JATC Liability Insurance: Customized Coverage for Multiemployer Training Funds

While training funds are subject to the same regulations as other multiemployer plans, their insurance needs are often far more complicated. Traditional fiduciary liability insurance and fidelity bonds may provide sufficient protections to training funds, but they fall short of addressing all of the unique exposures facing the affiliated joint apprenticeship and training committees (JATCs).

Without adequate single-policy options available, JATCs have often resorted to building their own insurance programs through multiple policies or an endorsement to existing policies that, even in combination, are not always a perfect fit for their needs. This issue of Insurance Shield examines many of the exposures JATCs face and discusses a relatively new, single-policy option designed to better meet their needs.

Traditional Insurance Protections — Not Enough for Most JATCs

For decades, multiemployer training funds have provided vital skills training to electricians, carpenters, plumbers, construction laborers and numerous other types of trade workers. As with other types of multiemployer plans, a training fund is overseen by a joint labor-management board whose trustees are subject to strict standards of fiduciary conduct under the Employee Retirement Income Security Act (ERISA).

Because of these standards, fiduciary liability insurance is a must for a training fund, providing defense, settlement and judgment coverage if there are allegations of a fiduciary breach. ERISA also requires that every trustee and anyone who handles program funds obtain a fidelity bond, which protects the training fund from asset loss due to fraud or dishonesty. Training funds commonly obtain fiduciary liability insurance and fidelity bond protection by having a larger related benefit plan or plans add the training fund to their policies.¹

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¹ This can typically be done at minimal extra cost and without necessitating higher limits of liability for the larger plan(s).
While the training fund’s board is responsible for prudently managing fund assets, the fund’s JATC handles the operation of the training program itself, from hiring instructors to setting curriculums and managing employee relations. Properly insuring a JATC is not so straightforward. Because of their educational and employment functions, JATCs face a slew of exposures falling well outside the scope of traditional fiduciary liability insurance and fidelity bond coverage.

**Top Exposures for JATCs**

Historically, the biggest exposures for JATCs have been discrimination and harassment claims, arising from two general scenarios:

1. During the selection of apprentices for the training program, applicants who are denied entry allege discrimination in violation of state or federal law.
2. Apprentices participating in or terminated from the program allege discrimination, harassment or other employment-related offenses in violation of such laws.

Court-ordered penalties for these types of violations can be severe. In the past year, a major union and its JATC in the Northeast were ordered to pay roughly $1.65 million to partially settle long-running Equal Employment Opportunity Commission (EEOC) claims of discrimination against black and Hispanic journeypersons in hiring and assignments.

Regulators show no sign of relaxing their efforts to clamp down on discrimination. Although EEOC discrimination claims overall have declined from a recent peak in 2011, they remain significantly above pre-recession levels, and the EEOC has identified “eliminating barriers in recruitment and hiring” as one of its six nationwide priorities. In addition, the Department of Labor recently expanded federal rules against discrimination in apprenticeships — by, among other things, strengthening the affirmative action requirements and adding age, genetic information, sexual orientation and disability to a list of prohibited forms of discrimination.

Such developments call for continued vigilance on the part of JATCs to ensure they are following all legally-mandated protocols to prevent discrimination and harassment, including updating and communicating their antidiscrimination policies to employees and students. If and when such claims are filed, adequate insurance is needed to protect the program’s assets.

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2 There can be one or multiple JATCs affiliated with a particular training fund.
3 Trustees of a training fund can — and often do — serve on an affiliated JATC, but these bodies may be considered separate legal entities, particularly when questions of liability arise.
Other Common Exposures

The list of exposures for JATCs does not end there.

- The committees can be sued for everything from plagiarism of instructional content to defamation in their marketing materials.
- Former students and outside third parties can sue the JATC for improper training for incidents arising from the student’s actions in the workforce.
- The safety hazards inherent to many building trades pose yet another set of liability risks for JATCs — if, for example, a student is hurt in training and sues for bodily injury.
- Owning or leasing training facilities, equipment and materials creates still more risks, including potential legal claims over property damage.

