As we’ve seen over the past two years, the world has become a much riskier place for many businesses. From the pandemic, to cybercrime, to sociocultural issues, new risks now impact more companies than ever before. What’s more, digital transformation has made these risks exponentially worse for business leaders. Digital risks are always evolving, they happen faster, and they strike with more severity than traditional D&O and EPL issues.

As a result of these emerging and expanding threats, a greater number of business leaders have found (or will find) themselves in the crosshairs of a legal action, held responsible after negligence or even a casual oversight of unforeseeable disaster.

“With the average D&O lawsuit costing over $120,000, the impact can be catastrophic for small businesses.”

PATRICK MITCHELL
EXECUTIVE RISKS LEAD AT COALITION
Coalition recently conducted a study in partnership with Wakefield Research, surveying 1,000 small businesses executives about their understanding and experiences regarding the risks they face today. In the following report we share highlights from these findings and provide examples and context to help illustrate the current risks—and the demand for coverage.

Brokers continually strive to educate clients on the best defense against unpredicted losses. Now a new comprehensive Executive Risks solution from Coalition enables brokers to offer business leaders active protection from digital threats—unlike any coverage previously available. In this report, you’ll learn:

1. The many new and emerging risks now facing small business directors and owners

2. Real-world data and examples that quantify and illustrate the impact of these threats

3. How Coalition’s new Executive Risk offering can help protect your policyholders continuously, even as the world and their circumstances change.

The guide is designed to help brokers navigate the fast-moving executive risks landscape and educate clients about the growing financial consequences facing their businesses today. Learn how you can do more than just cover their potential losses, but also actively protect their business on an ongoing basis.

Nearly a third of small business executives didn’t purchase management liability coverage because they didn’t realize coverage was available for them.”

—COALITION EXECUTIVE RISKS SURVEY, WAKEFIELD RESEARCH, 2021

Directors & Officers (D&O) Insurance
D&O is liability insurance covering company leaders and board members for claims made against them while serving in those positions. D&O can protect the directors and officers of both privately held firms and nonprofit companies.

Employment Practices Liability (EPL) Insurance
This insurance covers wrongful acts having to do with employment issues. The types of claims that EPL covers include discrimination, sexual harassment, retaliation, and wrongful termination.
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Technology continues to accelerate the pace of change for nearly all organizations. Digital transformation has also changed the nature of corporate and executive risk. As recent widely-publicized cyber attacks have demonstrated, digital threats strike faster and with more severity than traditional hazards. They’re also more complex and come with unforeseeable long-tail effects—as threat actors can gain access but lie in wait for the most opportune moment to cause mayhem.

The suddenness of the pandemic also brought into focus the effect that digital transformation has on the survival of not just businesses, but entire business models. Simplified ecommerce tools, mobile technology, and cloud-based services have not only helped many companies survive challenging times but also level the competitive playing field. However, these benefits have also exposed owners and officers to many complex and unfamiliar risks.

28% of respondents experienced some form of litigation in the past 24 months.

COALITION EXECUTIVE RISKS SURVEY, WAKEFIELD RESEARCH, 2021

In the past, organizations focused on protecting physical assets, including their offices, equipment, inventory, and property. Today, a company’s digital and intangible assets are often more critical to their operations—their data, their brand, their strategy, and the people on their team (with their unique knowledge and abilities).

In an increasingly litigious landscape, executives face constant scrutiny and responsibility for the stewardship of these assets, including those obtained
from, managed by, or shared with third parties. Here are some ways digital transformation can expose executives to new liabilities:

1. **Remote work and recruitment.**
   Even before the pandemic, many companies were already evolving to an increasingly distributed workforce. Since 2020, many more organizations have been forced to support remote work and navigate remote hiring and onboarding, perhaps with little time for thorough research into the best digital tools services.

2. **Outsourcing of digital functions.**
   Many companies hire third-party vendors to handle some or all aspects of their digital strategy, from designing websites to automating back office processes. Executives at firms on both sides of these outsourcing arrangements must understand and comply with applicable regulations. Litigation resulting from the failure of these strategies can have dire financial consequences for a small business.

3. **Failed digital transformations.**
   Businesses also need to deal with the consequences of bad decisions as they choose to digitize—from no visibility over a fragile supply chain to the wrong CRM system to deciding not to add an online sales presence. All of these decisions have financial consequences which can result in shareholder litigation.

