

# Risk Insights

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## 5 Common Sources of D&O Liability

In today's business climate of corporate transparency and accountability, an organization's officers and directors face a myriad of employment-related exposures. Regardless of your company's size or mission, the legal costs associated with a lawsuit can be crippling for both the organization and your directors and officers.

This Risk Insights explores five of the most common sources of directors and officers (D&O) liability.

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### Employees

Most directors and officers are surprised to learn that their own employees are one of the most common sources of a D&O claim against their organization. In fact, for private businesses and nonprofit organizations, employees are the most common source of D&O claims.

If employees are mistreated during any phase of their employment, they may bring their concerns to the organization's management team. If employees feel that their concerns have not been addressed in a sufficient manner, they may see legal action as a means of rectifying their grievances.

Common employment practices claims against directors and officers include the following allegations:

- Wrongful dismissal
- Discrimination, including workplace and sexual harassment
- Breach of employment contract
- Failure to address health and safety concerns

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### Government and Regulatory Authorities

Governmental and regulatory authorities exist to monitor the environment in which organizations operate. These bodies help ensure that directors and officers and the organizations they control conduct their activities in a fair and lawful manner.

Government and regulatory bodies monitor compliance with a broad range of laws, including the following:

- **Corporations law:** Governs the ownership and management of organizations
- **Securities law:** Governs the administration of publicly listed companies
- **Consumer protection law:** Governs the way in which organizations distribute products and services to consumers
- **Occupational health and safety law:** Ensures that organizations maintain a safe workplace
- **Taxation law:** Governs the taxation of organizations and individuals
- **Environmental law:** Ensures that industry participants adhere to environmental restrictions

For directors and officers, the enforcement power held by these bodies presents a significant exposure to D&O claims. If regulators discover that wrongful conduct has occurred, they may pursue legal action against the organization and the executives involved.

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### Competitors

As organizations attempt to grow their market share, management teams must ensure that growth is achieved through fair business practices. If an organization's competitors believe that they have been unfairly disadvantaged by dishonest or illegal



behavior, they may seek recourse through legal action.

Directors and officers can be brought into legal actions for a range of perceived wrongdoings, including the following allegations:

- Breaches of intellectual property
- Misappropriation of trade secrets
- Collusion
- Anti-competitive behavior

What's more, directors and officers may also be held liable for actions that are perceived as misleading or defamatory, with claimants seeking damages for their perceived losses.

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## Creditors

The management team of an organization has the responsibility of monitoring the organization's financial position and its ability to meet debt obligations as they become due. If an organization becomes insolvent, creditors will often scrutinize the decisions of directors and officers to see if they can be held personally responsible.

If debts are left unpaid when an organization goes into liquidation, creditors can pursue executives personally in an attempt to recover outstanding funds. Common allegations by creditors against directors and officers include the following allegations:

- Breach of fiduciary duty
- Breach of duty of due care
- Negligence
- Deliberate misconduct

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## Shareholders

Due to their financial investment, shareholders have an incentive to monitor an organization's ongoing performance and ensure that directors and officers are acting with the organization's best interests in mind. With potentially large sums of money at stake, if shareholders are not pleased with an organization's direction, they may take measures to protect their investment.

If it appears that management has breached their duties to the detriment of an organization, shareholders may bring a claim against those directors and officers.

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## We're Here to Help

Whether you're a nonprofit, privately held or a public company, it is likely that your business can benefit from a D&O policy. Since there is no such thing as a "standard" policy, a professional broker is invaluable when you go to purchase D&O coverage.

At Winters-Oliver Insurance Agency, we make it our priority to understand your organization and assist you with customizing policy language to meet your unique needs. Contact Winters-Oliver Insurance Agency today to learn more about D&O protection options for your company.

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