



CATHOLIC LEGAL IMMIGRATION NETWORK, INC.

Legal Malpractice Insurance for DOJ Recognized Agencies With Only DOJ Accredited Representatives

This guide focuses on helping Department of Justice (DOJ) recognized agencies that only have DOJ accredited representatives obtain legal malpractice insurance. All programs, new and existing, large and small, rural and urban, need some form of insurance to protect against legal malpractice.

Why get legal malpractice insurance?

- To protect your agency and staff
- To protect your clients
- To provide more professional services
- To avoid bankruptcy

Should DOJ accredited representatives be covered by malpractice insurance?

Yes. DOJ accredited representatives do the same legal work as attorneys and are subject to the same ethical responsibilities, and as such, the same liability. Legal malpractice insurance protects the agency from liability when staff make unintentional errors that harm a client. If your agency's DOJ accredited representative misses a filing deadline which results in your client being placed in removal proceedings, your agency will very likely be found to have committed legal malpractice. However, if your client is deported because the judge did not agree that she deserved relief from removal in a case after hearing all the evidence and arguments, then this is not necessarily legal malpractice. Due to the complexities and deadline-rich environment of immigration legal practice, there are plenty of circumstances that can result in malpractice. Protect your organization. One lawsuit can bankrupt a program.

What documents do legal insurance providers need in order to assess an application for insurance coverage?

- History of past coverage and/or claims, if any;
- A thorough explanation of offered services, your expertise, and description of your client base;
- A breakdown of sources of revenue since the coverage fee is based on the income;
- A sample retainer agreement (contract between clients and agency);
- A professional services organizational chart;

- Biographies of all DOJ representatives including accreditation date and planned renewal date;
- The most recent current financials;
- Printed materials about the agency and/or its legal immigration program; and
- Other documents as applied to individual providers

What if you are a new program or do not have the documents in place?

If your immigration program is new and not all of your program policies are in place yet, you should still submit the application and try to work out a schedule with your insurance provider to submit the required documents. The insurance coverage applies retroactively to the date the application was submitted. Although the insurance application may look overwhelming and most are catered to lawyers, do not allow this to persuade you from getting this very necessary and valuable protection for your program. In addition, most insurance providers are also willing to walk you through the insurance application process.

What is the scope and cost of coverage?

Each provider has a different policy in evaluating an application, however, every application is individually reviewed. 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 substantially more expensive than buying group insurance, you should also consider buying insurance coverage through a parent or national organization. Many agencies already have general liability insurance policies in place and could simply request from the current policy provider the addition of ancillary coverage for legal malpractice.

If your agency needs to buy coverage for a few DOJ accredited representatives, negotiating for a discount or paying the premium in installments is highly recommended. Here are some questions you should ask your insurance providers:

- What is the scope of coverage? Who can be insured under their legal insurance coverage (i.e. full- and part-time employees and volunteers, contract lawyers, volunteer lawyers, paralegals, board members, etc.)? 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 you pay in installments?

What other types of insurance should we consider obtaining for our program?

Employees and members of the board of directors should be protected by Directors and Officers (D & O) insurance. This protects them from liability arising out of negligence and/or reckless and even willful misconduct in their supervision of the agency and their volunteer work on behalf of the agency. Such policies are very common and fairly standard and are offered by all major insurance companies. Here are a few examples of lawsuits that may be brought against your agency:

- Asset mismanagement;
- Not providing services when there was no reasonable reason not to;
- Wrongful termination of an employee;
- Discrimination against an employee or client; and
- Harassment of employees or clients. The most common claims are for sexual harassment.

Having D & O insurance will provide a legal team to safeguard the agency and the directors and officers. Otherwise, your agency might incur extremely costly legal fees even when dealing with non-meritorious claims. All policies are different, and you must shop responsibly to get a good policy.

How do you locate an insurance provider?

We encourage you to begin your research by locating a legal malpractice insurance provider through the American Bar Association (ABA) Professional Liability Insurance Directory online at [LPL Insurance Directory \(americanbar.org\)](https://www.americanbar.org/insurance-directory) or by contacting them directly. Nonprofits can inquire of similar organizations in the community about their insurance providers and why. Be prepared to answer questions about the DOJ recognition and accreditation process and reference the *8 CFR Section 1292.1-1292.20* and the [Recognition & Accreditation \(R&A\) Program](https://www.dhs.gov/immigration-travel/entry/ra) website. (Agencies with staff attorneys who also supervise DOJ accredited representatives can get information on obtaining legal malpractice insurance from the ABA.)