

Part 2
Property & Casualty Insurance for Maine Small Businesses
(Workers' Compensation & Automobile)

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Welcome to Property and Casualty Insurance for Maine Small Businesses. This workshop is designed for Maine certified Disadvantaged Business Enterprises or DBEs and presented by DBE Supportive Services.

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There are four major types of property/casualty insurance coverage: property insurance, liability insurance, workers' compensation insurance and automobile insurance. This workshop segment will cover workers' compensation insurance and automobile insurance. Property and liability insurance coverages are covered in a separate online workshop segment.

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It is important to understand that insurance policies are contracts entered into between yourself and your insurance company. Be sure to read them thoroughly to understand your rights and responsibilities under your insurance policy. To get answers to your questions about your specific situation and insurance coverage, seek the expertise of a licensed insurance agent or reach out to the Maine Bureau of Insurance.

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According to the National Association of Insurance Commissioners, the NAIC, "Many small businesses...are exposed to serious risks that could be decreased by a clearer understanding of insurance options." The NAIC has found, based on 2007 research, that only 35% of small businesses have business interruption insurance, only 48% of small businesses have commercial automobile insurance and 48% of home-based businesses depend on their homeowners' insurance to protect their business. For purposes of this research the NAIC defined "small business" as a business with fewer than 100 employees.

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Let's look at workers' compensation insurance and answer the following question. Why does a small business need workers' compensation insurance? Workers' compensation insurance is required by Maine state law. Workers' compensation insurance protects a business owner from claims by employees who experience a work-related injury or illness, either sustained on the business premises or due to business operations.

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Failure to obtain workers' compensation coverage does not relieve the employer of responsibility for payments for a workers' comp related claim. If you do not have workers' compensation insurance and one of your employees is injured on the job, you can be sued by the injured employee for any work-related injury or illness and be held responsible for the employee's medical expenses. You may be found guilty of a class D crime which carries a civil penalty of up to \$10,000 or 108% of the premium that should have been paid, whichever is greater. You could be subject to revocation or suspension of your corporate charter and/or license revocation. You will have no coverage for legal defense.

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The next question we will answer is what does workers' compensation insurance cover? Workers' compensation insurance covers the following: employee's medical care and expenses (as deemed "reasonable and necessary"), rehabilitation costs, lost wages (payable as weekly compensation benefits). Please note that benefit amounts are subject to limits set by state law. Workers' compensation is a no-fault system. Benefits are paid regardless of fault. Workers' compensation is the exclusive remedy for work-related injury or illness and workers' compensation is regulated by each state.

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The next question we will answer is who must purchase workers' compensation insurance? Maine law requires almost all public and private employers to have workers' comp coverage. The law defines employers as "private employers, water districts, other quasi-public corporations, municipal school committees, school union committees, and design professionals."

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Maine law provides that certain employers are not required to have workers' compensation coverage. These are employers who have employees engaged in agriculture or aquaculture as seasonal or casual laborers (such employers must meet minimum liability and medical coverage requirements set forth in state law); employers of six or fewer agricultural or aquacultural laborers (such employers must meet minimum liability and medical coverage requirements set forth in state law) and employers of domestic servants in a private home.

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Let's discuss workers' compensation insurance and sole proprietors. A sole proprietor without employees is not required to have coverage under the Workers' Compensation Act. A sole proprietor does not need to fill out waiver forms to be exempt from coverage. A sole proprietor can opt-in to obtain workers' compensation coverage for themselves. Please note that a sole proprietor with employees is required to carry workers' compensation for those employees.

Let's discuss workers' compensation insurance and partnerships. A partner is not required to have coverage under the Workers' Compensation Act. A partner does not need to fill out waiver forms to be exempt from coverage. A partner can opt-in to obtain workers' compensation coverage for themselves.

