

INSURANCE COMPLIANCE FOR OHIO LAWN CARE LICENSEES

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The newly revised statute effective May 5, 2016 provides clearer guidance for Lawn Care Operators in Ohio, however there are still many considerations for the individuals and entities who are obligated to carry coverage required by the statute. It is important you make sure your insurance agent clearly understands how important this coverage is for your business. Failure to have the right coverage in place when a random visit from a field inspector occurs, when a claim is incurred or when your insurer will not pay for your customer's damaged lawn will be your businesses worst nightmare.

Here are the basics you need to understand:

You are required to carry Commercial General Liability insurance which includes Premises and Operations coverage on an occurrence policy form. This terminology is (or should be) understood by any licensed Property and Casualty insurance agent in Ohio. In addition, the policy must provide coverage for damage to a customer's yard as a result of your work. The term your work is also included in every standard General Liability policy however, your work is excluded from all General Liability policies unless your insurer is willing to remove the exclusion for an additional premium. Some insurers will provide this endorsement however most will not. Insurers simply do not want to guarantee your work – they feel that doing so makes your liability policy a Warranty.

An alternative way to provide coverage for your work is to purchase a Contractors Pollution Liability policy that covers your work and the resultant damages caused by the application of fertilizers, herbicides or pesticides or any other form of chemical. Pollution Liability policies are designed to cover liability incurred by contractors who use any form of pollutant in their operations. Think of painting contractors using bulk quantities of paint on commercial buildings, industrial weed control or right of way contractors, pest control services or any other type of commercial contractor using chemicals in their day to day operations. Insurance policies are not usually specific to any one form of pollutant. They use a very broad definition when describing a pollutant as opposed to naming specific chemicals.

Professional Liability

The individual or business entity must also purchase

Professional Liability if the licensee uses pesticides in its service program. Professional Liability would come into play if a customer was given the wrong diagnosis, incorrect advice regarding an appropriate product to be used on a property, the wrong property was treated, improper mixing or formulation of products. The failure to read product usage instructions on the instruction label could also lead to a claim when your work was not the cause of the claim; it was the technician's error by not reading the manufacturers' instructions.

Professional Liability coverage is written on a different type of policy form referred to as Claims Made. Professional Liability policies pay claims based on when the event occurred, the effective date of the business' first claims made policy (the first effective date) and when the actual claim was reported to the insurance company. In other words, for Professional liability to be effective you must keep the coverage in force continuously from year to year in order to have coverage for mistakes committed in prior years but reported in the current policy year. Doctors, Attorneys, C.P.A.'s and most other types of professional service companies will typically carry claims made coverage. Think of an accounting firm who makes a huge error in a tax return or financial statement for a client. The client has to re-file its returns for 3 or 4 previous years. The accountants could be liable for the business' penalties, interest and the cost to have another accountant clean up the mess. Think of the effect this could have with other business relationships such as banks, customers or regulators.

This sort of coverage can be very difficult to understand, especially if it is not clearly understood by your agent. If he or she cannot explain it well, they obviously do not understand it either. The retroactive date is very important to maintain from year to year. It should always be the policy effective date for the first year you purchased claims made coverage.

Tips for purchasing the right coverage:

1. Commercial General Liability policies can be endorsed to cover what is referred to as Contractors Professional Liability for a reasonably small premium. This coverage is probably worthless if the basic policy still excludes your work. In addition, depending on the complexity of the endorsement, there could also be a Pollution Exclusion in the policy or an endorsement that negates coverage.

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2. Certificates of Insurance are not the same as your policy language. Regulators and the insurance industry are in agreement for the most part that a Certificate of Insurance only outlines limits, dates and types of coverage. When a claim is presented, it is the policy language that determines what is or is not covered. An agent does not have the authority to determine whether a policy will respond to a claim.
3. Deductibles for your work claims can be on a per claim basis or on a per occurrence basis.
 - a) If your coverage has a per claim deductible you will have to pay a deductible for every customer who makes a claim against you. If two of your techs filled their tanks with bad product (or the tanks were sabotaged) and unknowingly treated 40 lawns that day, damaging them all to varying degrees, you could be facing 40 individual claims. If your deductible was \$1,000 per claim, you are potentially looking at \$40,000 in claims costs plus all of the other headaches that go with situations like that.
 - b) If your coverage has a per occurrence deductible and the same situation previously described occurred, you would be looking at one \$1000 deductible for the entire occurrence. A substantial difference for any business.
4. Make sure you understand the importance of the retroactive date found in every professional liability policy. If you switch insurers and they will not honor your original retroactive date you are giving up a substantial amount of coverage in the future. Current claims made policies will respond to prior acts if your coverage has been in place continuously since your retro date and reported in a timely manner.

Other considerations regarding Lawn Care businesses

Commercial auto policies exclude the clean-up costs resulting from a collision, upset or other damage to the vehicle or tanks. Haz-mat contractors can charge upwards of \$30,000 for a serious spill clean-up. This coverage is readily available and most insurers make a reasonable charge for this endorsement. Personally owned trucks you use in your business and insure under your personal policy will not usually pay for pollution related clean-up costs.

Businessowners policies will pay some premises pollution clean-up costs at your business location which are a result of a fire, windstorm or other outside peril in varying amounts typically up to \$25,000. Other claims due to poor containment, diking, wicking into common walls for example may not be covered due to the policy's pollution exclusions. Read your policy exclusions and consult with your agent especially when your product inventories are high in season.

Summary

The clarification of Ohio Administrative Code rule 901:5-11-07 regarding Financial Responsibility for Pesticide Businesses is new territory for everyone involved.

Insurers who have not provided the coverage (for your work) in the past are still deciding whether to provide coverage under the rule clarification. The insurers who have modified or endorsed their policies to provide the coverage are probably not experienced in handling new claims covering a customer's damaged lawn. Specialty pollution liability underwriters who have provided this type of coverage for years need to familiarize themselves with the Ohio statute to make sure their policies will respond. These underwriters will in all likelihood be able to include Professional Liability for pesticide applicators.

If you are doing business with an agent who does not understand your business, the services you provide or the statute, it is important that they realize that you must have the right coverage in order to protect your license. Remember that information provided on a certificate of insurance is just simply an outline of limits, type of coverage and policy dates. It does not guarantee that a claim will be paid. Every incident is different, and the coverage you purchase can vary from insurer to insurer and agent to agent.

Finally, if you are not comfortable with the answers you are getting, ask for a copy of a sample policy or related endorsements to review yourself.