third parties affected by any breach. New EU data protection regulation will also shortly become law with the potential of those guilty of data protection breaches facing fines of 2% of their turnover. In addition, companies who have committed a breach will be required to contact those affected by it which will lead to significant costs and a likely increase in third party claims.

Pension's claims

With the recent introduction of auto-enrolment, the risks to UK companies from the provision of pension facilities to their employees have changed from affecting only those with large numbers of employees to now impacting all employers. Perhaps the greatest risk for the majority of SME's is not adding an employee into the agreed pension scheme. Should that employee subsequently be killed in a road accident, the company would be left facing a large payment that should have been covered by the pension scheme had the error not occurred. For those companies with pension schemes with trustees, whether defined contribution or defined benefit schemes, additional responsibilities and risks arise. This brings with it increased potential for claims against the trustees, the pension plan or the company including claims alleging negligent use of the funds affecting the employees or ex-employees future pensions.

Cyber liability

As a business of any size, it is likely you will rely on information technology (IT) infrastructure to some degree and in doing so expose your company to additional third party risks including allegations of:

- Security and privacy breaches
- Defamation, breach of privacy or negligence in publication in electronic or print media
- Transmission of a virus or malware.

Such claims incur significant investigation and legal costs with the potential of large compensatory payments and significant damage to your reputation.

In addition, loss of electronic data following a virus or cyber-attack could lead to a significant interruption to your business.

Pollution claims

Companies found guilty of causing pollution face the prospect of a significant criminal fine being imposed on them with fines and even imprisonment for the directors in the most serious cases of negligence. In addition, should a pollution incident occur, you may well be responsible for the immediate clean-up of the affected area, even if it is later proved you were not at fault. In addition, you could face costly claims from third parties seeking compensation alleging you have polluted their land.