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Let's discuss the workers' compensation corporate exemption under which a bona fide owner of at least 20% of the outstanding voting stock of a corporation may waive in writing all the benefits provided by workers' compensation for themselves, if the waiver is not a precondition to employment.

Let's discuss the workers' compensation family member exclusion under which the parent, spouse or child of a sole proprietor, partner, or bona fide owner of 20% of the voting stock who is employed by that business may waive in writing all the benefits provided by workers' compensation.

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Let's discuss workers' compensation insurance and limited liability companies, known as LLCs. Owners of LLCs are not required to be covered by workers' compensation insurance and do not need to fill out waiver forms. The parent, spouse or child of a member of an LLC who is employed by that limited liability company may waive in writing all benefits provided by workers' compensation for themselves.

Let's discuss workers' compensation insurance and charitable, religious, educational or other nonprofit corporations. Duly elected or appointed executive officers are not covered by workers' compensation unless they are specifically included among those for whom workers' compensation insurance has been obtained.

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To assist in understanding Maine's workers' compensation coverage requirements by business entity type here is a chart provided by the Maine Bureau of Insurance which explains the various coverage requirements by entity type.

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Let's review the important subject of whether a particular business relationship is one of a contractor/subcontractor or employer/employee for purposes of the workers' compensation law. This is an important distinction because bona fide independent contractors are not employees and are responsible for complying with the workers' compensation law, as applicable. Independent contractors perform services for another under contract but are not under the essential control of the other person while performing those services. Exception to the Independent Contractor Rule, a land owner who contracts for wood harvesting may be liable for benefits to employees of the contractor if a certificate of insurance is not provided by the contractor.

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If you are not certain whether a person working for you is an employee or independent contractor, ask the person you believe to be an independent contractor to provide written proof in the form of a certificate of coverage that they have workers' compensation coverage for their employees; or you and the contractor can submit an application for Pre-determination of Independent Contractor Status to Establish Rebuttable Presumption (form WCB-261) to the Maine Workers' Compensation Board. If the application is approved, you will receive a rebuttable presumption that the contractor is an independent contractor. This essentially gives you the benefit of the doubt that there is not an employer/employee relationship requiring you to provide workers' compensation coverage. However, this presumption can be rebutted by the actual facts of your business relationship and the independent contractor finding overturned resulting in responsibility under the Workers' Compensation Act. If you don't take these steps, your insurer might consider the employees of the independent contractor to be your employees and take their payroll into account when calculating your premium.

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To obtain an application for waiver, form WCB-2C, or application for Pre-determination of Independent Contractor Status to Establish Rebuttable Presumption, form WCB-261, contact The Coverage Unit of the Workers' Compensation Board at this address.

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Here are some workers' compensation insurance shopping tips from the Maine Bureau of Insurance. Get proposals for workers' compensation insurance at least 90 days before your policy expires. This provides enough time for quote preparation, presentation and review. Your agent should ask for proposals from several companies and present them to you. Request information from your agent about the rating, loss control services and reputation of the prospective insurer if you are thinking about changing companies. Make sure to provide all information requested to get the best proposals.

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Following are workers' compensation insurance tips for managing your costs from the NAIC. Good management practices are essential to keep costs as low as possible. Include upper management in your safety program. Report injuries promptly to the insurance company. Request summaries of losses on a regular basis. Institute safety programs to include monthly safety meetings with employees. Use return to work programs offered by insurance companies, for example light duty and reduced hours. Use written job descriptions that establish physical requirements for each position when a large amount of physical activity is required. Designate your health care professionals for work-related injuries in advance. Maine law allows the employer to select the injured worker's health care provider for the first ten days after an injury occurs.

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Let's review what we've learned about workers' compensation insurance by reviewing a question from the NAIC's Insure U. Which of the following types of insurance are employers required to provide per the laws of the state of Maine?

- A. Professional liability insurance,
- B. Employment practices liability insurance,
- C. Workers' compensation insurance or
- D. All of the above.