Such digital dependencies (and the quickly-changing nature of work) present numerous personal risk exposures for corporate leaders.
Business leaders were forced to act quickly to respond to the COVID-19 pandemic. They faced abrupt decisions—including supporting remote work and online ordering, reducing hours of operation, and enacting intense health and safety precautions. These decisions weren’t without consequence, and 57% of the businesses we surveyed were negatively impacted by the pandemic. These sudden changes have made executives at all-sized companies more vulnerable to legal scenarios, including:

1. **Business slowdown-related terminations.** Shortened schedules and even some mandated lockdowns led many employers to make fast decisions about layoffs. When perceived as unfair, such actions have subjected many companies to lawsuits. Mass resignations of employees or surprise partings of directors in the wake of the pandemic may draw extra scrutiny from regulators or shareholders.

2. **PPP and EIDL loan fraud investigations.** The SBA’s Paycheck Protection Program (PPP), Economic Injury Disaster Loan, and other federal loans have resulted in a flurry of fraud investigations by the IRS, FBI, and Justice Department. Even simple issues such as company information mismatching what’s on government records can trigger a costly fraud investigation and defense.
3. **COVID-19 related employer obligations.** Executive orders and changes to federal regulations may affect business owners who fail to comply with proposed vaccination mandates. These rules may place about two-thirds of American workers under some kind of vaccine requirement.

4. **Employer-mandated COVID-19 precautions.** Many private employers have instituted their own vaccination or testing requirements for workers. However, companies may expose themselves to EPL litigation if they fire an employee “for cause” for refusing to get fully vaccinated against COVID-19. Conversely, some workers have sued employers for adding to the risk of coronavirus exposure due to failure to train employees or failure to adapt or adhere to policies and procedures required by law. Such legal challenges promise to become even more common as businesses return to in-person operations.

5. **Customer vaccination proof cases.** Many companies require their patrons to be vaccinated. However, Republican governors in some states such as Texas and Florida (which threatens a $5,000 fine) have signed executive orders attempting to prevent businesses from demanding proof—or face penalties and the loss of state funds.

6. **Price-gouging lawsuits.** Numerous retailers have been sued by consumers accusing them of charging inflated prices for certain products in high demand at a time of crisis, including N95 masks, sanitizing supplies, and even foodstuffs.

7. **Denial of refund cases.** As the ongoing pandemic continues to disrupt scheduled travel, gym memberships, hospitality reservations, and entertainment events, numerous lawsuits have already been filed by consumers against companies who deny refunds.

*62% of all businesses bought additional insurance coverage as a direct result of COVID.*

**COALITION EXECUTIVE RISKS SURVEY, WAKEFIELD RESEARCH, 2021**
8. Other COVID-related lawsuits.

There has also been a wide variety of other D&O and EPL lawsuits, including:

- Claims alleging the company’s executives downplayed the impact of the pandemic on the business
- Allegations of inadequate health and safety measures in stores
- Discrimination lawsuits brought about by employees in high-risk groups for contracting COVID-19
- Claims against companies alleging that employees were mistreated or fired based on suspicion of illness
- Wage and hour (e.g., overtime) claims stemming from the need to work at home
- Lawsuits claiming a company was inconsistent about its policies regarding sick leave, working from home, and other accommodations

With all these pandemic-related risks, it’s no wonder such coverage is in high demand. According to the businesses we surveyed, 62% bought additional insurance coverage as a direct result of COVID-19. Why? Over half (57%) of the businesses surveyed said that COVID-19 negatively affected their businesses. The most common reason for which businesses bought insurance during COVID-19 was simply as a precautionary measure due to the uncertainty they faced, accounting for 40% of businesses surveyed.

Have you purchased additional insurance as a direct result of COVID-19?

- Yes: 38%
- No: 62%

Has COVID-19 negatively affected your business?

- Yes: 43%
- No: 57%
Over the past 18 months, we’ve seen a record amount of financing activities that have heightened the exposure of directors and officers to litigation. Two of the most common events are mergers and acquisitions (M&A) and equity/debt financing activities. Of the small businesses Coalition surveyed, over half (55%) were involved in some form of M&A in the past 24 months and 38% plan to either raise equity or issue debt some time in the next 12 months.

Typically, litigation stemming from financing activities is covered under a directors and officers policy, leaving uninsured companies exposed to potentially disastrous losses. There are a number of financing-related scenarios in which corporate officers can be directly accused:

1. **Merger objection litigation.** It’s becoming increasingly common for shareholders to accuse company officers of conducting a merger improperly due to a conflict of interest. Currently there is one lawsuit filed for almost every public company merger transaction.²

2. **SPAC class actions.** Many organizations seeking to fast track an IPO choose to form a special purpose acquisition company (SPAC)—a shell company for the sole purpose of merging with or acquiring. 2021 has seen a surge of lawsuits and SEC investigations charging SPAC directors with allegedly providing inadequate disclosures to shareholders.

