

Loss Control Questionnaire: **Directors and Officers Liability - Private Companies**

Provided by Propel Insurance



Examine Your Risk

With today's emphasis on corporate transparency and accountability, an organization's directors and officers face a countless number of exposures. Regardless of your company's size or mission, the legal costs associated with a lawsuit can be devastating for both the organization and your directors and officers.

The current litigation climate for private companies presents an unending and potentially devastating challenge. Following a financial crisis, error, business interruption or similar incident, management can be held liable. Without the proper coverage, directors and officers would have to face claims brought on by competitors, customers, business partners and regulators on their own, likely with minimal success.

Thankfully, a proactive approach to risk management goes a long way toward protecting organizations from D&O claims. This questionnaire is designed to help organizations assess how adequate their loss control programs are by examining common D&O-related exposures and the techniques, policies and procedures that can be applied to control these exposures. Remember, the best defense against D&O claims is to prevent them from occurring in the first place.



BASIC EXECUTIVE DUTIES

General	Yes	No	N/A	Notes
Do executives act in good faith? Do they make decisions consistent with what a reasonably judicious person in a comparable situation would do under similar circumstances?				
Do directors and officers obtain and consider all material information reasonably available to them prior to making a business decision?				
Do directors and officers make a reasonable effort to monitor corporate activities?				
Do directors and officers avoid engaging in conduct that could harm your organization (e.g., misusing their position of trust for their own private interests)?				
Do directors and officers conform to all applicable statutes and your organization's corporate charter?				

BOARD OF DIRECTORS

General	Yes	No	N/A	Notes
Are directors selected primarily based on whether or not they can benefit the overall organization?				
Do directors have integrity and good judgment?				
Do directors have the time and interest required for the position?				
Do directors have any conflicts of interest (e.g., does the director serve on the board of another company)?				
Does the board have independent, outside directors who are not part of your organization's management team?				Courts may see it as a greater presumption of good faith when a significant percentage of a board consists of independent, outside directors.
Does the size of the board strike a balance between active engagement from all directors and sufficient diversification and committee staffing?				
Does the board conduct periodic self-evaluations? Is the performance of individual directors evaluated regularly?				
Does the board monitor corporate conduct and ensure adequate policies are in place?				

Do directors rely on experts, committees or agents of the corporation when making board decisions?				
Are qualified legal professionals consulted as necessary to avoid potential issues?				
Education and Corporate Policy	Yes	No	N/A	
Are new directors and officers educated on how your organization operates as part of their initial onboarding process?				
Are new directors and officers required to familiarize themselves with corporate disclosure documents as part of their onboarding process?				
Do directors and officers receive ongoing training regarding industry trends and regulatory concerns?				
Alongside legal professionals, has the board developed guidelines around the following topics: <ul style="list-style-type: none"> • Conflicts of interest • Antitrust compliance • Accounting and financial integrity • Bribes and kickbacks • Political contributions 				

<ul style="list-style-type: none"> • Harassment and discrimination • Misappropriation of corporate assets • Confidentiality of corporate information 				
Are corporate policies and guidelines reinforced through periodic training programs?				
Is senior management committed to enforcing corporate policy regardless of an individual's rank in your organization?				
Are directors and officers required to sign a statement acknowledging and agreeing to corporate policies?				
Are corporate policies reviewed regularly and updated as necessary?				
Board Meetings	Yes	No	N/A	
Are actions taken by directors well-informed and based on an investigation of all relevant facts?				
Are directors required to regularly attend board meetings to keep them up to date on your organization and allow them to make informed decisions?				A regular meeting schedule should be established. The dates of these meetings should be communicated well in advance.
Are directors and other board members given enough time to deliberate on key company				

issues? Is information related to key issues distributed to directors prior to board meetings?				
Are meeting minutes from the previous board meetings distributed in advance?				
Are legal counsel and outside counsel available to attend board meetings as necessary?				
Are board meetings conducted in an unbiased manner? Are open discussion and active questioning encouraged?				
Do meeting minutes track what topics were discussed as well as any actions taken? Are documents attached to the minutes clearly labeled?				
Are the results of each vote recorded? Does your organization make note of any dissenting votes?				
Are directors asked to review meeting minutes for any meetings they did not attend themselves?				
Are documents related to directors and officers prepared with the expectation that they may be closely scrutinized in the future?				