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The answer is C. Workers' compensation insurance covers employees who suffer a work-related injury or illness. In the state of Maine, most companies are required by law to carry workers' compensation insurance for their employees.

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The next type of coverage that we will review is automobile insurance coverage. Let's start by answering the following question. Why does a small business need automobile insurance? Maine's Financial Responsibility Law requires that you buy the following motor vehicle coverages: liability insurance coverage, uninsured motorist coverage and medical payments coverage. Maine state law sets mandatory minimum coverage levels. Please note that the mandatory minimum coverage levels may be low for your situation. You may want to buy more coverage. Base your decision on your wish to protect your assets from additional claims above the minimum amounts. Remember that as you raise your coverage, your premiums will also increase.

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Most automobile liability policies have three major parts:

1. Bodily injury liability insurance,
2. Property damage liability insurance and

3. Uninsured/underinsured motorist coverage.

Let's examine these coverages. Bodily injury liability insurance does not protect you or your car directly. If you, or a family member living with you or someone using your vehicle with your permission, cause an accident in which other people are injured it protects you against their claims, as third parties, for damages such as medical expenses, lost wages, and pain and suffering. Property damage liability insurance pays for any damage you cause to the property of others; like a crushed fender, broken glass, or a damaged wall or fence. Your insurance will pay for this damage whether you are driving your car or it is being driven by another person with your permission.

Uninsured/Underinsured motorist coverage protects you directly. This coverage pays if you are hurt by a hit-and-run driver or by a driver who does not have auto insurance or whose auto insurance liability coverage is lower than yours and may not be adequate to pay for your injuries.

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The other type of required automobile insurance coverage is coverage for medical payments, also known as personal injury protection coverage or "PIP" coverage. This pays for the medical and funeral expenses for you or others hurt or killed in an accident while riding in or driving your car, regardless of fault. Medical payments coverage is a first party coverage that includes all reasonable medical and funeral expenses; covers you or members of your family if you are hit by a car when you are walking or if you are riding in another car and usually covers only expenses incurred within a specified period of time after an accident.

We just discussed the basic coverages required by law when you buy auto insurance. You must decide the appropriate levels of coverage to purchase and whether to purchase any of the available optional coverages which we will discuss next.

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Let's review the optional automobile insurance coverages. Collision coverage which pays for physical damage to your car when it collides with an object, like a tree or another car. Collision coverage may be required by your bank or credit union if you have a loan or by the lessor if you lease a car. It is usually not purchased for older, low value cars and it covers the cost of repairs or value of the car, not to replace your vehicle. Comprehensive coverage pays for damage to your car from almost all other causes (other than collision) including fire, severe weather, vandalism, floods, and theft. It also covers broken glass, such as windshield damage. Collision and comprehensive coverages are subject to deductibles, the "out-of-pocket" amount you agree to pay as part of a claim before the insurer is obligated to pay the rest of the claim, up to the applicable policy limits.

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Loan/lease coverage, also known as gap coverage, pays the difference between the actual cash value of the car and the remaining balance you owe on the loan. Rental reimbursement coverage pays a set dollar amount per day to rent a car for a specific number of days while your car is being repaired following an accident. Towing and labor coverage pays the cost of towing your car to the repair shop subject to the limit amount in your policy. Please note, that if you are a member of an auto club (like AAA), you probably already have this service and may not want to duplicate your coverage. Note also that audio or visual electronic equipment, tapes, records, discs and other media that

is not necessary to the operation of the vehicle is generally excluded under collision and comprehensive coverage.

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You will need to decide whether to purchase personal or commercial automobile insurance coverage. While personal and commercial policies provide essentially the same types of coverage, commercial policies have higher liability limits (generally \$1 million) and may have provisions that cover rented and other non-owned vehicles, including employees' cars when driven for company business. There are some factors to help determine whether a personal or commercial policy is appropriate for your business, including who owns or leases the vehicle, you individually or the business as an entity; who drives the vehicle, you or your employees; and how is the vehicle principally used, transporting people, delivering packages or carrying hazardous materials? Discuss these issues and your specific situation with a licensed insurance agent knowledgeable about commercial automobile insurance.