55% of small businesses completed at least one merger/acquisition in the past 24 months.

COALITION EXECUTIVE RISKS SURVEY, WAKEFIELD RESEARCH, 2021
3. **Bankruptcy filings.** Particularly common for retailers, restaurants, and other small businesses in the wake of the pandemic, bankruptcies often come with lawsuits by co-owners, creditors or others alleging that the company’s owners or directors committed acts, errors or omissions that caused the insolvency.

4. **Other fiduciary-related issues.** Company executives may also face such cases as breach of contract, fraud or conspiracy, unfair treatment of shareholders, and shareholder derivative suits.

Ready-mix concrete manufacturer Argos was accused of conspiring to fix prices on projects in the Georgia area. If found guilty of violating The Sherman Act, they could have faced a penalty of up to $200 million. Not only that, but the company’s directors and officers could be held personally financially liable. Ultimately, Argos admitted to participating in the conspiracy and agreed to pay a $20 million criminal penalty.

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**Has your small business been involved in a merger and/or acquisition?**

- Yes: 45
- No: 55

**Is your business planning to raise equity or issue debt in the next 12 months?**

- Yes: 38
- No: 62
Employment practices liability risks are rising

Especially in the current climate, businesses are increasingly vulnerable to EPL issues—not only related to employment matters but also to their company’s environmental, social, and governance (ESG) practices. These may trigger event-driven litigation against directors and owners over their decisions, actions, and statements regarding:

- **Diversity & inclusion and equity**, including board member diversity derivative lawsuits
- **Discrimination or harassment** based on sex, race, age or disability, as well as publically-revealed #MeToo allegations
- **Wrongful termination** and other employment-related issues such as promotion or hiring rejections
- **Employee benefits mismanagement** surrounding policies such as paid leave and insurance
- **Activism incidents** such as social justice protests, fundraising campaigns, or even climate-change-driven litigation
- **Employee fraud**, either acting alone or in collusion with customers or suppliers, including offering unfair discounts
- **Whistleblowing**, where managers ignore issues raised or punish those reporting
- **Health & safety violations**, including owners' false statements regarding OSHA or fire regulations

Coalition’s survey found that **26% of companies with 100 or more employees experienced an EPL claim in the last two years**, compared to 12% of smaller companies. However, EPL matters have the potential to impact owners at smaller businesses because they are typically more directly involved in employment decisions—and therefore may be seen as more personally liable.

Suffering racial slurs at work is an appalling situation that an employee of a Smashburger experienced from his manager in Long Island, NY. The employee sued Icon Burger Acquisition, LLC, Smashburger’s parent company. The case went to trial for violation of Title VII of the Civil Rights Act of 1964. Icon was found liable and paid damages of $70,000 in addition to attorney fees and court costs.
Small businesses are not immune to liability claims

Despite facing a growing set of executive risks, many leaders often don’t adequately protect their business. Small businesses often think they are too small, don’t know what they need, can’t find the coverage they want, or are having trouble getting approval from senior management.

Risk is a great equalizer for organizations; no company size or revenue figure can keep executives safe from being targeted. Any privately held organization’s officers or board members or even employees can be sued over the decisions, errors, willful actions, or even statements they make—by a variety of potential parties, including:

- Customers and clients
- Partners or co-owners
- Investors and shareholders
- Employees (current, former, or rejected)
- Competitors
- Creditors and lenders
- Government agencies

“36% of small businesses with D&O coverage have experienced a claim in the last two years.”

COALITION EXECUTIVE RISKS SURVEY, WAKEFIELD RESEARCH, 2021

Our survey found that about one in three (36%) small businesses with D&O coverage have experienced a claim in the last two years, followed by nearly one in five (18%) of those with EPL coverage. These claims are also expensive—the average cost for a D&O lawsuit for businesses up to 250 employees is $120,590 and can range into the millions of dollars, and the average EPL loss is $68,867.

This finding reaffirms a key study by the Small Business Administration’s Office of Advocacy, which found that every year, 36% to 53% of small businesses are sued, and 43% of
small businesses said that they had at least been threatened with a lawsuit. The SBA calculated that for every $1 million a business earns, they may spend $20,000 on lawsuits. Even if a lawsuit does not go to trial or even arbitration, the costs of defending litigation can be catastrophic to small businesses—often forcing them to cut operational or workforce expenses to make up for the loss, causing a downward cycle of lower profits.

