



RiskBox

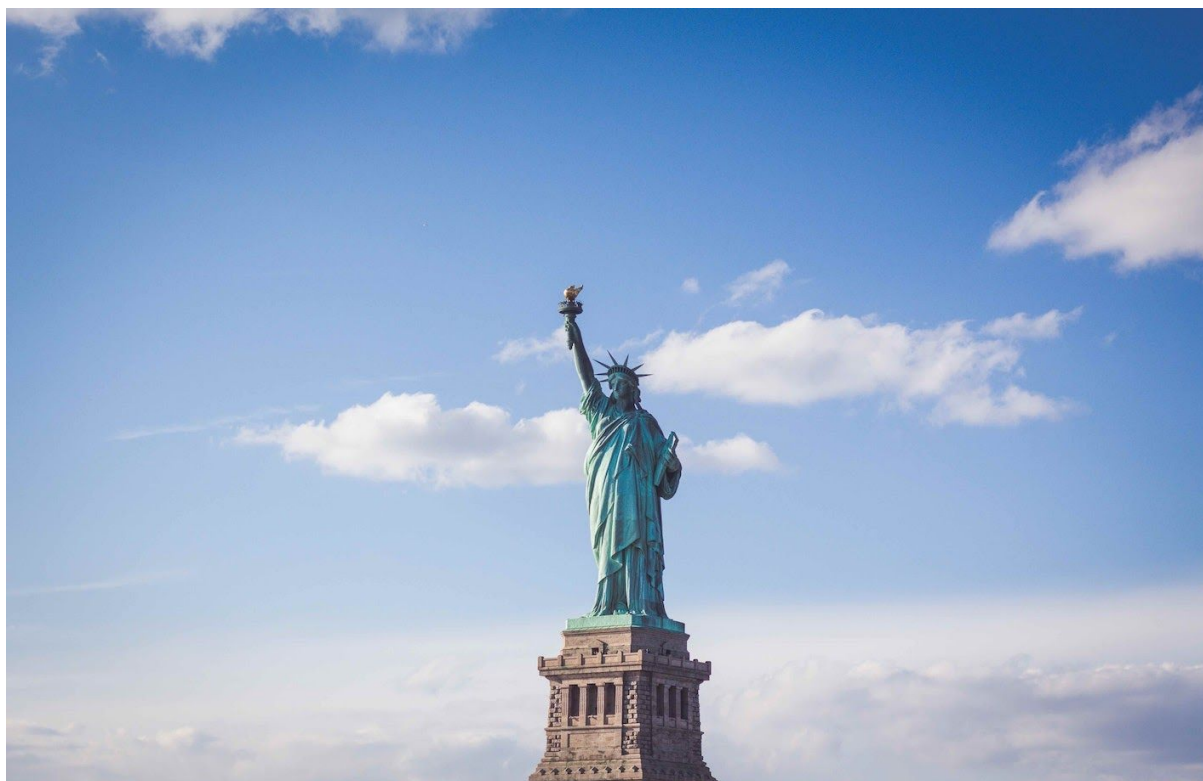


9th November 2020

Working With US Clients

Mini Guide

How working with US clients affects your insurance policies



When it comes to working with international clients, your insurance needs additional attention. Whether staff are visiting them, they are taking equipment abroad, or your agency simply has a contract with overseas customers, there are many considerations you need to make.

We've touched on some of these key considerations for US exposure here. It's not an exhaustive list by any means, so for advice on anything outside of what we've tackled here, please get in touch.

Professional Indemnity

Dealing with US clients is covered under most Professional Indemnity policies. That is, until the contracts are operated under US jurisdiction. This is the trigger point at which the policy generally needs extending.

When a contract falls under US jurisdiction, the risk to insurers increases. Claims in US courts tend to result in far higher costs for them due to increased legal fees, the prevalence of class actions and a higher average amount awarded in damages – not to mention the extra expense in having to travel to the US itself.

How working with US clients affects your insurance policies



Extending the policy to include US jurisdiction will usually cost you more and see more restrictive terms applied, including:

- Capping limits of liability
- Increasing excess levels
- Imposing additional terms and excluding certain types of action

To quote for US exposure, insurers will normally need to understand the size of clients you will have there, the type of work you'll undertake, and which contracts apply. If the contract is of a decent size, then they'll usually ask to see a copy of it in order to understand what you're agreeing to.

For example, US clients have a greater tendency to impose terms that restrict the rights of your insurer through waivers and requests for 'additional insured' status. This can be an issue for insurers, so some will often charge to extend cover, and some will even refuse altogether.

