

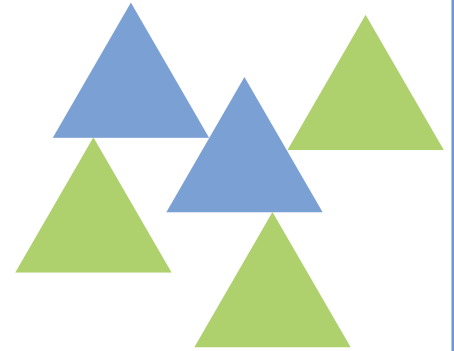


# When do Freelance Instructors need their own personal Public Liability Insurance?

**The short answer to the question:** “when do freelance instructors need their own Public Liability (PL) insurance?”

**Is.....**

“when they are working for themselves, being responsible for the content and delivery of their own programmes.”



Looking at it from the employer’s perspective and whether or not the freelance instructor is covered by the employer’s liability insurance (and therefore not needing personal PL insurance), the HSE guidance says: *whether or not you need employers’ liability insurance for someone who works for you depends on the terms of your contract with them. This contract can be spoken, written or implied. It does not matter whether you usually call someone an employee or self-employed or what their tax status is. Whether you choose to call your contract a contract of employment or a contract for services is largely irrelevant. What matters is the real nature of your relationship with the people who work for you and the nature and degree of control that you have over the work they do.*



## You don’t need your own Public Liability Insurance when acting as a Labour Only Sub Contractor

Insurers generally define the type of sub-contractor covered by the Employers’ Liability Insurance (therefore not requiring their own PL insurance) as Labour Only Sub Contractors. So, if the freelance instructor, whether full time or part time, regular or irregular, whether the arrangement is defined by a written contract or merely by an oral contract, is engaged to deliver the employer’s programme, he/she will fall under the heading of a Labour Only Sub-Contractor and to all intents and purposes is treated at law as an employee.

Using HSE guidance, Labour Only Sub-Contractors are usually contractors who:

- Normally work for a ‘day rate’
- Often use equipment supplied to them
- Always do the work themselves and do not provide a substitute if they are unable to work
- Work under employer’s direction and adhere to their risk assessments
- Are treated in the same way as other employees, for example, they do the same work under the same conditions as someone else you employ

Employers are vicariously liable for the actions and omissions of their employees whilst at work whether permanent or part time. Recent court cases have extended the outreach of this legal principle ruling that vicarious liability including bullying, harassment, violent or discriminatory acts. can exist in a wide range of circumstance making it important that employers are aware of their responsibilities and have the adequate cover in place should a claim occur.

## You do need your own Public Liability Insurance when acting as a Bona Fide Sub Contractor

You are described as a Bona Fide Sub Contractor when you are working for yourself, being responsible for the content and delivery of your own programmes, whether engaged by an individual, a group or larger entities.

Using HSE guidance, from an employer’s perspective Bona Fide Sub Contractors are usually contractors who:

- Do not work exclusively for you
- Work without your direction
- Hold their own insurance
- Usually provide most of their own equipment
- They are clearly in business for their own benefit
- Can provide a substitute if they cannot work

**Caveat emptor.** It’s the centre’s or employer’s responsibility to ensure that the BFSC is competent and has their own Public Liability insurance, recognising that they are responsible and liable for the content and delivery of the activity they are providing.

It is not unusual, in the event of alleged negligence of the BFSC, to see the claim to be made against the centre in the first instance and not the BFSC. Hence it’s the centre’s responsibility (and a policy requirement) to ensure that the BFSC has its own insurance to the same indemnity limits as those of the centre. ■

**AUTHOR: James Willis, Activities Industry Mutual**

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