

FELLOW EMPLOYEE EXCLUSION, BEWARE!

Have you ever heard of the Fellow Employee Exclusion? Well it is prevalent in many commercial auto policies and other commercial liability policies. Yes, you guessed it; many aviation insurance policies contain it too. Look at your policy. It may say, "... Nor will we cover any liability claim against any employee, including your own employees, who, while working within the scope of his or her duties, injures someone who works for the same employer".

The Fellow Employee exclusion is designed to eliminate coverage in an employee versus employee lawsuit. This would occur as the result of one employee's negligence in a work related injury case.

The employer carries worker's compensation, which is considered to be sole remedy if a worker is injured on the job. Sole remedy means, the injured employee is entitled only to the benefits designated by the state of domicile or the state in which the injury occurred. In most cases, the injured employee is entitled only to those benefits and cannot pursue legal action against the employer in search of a higher settlement.

What about the worker (employee) who caused the accident due to his negligence? He has no protection under his personal liability policies (homeowners, personal auto, personal umbrella) due to specific exclusions dealing with work related losses. So, he must be covered under his employer's policies, right? Wrong. The employer's business auto policy, or in the event of an aircraft, the employer's aircraft liability policy, may exclude coverage for the negligent worker/employee.

This could be the owner of the company who flies or drives on company business and carries employees as passengers. In many cases, the owner of the company is a stockholder of the corporation, but in reality is also an employee of the company and is subject to the fellow employee exclusion as any other employee.

How can an employee be covered for such a liability?

Find out if your policy contains such exclusions. If it does not, there is coverage for the employee to the limits of the policy. If it is excluded, ask your agent if your particular underwriter will remove the exclusion by endorsement. This may be good advice for other liability policies as well. Business auto policies often contain this exclusion.

In the general property and casualty industry, the "Fellow Employee Coverage" endorsement may be written with respect to all employees or for specific employees or positions. This form usually states, "The Fellow Employee Exclusion contained in Section II – Liability Coverage does not apply to the "employee(s)", job title(s) or position(s) named or listed in the schedule". A broader wording may say, "The Fellow Employee Exclusion contained in Section II – Liability Coverage does not apply." As in the aviation insurance industry, some underwriters make fellow employee coverage available for a fee, some at no charge and others will not or cannot offer it at all.

I have often heard the advice, “just add the employee as an additional insured”. The inference is that naming an employee as an additional insured is supposed to be the universal solution. Just naming your employee pilot as an additional insured will not solve the fellow employee dilemma. The additional insured is protected in many situations but is subject to all the exclusions, terms, and conditions contained in the policy. If the fellow employee exclusion is in the policy, it applies to all employees whether added as an additional insured under the policy or not.

Remember, most liability policies (except worker’s compensation policies) exclude work related injury, death or disease. An example of this policy wording might say, “What is not covered: We do not cover any bodily injury to any person in the course and scope of employment by you or by someone we protect for any claim against you, against someone we protect, or against a fellow employee.” In other words it is expected that the employer purchases worker’s compensation insurance. This exclusion also applies to the additional insured.

Agents, as a rule, do not automatically request that the fellow employee exclusion be removed. Some do not know it exists, others do not know the client’s needs. Do not assume that this detail meets your needs or wishes. Call your agent and ask if this coverage is needed. Remember, your particular insurance company may not offer fellow employee coverage. Q