CONFLICTS OF INTEREST

General	Yes	No	N/A	Notes
Are conflicts of interest avoided at all times?				
Does your organization have policies in place to identify and address potential conflicts of interest?				
Does your organization have a conflicts of interest disclosure form?				

SPECIAL RISKS

Employment Practices Liability	Yes	No	N/A	Notes
Does your organization have a human resources (HR) department or dedicated employees who handle HR matters?				
Does your organization have an in-house legal department?				
Does your organization have access to legal services from outside counsel for employment-related matters?				
Does your organization have a process in place to ensure that it is aware of applicable compliance requirements on the local, state and federal levels?				
Does your organization have procedures in place to stay up to date on changes to employment laws and regulations at the local, state and federal levels?				
Does your organization have employment practices liability insurance (EPLI) or similar coverage?				
Does your organization review its EPLI policy on an annual basis with an insurance professional?				

Does your organization conspicuously display federal and state labor and employment law posters as required?				
Does your organization have an employee handbook?				
Does your organization distribute its employee handbook to all employees?				
Is your organization's employee handbook reviewed by HR or an attorney on a regular basis?				
Does your organization follow the policies set forth in your employee handbook?				
Are all employee handbook policies applied consistently across your organization?				
Does your organization's employee handbook use clear and concise language?				
Does your organization's employee handbook include a provision that establishes your organization's right to modify the handbook?				
Does your organization communicate any changes to your employee handbook to employees when they are made?				
Does your organization's employee handbook include an acknowledgment form that employees must sign and return, indicating				

that they have received and understood the handbook?				
Does your organization’s employee handbook outline standards of conduct and progressive disciplinary measures?				
Does your organization have a written policy prohibiting unwelcome conduct in the workplace that is based on, or motivated by, the victim’s membership in a protected class?				
Does your organization have a separate written policy prohibiting discrimination based on a protected characteristic?				
Do your organization’s policies address the potential liability for harassment and discrimination based on race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability and genetic information, among others?				
Does the policy include a statement of zero tolerance with regard to harassment and discrimination?				
Does the policy give explicit examples of conduct that constitutes harassment and discrimination?				
Does the policy include a thoroughly developed complaint reporting procedure?				

Does the policy require prompt reporting of all harassing or discriminatory conduct?				
Does the policy provide a procedure to allow a complainant to bypass a supervisor if that supervisor was the alleged harasser or discriminator?				
Does your organization have an internal policy or procedure for thoroughly and promptly investigating employee complaints?				
Do your organization's investigators confirm to the complainant the confidential nature (to the extent possible) of the harassment/discrimination investigation?				
Does your policy include a statement of non-retaliation that effectively allows a complainant to make a claim without fear of retribution?				
Does your organization submit your statement to every employee, both physically and electronically?				
Does your organization require employees to acknowledge in writing their receipt of the harassment policy?				
Does your organization conduct annual training of managers and employees about your organization's nondiscrimination, harassment and non-retaliation policies?				

Does your organization review, at least annually, your operating procedures and policies to eliminate discrimination and harassment on the basis of a protected characteristic?				
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Cyber	Yes	No	N/A	Notes
Are reasonable steps taken to identify, prevent, mitigate and respond to cyber concerns as they arise?				
Do directors ensure that your organization’s unique cyber risks are reasonably addressed in ways consistent with legal requirements, industry best practices and the reasonable expectations of your organization?				
In regard to cyber risks, do directors act with responsible oversight but avoid actively managing the risk themselves?				
Does your organization have a cyber incident response team in place?				
Has a cyber risk assessment been completed? Does it identify exposures that pose the greatest potential harm to your organization?				
Are merger and acquisition activities audited from a cyber risk standpoint?				

<p>Does your organization’s cyber risk management program have adequate staffing and budget?</p>				
<p>Does your organization have a process in place for determining what information is shared with the public following a cyber incident? Does this process outline how this information will be shared with key stakeholders? Does this process account for the impact of applicable legislation?</p>				
<p>Does your organization have a third-party security assessment that documents all vendors that you partner with?</p>				
<p>Does your organization have a third-party security assessment that determines whether vendors have sufficient cybersecurity policies and procedures in place?</p>				