

Vicarious Liability

Vicarious liability is the responsibility an agency has for the actions (or non-actions) of a person who works on their behalf...

An example...

An IT company is contracted to install a new database. An employee of the IT company tasked with the installation, accidentally corrupts data in other systems and as a result, the employer (the "IT company") is held responsible ("legally liable") for the costs to remedy the damage caused, and compensation for the reduced revenues incurred.

Vicarious liability with temporary workers - background

Employment Agencies Act 1973

An Employment Business is defined by the Employment Agencies Act 1973 as a business supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity.

Standard contracts

These should state that you are not responsible for the control of the workers supplied, and that you are not responsible for any actions made by the temporary worker.

Non-standard contracts

You may also accept your clients' contract terms (see below comments on Contract Agreements) whereby you are contracted as an Employment Business and that you are not responsible for the professional actions of the workers supplied.

Vicarious liability with temporary workers – do recruiters need cover?

As an Employment Business is defined by legislation, stating that you are not responsible for the actions of a worker supplied, and the contracts clearly state that you are not responsible for the actions of the worker, then cover for vicarious liability is not required.

If, however, you decide to operate outside the definition of an Employment Business & / or you agree to contract terms that make you responsible for the professional acts of the worker, then you will need to have cover for vicarious liability.

Contract terms

If your client insists that you supply workers under their contract terms, then you need to check what your responsibilities will be for both yourself, and for the worker.

If you are being asked to conduct business as an Employment Business, but you are responsible for the professional acts of the worker, then you will need your Professional Indemnity policy to include cover for vicarious liability. Your business activities on your policy can remain as an Employment Business.

Your services

It is equally important to understand the services that you are contracted to provide. The services offered should be contained to an Employment Business (or Employment Agency if providing permanent recruitment services).

If you agree a contract which goes beyond these activities, then your policy will need to specifically note the additional business activities. These additional activities will ensure that you are insured for the professional acts of the workers that you supply.

What now?

RecruiterCover can include cover for Vicarious Liability. However, you can also try:

Re-negotiate your contracts

Your client may have issued their standard contract to procure contractor services, and quite often when they are queried, they will accept that they are hiring workers to be under their control, and consequently will agree to amend the contract terms.

Query the supply of contractors

If your contract is for the supply of contractors, then your client could accept that each individual contractor has their own Professional Indemnity policy in place to cover their own actions. If acceptable by your client, then you should obtain confirmation in writing.

Need help?

If you need help with insurance or risk management, speak to your insurance broker.