Don't worry about sharing a contract with your insurer or broker in this way. It's not dissimilar to sharing it with legal counsel – it should be treated by the insurer and broker as strictly private and confidential, and only used for quoting purposes.

To understand more about contracts, check out our [Contract Checking Guide](#).

Employers' Liability

If your UK employees are temporarily working in the US for a project, your Employers' Liability insurance would automatically extend to cover them should they be injured while working for you there.

This is totally different if you have a permanent physical presence in the US, have an incorporated company there, or are employing US nationals.

Though it varies per country, as a basic rule, you are usually required to take out certain compulsory insurance covers if you have a permanent presence with employees in a foreign country. You'll need to take out these covers locally too, either from a local broker or an insurer in that country. This almost invariably includes the Employers' Liability equivalent (called Workers' Compensation in the US).

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Public Liability

Public Liability doesn't always automatically cover work undertaken overseas. Often, insurers will extend this without charge assuming this work will be purely clerical, such as attending meetings or expos. However, if you'll be carrying out manual work, such as video shoots, insurers will normally require additional information and may charge an extra premium.

There may also be specific requirements from the US side. For example, it might need to be within the terms that you're able to display your business at an exhibition. These sorts of requirements need to be checked carefully. If you're unsure, ask your insurers to confirm any cover implications.

Occasionally, a contract may require your Public Liability policy to extend to include US jurisdiction. In those instances, the policy will normally be affected in the same way as outlined in the Professional Indemnity section above.



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Equipment

You will similarly need to carefully check that your equipment is also covered by your insurance if you take it overseas. In many cases, it is restricted.

It's worth noting that there can be some small nuances around when it will be insured – most insurers don't cover equipment if it's placed in the hold of an aircraft, for example. You also need to be aware of any storage conditions, particularly when left unattended in hotels or on location.

Hiring equipment in the US adds another level of complexity. Firstly, you'll need to check that your policy even covers you for hired-in equipment at all (not all policies do), and then check that it'll cover hired-in equipment in the US.

The terms of the hire company in the US may also further complicate matters. They'll often require confirmation that the property is fully insured, and they aren't always familiar with UK insurers and the terminology they use. It can be a challenge getting them to accept that the valid insurance you hold meets your hire contract requirements.

Cyber & Data

As with Professional Indemnity, you may work with US clients who require you to hold Cyber & Data insurance. This again needs to be checked, as US exposure can be excluded on a lot of policies.

It's also quite possible that an agency dealing only with UK clients could have US exposure on their Cyber & Data policy and not really appreciate that. This is because the key point is often where a data subject is resident, and not where the client operates.

For example, assume that your marketing agency was engaged by a UK business to carry out digital marketing on their behalf. If the marketing list provided by the UK company included information on US citizens, then they would be deemed the data subject in the event of a data breach. A different range of rights would therefore be in force.

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Cyber & Data insurance is additionally evolving quite quickly, so there are some significant variances between policies. Some insurers will restrict both the geographical scope and area of jurisdiction, generally excluding actions from US citizens and leaving the insured exposed.

The positive news is that the insurance market has caught up. Some of the main cyber insurers now quote the geographical scope and jurisdiction on a worldwide basis by default. As with everything else though, forewarned is forearmed.

Management Liability

Normal Management Liability policies consist of Directors' & Officers' Liability, Corporate Legal Liability, and Employment Practices Liability – with a few additional extensions depending on the insurer.

D&O covers are usually provided on a worldwide basis, with some additional terms applied in relation to US claims (such as higher excess levels). The same goes for Corporate Legal Liability. However, Employment Practices Liability usually excludes US employees.

But it's not quite as simple as that – you can't assume that your agency is automatically covered for all US work. D&O policies for agencies tend to be quoted on a statement of facts basis, and a key statement will often be that you can't have turnover or assets over a certain level in the US. If they are higher, then your insurer absolutely must be notified so that they can sign it off. Otherwise, there's a danger that you'll find yourself uninsured if the worst happens.

The same goes if your agency has a US subsidiary. That also often needs to be notified, particularly as it is related to the US assets and turnover of the group. With all Management Liability covers, it's worth being crystal clear with insurers as to what US exposure your company has.

If in doubt, double-check and ask for support

There are several other insurance covers which you might need to look at, depending on the US work that your agency undertakes. It might be a case of simply having the appropriate motor (or automobile) insurance while out there, or something more technical such as suitable Producers' Indemnity cover.

While we've not tackled these particular forms of insurance here, we are always more than happy to do so individually. For any queries or bespoke advice specific to your business, please [get in touch](#).



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