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Following are some commercial automobile insurance tips and considerations from the NAIC. If your business owns or leases a vehicle, make sure that its name is listed on the policy as the principal insured. If you are relying on either a personal automobile insurance policy or personal umbrella liability policy to provide you with protection for your company's use of vehicles, look closely at the policy provisions, as business-related liability might be excluded from coverage. If your employees operate a company car, make sure they have good driving records and are trained properly. Consider increasing insurance on your business vehicle to cover permanently attached items such as a generator or storage unit.

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According to the National Association of Insurance Commissioners, the following factors can affect the cost of your automobile insurance premiums. Premiums are linked to the type of vehicle driven. Check the applicable insurance rates before you chose a new car or truck for your business. Safety devices can help reduce your premiums, for example anti-lock brakes, side air bags, automatic seat belts and daytime running lights. Anti-theft devices, such as alarm systems and GPS (global positioning systems), can help reduce your premiums. Where you park your vehicle can impact your premiums. If you have access to an indoor garage or locked parking lot, places that decrease the likelihood of theft, you may qualify for lower premiums. The geographic region in which your business operates affects premiums. The number of claims you have previously filed can impact your insurance costs.

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The coverage limits you choose affect the premium. The higher the coverage amount, the higher your premium. If you're using your vehicle to conduct business, you may want to consider a higher liability limit so that coverage protects both your business and personal assets if you are sued due to an accident. The cost of insurance is directly linked to your policy's deductible amount. This is what you agree to pay as part of a claim before your insurer pays the remaining amount toward that claim. For example, if your vehicle incurred \$1,000 of covered damage in an accident and your deductible was \$250, you would pay the \$250 first and your insurer would pay the remaining \$750. The higher the deductible, the lower your premium.

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Let's review what we've learned about automobile insurance coverage by reviewing a question from NAIC's Insure U. True or false, if you own vehicles for your business, your personal automobile insurance provides adequate coverage to protect you and your employees against liability claims resulting from car accidents.

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The statement is false. If you own vehicles for your business, you likely need to obtain commercial automobile insurance to protect yourself and your employees against liability claims as the result of motor vehicle accidents. Your personal automobile insurance policy or personal umbrella liability policy likely exclude business-related liability from coverage and any coverage under those policies might be inadequate to protect your assets. Check with your insurance agent or company to learn more about the automobile insurance coverage that is appropriate for you and your business.

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Let's spend a few minutes discussing the insurance needs of home-based businesses. According to the Small Business Administration, home-based businesses are those businesses exclusively run from a home and no other location. Home-based businesses comprise roughly half of all US businesses and generate a huge amount of economic activity. Among the top types of home-based businesses are the following: professional, scientific and technical services; consultants and freelancers; construction; retail and specialized services, like music instructors, daycare, etc. According to the SBA 90% of home-based businesses are sole proprietors. 7.2% have fewer than five employees, just over 1% have 5-19 employees and about 0.2% have 20 or more employees.

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Regardless of their size or type, home-based businesses (like all businesses) should be properly insured to protect their assets and their owners against certain risks. Often, home-based businesses are underinsured; a fact that owners discover after an incident occurs when they realize the insurance they have is inadequate to address the type and magnitude of the problem they face after a loss. If you have a home-based business, it's a good idea to learn about the range of insurance products available for your business. While your specific business may not need to purchase certain types of insurance coverage it is important to understand your potential risks and insurance options.

