

Guide to Malpractice Insurance

Why is Malpractice Insurance Important? One lawsuit can bankrupt a program, its staff, and its board. Malpractice insurance protects the agency from liability when the agency makes errors that harm a client. For instance: if staff miss a filing deadline and it results in a client's removal, there would likely be a finding of legal malpractice. If, however, a client is deported after a judge heard all evidence and arguments did not agree that a client deserved relief from removal, that is not necessarily legal malpractice.

Organizations that provide legal services, whether through attorneys or DOJ accredited representatives, **should maintain legal malpractice insurance.** HILSC recommends that organizations that works with pro bono attorneys obtain malpractice insurance to that covers volunteers.

Who should get malpractice insurance?

- Attorneys (insurance covers legal assistants)
- DOJ accredited representatives¹
- Pro bono volunteers (long-term and one-time)
- Consulting organizations (eg: MOU with DOJ recognized organization)
- **Note:** Boards of directors and non-legal staff working at non-profits should have directors and officers (D&O) insurance.

Why do DOJ accredited representatives need malpractice insurance?

Accredited representatives do the same legal work as attorneys and are subject to the same liability. Malpractice insurance protects an organization and the DOJ accredited representative from liability if staff make unintentional errors that harm a client (for instance: missing filing deadlines could be legal malpractice). For more information, visit: <https://cliniclegal.org/sites/default/files/LiabilityInsurance.pdf>

Will malpractice insurance cover my pro bono volunteers? Consulting work?

This depends on the insurance provider. Make sure to inquire about whether malpractice insurance covers only staff or also volunteers for the organizations. If your organization provides legal advice to another organization, such as having an MOU with a DOJ recognized organization to provide supervision or advice, you should inquire whether the insurer covers that type of work. Not all providers do.

What is Directors and Officers (D&O) Insurance and why is it important?

D & O insurance protects employees and members of the board of directors from liability arising out of negligence, reckless, and willful misconduct in their supervision of the agency and their volunteer work on behalf of the agency. The insurance will cover the costs of a legal team to safeguard employees, board, and agency; otherwise, the organization could incur extremely costly legal fees dealing even with non-meritorious claims. Some examples of lawsuits include asset mismanagement; wrongful termination of an employee; discrimination against employee or client; and harassment of employees or clients.

¹ In January 2017, the recognition and accreditation program was transferred from the Board of Immigration Appeals (BIA) to the Office of Legal Access Programs (OLAP). Accredited representatives were formerly known as "BIA accredited representatives" and are now called "DOJ accredited representatives."

How to Get Insurance

How much does insurance cost?

All policies are different and you must shop carefully to get a good policy. The coverage and cost depend on your agency's staff, claimed expertise, client base, amount of deductible, and source of revenues and fees. Since purchasing liability insurance individually is a lot more expensive than buying group insurance, you should also consider buying insurance coverage through a parent or national organization. If your agency needs to buy coverage for a few DOJ accredited representatives, negotiate for a discount or to pay the premium in installments.

How long does it take to get insurance?

Most insurance providers will review your application within a few business days. However, it takes time to research, make inquiries among providers, and get internal agency approval. If you plan to switch providers, be sure to do research in advance so there is no gap in coverage. Insurance coverage applies retroactively to the date the application was submitted.

What documents are needed to apply for insurance?

Required documents vary from one provider to another; here are some examples:

- History of past coverage and/or claims, if any;
- Explanation of services, your expertise, and description of your client base;
- Breakdown of revenue sources (coverage fee is based on agency income);
- Sample retainer agreement (contract between clients and agency);
- List of DOJ accredited reps, accreditation date, and planned renewal date;
- The most recent current financials; and
- Printed materials about the agency and legal immigration program.

Note: New programs without all policies in place should still submit the application and try to work out a schedule to submit the required documents.

Source: CLINIC, "[Managing an Immigration Program: Steps for Creating and Increasing Legal Capacity.](#)"

QUESTIONS TO ASK INSURERS

What is the scope of coverage?

Who is covered? (i.e. full- and part-time employees, contract lawyers, pro bono lawyers, DOJ accredited representatives, board members, paralegals)

What claims are covered and not covered?

What factors do they use to determine your rate?

What is the highest available limit of liability?

What is the range of deductibles?