In our survey, the most common reason leaders didn’t purchase executive risks coverage was that they believe their business is too small to need it. This includes those not purchasing D&O (48%), EPL (46%), Fiduciary Liability (45%), and Crime (41%) coverage. Smaller companies with fewer than 100 employees were twice as likely to say they’re too small to need D&O coverage as compared to larger companies.

Even if they understand their exposure, many small businesses aren’t aware that executive risks coverage is available for them. Amongst the executives we surveyed, about a third cited lack of knowledge for not intending to buy coverage for EPL (30%), fiduciary liability (29%), and D&O (28%).

Many small businesses are hard-pressed to find insurance that fits the bill—or mistakenly believe that general liability or umbrella insurance will take care of every possible lawsuit.
Coalition is your Executive Risks partner

You may already know Coalition for our industry-leading approach to cyber insurance. Now we are proud to introduce executive risks insurance as well. Coalition’s unique approach not only enables you to offer comprehensive executive risks coverage, including D&O and EPL, we also drastically streamline your process—from quoting and binding to servicing renewals—and we provide active monitoring for clients’ risk exposures and ongoing support. Here’s how:

- **Real-time data-driven underwriting.** We underwrite our executive risks using our real-time Coalition Risk Platform that canvases publicly available data to capture an accurate picture of any organization’s risk profile.

- **Faster quotes.** You can rate, quote, and bind insurance online in minutes—or milliseconds via our API—pre-populating data and eliminating the need for back-and-forth questions during the quoting process.

- **Exclusive risk assessment for brokers.** Coalition provides a personalized executive risk assessment for all submissions, providing a complete picture of the data that informs our underwriting and the unique risks that impact each business. Our real-time data and informative content allow you to better communicate the value of executive risks insurance to your clients.

- **Ongoing monitoring for policyholder issues.** Our service doesn’t end with binding. Our system can even notify you of missing key company changes and milestones throughout the policy term, providing unprecedented visibility into business changes requiring action.

- **Solutions built by insurance experts.** Coalition is home to professionals with decades of experience helping brokers and their clients efficiently purchase the insurance they need.

- **Respected insurance carrier partner.** Coalition’s Executive Risks coverage is backed by Zurich North America*, providing a high quality product and award-winning claims service, admitted in 47 states and the District of Columbia.

*Coalition’s executive risks insurance products are backed by Zurich’s financial strength and Stability, including its A+ rating from A.M. Best (as of September 30, 2021).
Key benefits of Executive Risks coverage

With the pace of digital transformation, as well as the ongoing pandemic, executive risks are multiplying and evolving like never before. Liability claims are common and result in high and often unexpected costs for small businesses. Coalition’s survey found that 36% of small companies with D&O coverage and 18% of those with EPL coverage suffered a claim in 2021.

Coalition’s Executive Risks coverage provides broad protection from fast-moving and unforeseen risks to help business leaders navigate their exposure in the digital economy. The value is clear:

1. Provides financial protection from catastrophic losses. Average losses for small businesses are very high, dedicated coverage helps small businesses stay resilient to these risks, even if they lack internal expertise (like HR, IT, and legal staff) that could help prevent such liabilities.

2. Provides protection from third-party risks. Companies maintain relationships with external providers of goods or services—whose actions or failures may someday call a company director’s decisions into question.

3. Covers many legal costs and awards that general liability won’t. An additional Executive Risks policy can save companies millions in potential losses that many executives don’t realize are excluded from their existing business insurance.

4. Investment in insurance is small compared to potential losses. The SBA Office of Advocacy reports that for every $1 million a business earns, they spend $20,000 on lawsuits. Statistics tell us that an employment lawsuit is three times more likely to happen than for an office to burn down.

5. Transferring risk lets executives focus on running and growing their business. Effective and agile decision making can be burdened by exhaustive consideration of possible legal exposures. Executive risk insurance provides companies with the peace of mind to operate strategically rather than from a place of fear.
Help solve executive risks for your clients

Liability is part of the cost of doing business in this highly connected era. Coalition insurance is different because we provide more than a hedge against financial loss after a potential event. We actively monitor, alert, and can help mitigate threats before they impact your clients. This different approach lets you provide much more peace of mind to the companies you serve, helping your policyholders prevent business-stopping events before they happen.

As a partner to your broker services, our focus is on improving the overall process—far beyond the quote and binding. In addition to actively protecting your clients, we provide tools to elevate your own expertise and improve client service through up-to-date educational resources.

For more information, contact Coalition today.

Endnotes


Methodological Notes
The Coalition Executive Risks Survey was conducted by Wakefield Research among 1,000 Senior Executives who are insurance decision-makers at companies of 1-250 employees using an email invitation and an online survey.