

Errors & Omissions (E&O)

What is Errors and Omissions (E&O) Liability Insurance and What Does it Cover?

E&O for cannabis businesses and their supporting vendors offers protection for a variety of professionals from bearing the full cost of defending a lawsuit stemming from allegations of “negligence” in rendering or failing to render a professional service. In general, E&O coverage extends to the policyholder company, its full time/part time/leased employees and sometimes independent contractors for professional services. E&O insurance is able to cover a myriad of professional services and can include multiple entities if owned by the same parent company or if they are majority owned by the same core group of owners assuming the services rendered are common.

Why does a Cannabis Business Need E&O Insurance?

Businesses in the cannabis industry providing professional services need E&O just like any other professional service firm. Anyone in a professional service firm, manufacturing operation or laboratory could make a mistake, overlook or misplace critical information, forget a crucial step, or be misinterpreted and be sued. Any client or any third party a company interacts with could be the source of an E&O claim.

Obtaining E&O coverage for professionals in or around the cannabis arena is challenging since Marijuana (not Hemp/CBD) is illegal at the federal legal level. This includes companies not touching the cannabis product but having clients within the cannabis industry closely associated with the product. Many insurance companies have elected not to extend coverage to service firms in and around the cannabis arena. It’s important for a cannabis related service firm to be transparent and have the right E&O policy in place with an insurance company accepting of the cannabis related exposure. Examples of professions needing E&O:

Manufacturing Operations

Commercial Real Estate Professionals

Lawyers/Legal Professionals

Allied Health/Medical Professionals

Laboratories and Testing Services

Technology Professionals

Architects & Engineers

Management Consultants

Financial Institutions

HR/Employment Professionals

What are Notable Coverage Features and Exclusions Within E&O Policies?

Not all E&O policies are the same and vary widely regarding benefits and exclusions:

Exclusions to Note

Intentional/Criminal acts exclusion

Interstate licensing restrictions

Prior acts restrictions

Related entity exclusions

Excluded services

Enhancements to Note

Broad scope of covered services

Industry specific enhancements

Independent contractors’ coverage

Disciplinary proceedings coverage

Broad definition of an Insured

Cannabis Business Insurance

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Claim Scenarios:

Real Estate

A real estate agent sold a building supposedly permitted and zoned for cannabis activity and confirmed as such when asked. The buyer of the property struck a deal with a cannabis business looking to expand in that area and collected lease related earnest deposits and started other arrangements for the build out of the property. The sale went through. Later it was found the property was only being considered for permitting/zoning allowing for cannabis activity, but permission had not been granted. Ultimately, the buyer of the property sued the previous owner/seller for misrepresentation and included the real estate agent in their complaint. They also alleged loss of a business opportunity and the cannabis business tenant was considering legal recourse as well. Legal expenses incurred were over \$250,000 with a settlement sure to follow.

Technology Professional

A software as a service (SaaS) company created a platform for cultivators to use to improve their costs and marijuana growing efficiencies. Amongst the promises made was the ability to automate many manual processes cultivators were challenged with by streamlining. Unfortunately, the SaaS product incurred many problems including inaccuracies with plant tracking abilities and related data. As such, many deadlines and inventory delivery related problems ensued resulting in a suit against the technology company. The claim resulted in over \$150,000 in legal and damages amounting to \$200,000.

Accounting Firm

An accounting firm was hired to set up the tax structure of a client's multi state cannabis operation. The accountant assigned to the project mistakenly set up several locations as a corporation instead of a partnership resulting in additional tax liability. The client sued the accountant alleging losses for tax liability and the accountant had to pay the client \$375,000.

Interior Design Consultant

A company provided consulting services to a cannabis dispensary in an effort to comply with recent COVID 19 guidelines. A local governmental authority received complaints about the seeming lack of COVID 19 safety protocols being carried out within the cannabis dispensary and investigated the location. The equipment suggested by the designer (including personal protection equipment) was incorrectly installed and used which led to a temporary suspension of the dispensary operations. As a result, a suit was filed against the interior design consultant based on these non-compliance allegations. Defense costs are expected to exceed \$100,000 at a minimum.

Let's talk about your insurance needs.

Contact a cannabis industry insurance expert today.

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