How does your deductible affect your premium?

Can one pay in installments?

INFORMATION ABOUT INSURANCE PROVIDERS*

* HILSC does not recommend any one policy over another.

Insurer: CIMA's Volunteers Insurance Service

Website: <http://www.cimaworld.com/legal/legal-services-and-public-defenders>

Contact Person: Aaron Jones, ajones@cimaworld.com; 800-468-4200 or 703-778-7308

Cost: General public: Minimum premium: \$500 per year
Texas Access to Justice members: \$400 per year

Link to application: Contact Aaron Jones for the application

Who is Covered?

- Attorneys providing direct representation? Yes
- DOJ accredited representatives? Yes
- Pro bono volunteers? Yes
- Consulting to another organization? No

Does the insurance require membership in another organization? No

What does the insurance cover?

- The CIMA program's limits of liability are \$1,000,000 each claim/\$1,000,000 aggregate, for professional liability coverage and/or management errors and omissions coverage. If your organization either has now or expects to need higher limits, they will work with you to make certain that you have the level of coverage you need.
- No deductible is required.
- The policy is a claims-made policy, with full prior-acts coverage available. It pays 100% of defense and indemnification for covered claims made under the defense of contempt proceedings, and employment practices coverages, after the deductible has been satisfied.
- Employment practices coverage promises to defend and indemnify the insured against claims arising out of employment practices, and does not limit coverage to specific employment practices.
- Protection under the personal injury coverage includes publications or utterances in the course of, or related to advertising, broadcasting or telecasting activities conducted on behalf of the insured. Coverage also is provided for claims involving alleged publication or utterances in violation of an individual's right of privacy, and personal injury claims alleging mental distress, mental anguish, mental illness, or humiliation.
- Professional liability coverage is extended to non-lawyer employees arising out of services rendered within the scope of such person's employment, and does not restrict coverage to services performed while under the direction of lawyers.

Insurer: NLADA Insurance (National Legal Aid & Defender Association)

Website: <http://www.nlada.org/nlada-insurance-program/faq>

Contact Person: Kevin Horsted, k.horsted@nlada.org, 800-725-4513

Cost: Varied + NLADA membership dues (total may be ~\$1,500 per year)

Link to application: <http://www.nladainsurance.org>

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Does the insurance require membership in another organization? Yes. Membership in NLADA is a requirement, though you do not have to be a member before purchasing insurance (good faith commitment to join required). Non-profit organizations providing immigration legal services are eligible for membership. Membership fees are calculated based on a program's overall budget, with a minimum of \$150 and maximum of \$5,500. For questions, visit their [membership pages](#). Or contact Chandra Nicholson: c.nicholson@nlada.org or 202-452-0620, ext. 215. To apply, visit <http://www.nlada.org/become-a-member>

What does the insurance cover?

- Broad definition of "Insured" includes "any person who was, is or hereafter during the policy period becomes a lawyer, employee, member or volunteer of the Named Insured while rendering Professional Services for or on behalf of clients of the Named Insured."
- Broad definition of "Professional Services" extends coverage to include "services adjunct to legal services" thereby reflecting an understanding of and an appreciation for the diversity of services provided by policyholders.
- The full amount of the professional liability limit is extended to personal injury claims.
- Retroactive Dates (if any), which appear on a prior policy, are matched.
- Insurer's commitment to respect preference of the policyholder in the selection of defense counsel. NLADA Service Corporation staff will assist if any claim-related disputes arise.
- Coverage for defense costs resulting from a range of proceedings, specifically, "any grievance proceeding, judicial proceeding, disciplinary proceeding or administrative proceeding" with a claims expense limitation of \$50,000.
- Coverage for damages and claims expenses caused "by any Act of the Insured, or any other person for whose Acts the Insured is legally responsible, and arising out of the rendering of or failure to render Professional Services by or on behalf of the Insured for clients of the Named Insured."
- Possible insurance add-ons include:
 - Outside Practice of Law Endorsement: extends professional liability policy to the delivery of pro bono legal assistance by insured with no sublimit
 - Primary Pro Bono Endorsement: primary coverage for legal services provided by participants in specified pro bono programs sponsored by policyholders.

For more details, visit: <http://www.nlada.org/nlada-insurance-program/summary-coverages>