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Let's discuss home-based businesses and workers' compensation insurance. As a general rule, if your home-based business has employees you must purchase workers' compensation insurance to cover your employees. Following are some tips and considerations on workers' compensation insurance from the NAIC. If you own machinery and it is operated by your employees, you are exposed to the risk of serious injuries. Always provide goggles, gloves and other recommended safety gear to help prevent accidents. Keep your home office space in good physical condition. Maintain carpeting and railings on stairs. Make sure telephone and computer wiring is in good working condition and does not create any hazards. The United States Department of Labor's Occupational Health & Safety Administration (OSHA) offers specific information by industry type and provides other helpful resources to small businesses on how to comply with safety requirements that can limit work-related injuries. Go to the OSHA website for more information.

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Let's discuss home-based businesses and automobile insurance. In some cases, home-based business owners who only use their vehicle occasionally to deliver goods or transport equipment can be covered under their personal automobile insurance policy. However, depending on the particular use of your vehicle, you may need to purchase higher coverage limits to protect yourself and your business. If you are transporting people for any reason in the conduct of your business, you should consider commercial automobile insurance coverage. You could be held liable for injuries or damages caused by an employee who is driving a vehicle to conduct your business, regardless of who owns the vehicle. If you are relying on either a personal automobile insurance or personal umbrella liability policy to provide you with protection for your company's use of vehicles, look closely at the policy provisions, as business-related liability may be excluded.

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Following are steps you can take to minimize risk in the workplace and to help lower your insurance premiums from the NAIC. Install fire and security alarms. Plan and train employees for an emergency on the premises, such as fire and evacuation. Have employees keep wallets and other personal items in a secure place. Keep the business' cash and valuables in a safe. If employees work with machinery, provide goggles, gloves and other recommended safety gear to help prevent injuries. Keep office space in good physical condition. Maintain carpeting and railings on stairs. Make sure telephone and computer wiring is in good working condition and does not create any hazards. If your employees operate a company car, make sure that they have clean driving records and are trained properly.

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Let's review the elements of an insured loss. In this illustration the total insured loss is \$300,000, with a policy deductible of \$2,500. Please note policy deductibles are not applicable to all types of coverage. The policy limit in this illustration is \$250,000. Under this example, the insured would be responsible for payment in the amount up to the policy deductible and over the policy limits; in this case \$0 to \$2,500 and \$250,000 to \$300,000, for a total policyholder responsibility of \$52,500. The insurer on the other hand is responsible for the amount above the policy deductible up to the policy limits; in this case from \$2,500 to \$250,000, for a total insurer responsibility of \$247,500. It is important to understand the elements of an insured loss in order to make sure that you purchase an adequate and appropriate amount of insurance coverage.

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Following are additional informational resources including: the NAIC Consumer Information Source, the NAIC Insure U for Small Business, the Maine Bureau of Insurance and the Maine Insurance Agents Association.

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If you have further questions about your workers' compensation or automobile insurance coverage please contact a licensed insurance agent or broker or your insurance company. They are the best resource for answering questions about the type of coverage that is right for your business.

Thank you for participating in our online workshop. We would appreciate any feedback you may have about this workshop. To take a short survey please click the survey link at the bottom of this slide.

Links Included in Presentation with Hyperlinks

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- Maine Insurance Agents Association
 - <http://www.iiaba.net/me/default?ContentPreference=ME&ActiveTab=STATE&ActiveState=ME>
- Maine Bureau of Insurance
 - <http://www.maine.gov/pfr/insurance/>

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- US Department of Labor's Occupational Health & Safety Administration (OSHA)
 - <http://www.osha.gov/dcsp/smallbusiness/index.html>

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- NAIC Consumer Information Source (CIS)
 - <https://eapps.naic.org/cis/>
- NAIC Insure U for Small Business
 - <http://www.insurance.insureuonline.org/smallbusiness/>
- Maine Bureau of Insurance
 - <http://www.maine.gov/pfr/insurance/>
- Maine Insurance Agents Association
 - <http://www.iiaba.net/me/default?ContentPreference=ME&ActiveTab=STATE&ActiveState=ME>