Filling the Coverage Gaps: An Imperfect System

Based on our review, the current programs attempting to cover these various exposures under a single policy are lacking, spurring too many JATCs today to seek coverage under multiple, non-customized policies. For coverage of discrimination or harassment claims, for example, committees often end up choosing one or a combination of the following policies:

- **Union Liability Insurance**—These policies provide broad coverage for many of the employment-related exposures described above, but there are potential drawbacks. If an affiliated union is the policyholder, union officials may be reluctant to extend the insurance protections to non-union JATC members. In addition, because union officials are often involved in the preliminary phases of JATC admissions, many union liability policies are designed to cover only discrimination claims by denied applicants.

- **Employment Practices Liability (EPL) Insurance and Not-for-Profit Directors’ and Officers’ (NFP D&O) Liability Insurance**—These policies also provide broad coverage for employment-related exposures. However, when dealing with claims against the insured for failure to educate, most policies exclude professional errors and omissions for this exposure.

For other common exposures, JATCs are often directed to obtain separate policies such as general liability, property, casualty and educator’s liability insurance to fill coverage gaps. This piecemeal approach may enhance the committee’s insurance protections overall, but it also can create redundant areas of coverage — making insurance a greater expense than it needs to be for the typical JATC with a limited budget to begin with.

Another concern with overlapping areas of coverage is that a single lawsuit may trigger multiple policies at once, leading to disputes between carriers over who is responsible for coverage. When facing a claim, no policyholder should have to deal with such complications and possibly exhaust their current policy limits, potentially leaving the board without sufficient limits of liability for future claims.
A New Type of Coverage

A long-overdue solution is now available. Seeing an unmet need, Segal Select Insurance Services has worked with Ullico Casualty Group to design what we believe is a superior choice for JATCs — a tailored version of Ullico’s standard union liability insurance that combines several forms of specialty coverage under a single policy for all committee personnel.

This customized policy includes:

- **EPL insurance** that is broad enough to:
  - Include teachers as covered employees and,
  - Cover discrimination and harassment claims by prospective, current and former apprentices, addressing two of the major shortcomings of other policies.

- **Personal injury and advertising liability insurance** for claims of advertising liability, personal injury, copyright infringement, media and defamation occurring in the course of business.

- **Educator’s liability coverage** for the many risks a JATC faces when its graduates use their job and safety training in the workforce.

- **Sub-limited defense coverage** for individuals accused of personal profit, fraud or conflict of interest, known as a “Final Adjudication.”

When combined with traditional fiduciary liability insurance and ERISA-compliant fidelity bonds, this new type of insurance comes closer than any known product to providing the full scope of coverage needed by both a training fund and its JATC(s) — and it is available at rates tailored specifically to the coverage needed.

How Segal Select Can Help

Segal Select can assist multiemployer training boards and committees in understanding and obtaining quotes for customized JATC coverage, as well as for fiduciary liability insurance, fidelity bonds and other essential types of coverage, such as cyber liability insurance. We provide free policy reviews for an in-depth evaluation of your coverage needs.

Segal Select can also:

- Conduct benchmark analyses for clients,
- Solicit and evaluate quotations,
- Negotiate pricing and contract terms, and
- Present quote results and make recommendations.

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To Learn More

To discuss any of these services, contact one of the following Segal Select experts:

- **Diane R. McNally**
  Principal, SVP and Senior Consultant

- **Matthew Jackson**
  SVP and Consultant

- **Mark A. Dobrow**
  VP and Consultant

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The advantages you gain with Segal Select as your trusted broker include:

**Experience:** Our staff includes 10 licensed insurance brokers with an average of almost 15 years of experience per broker. This considerable experience means we can help assess other insurance lines and even negotiate with carriers to develop product innovations that keep clients properly insured.

**Knowledge:** Our clients, fund counsels and insurance carrier underwriters recognize our technical knowledge. We regularly provide technical communications and host educational webinars.

**Transparency:** Segal Select is primarily compensated through commissions paid by the insurance carriers. Annually, we disclose to each client, in writing, the amount of commissions we received during the prior year for that client. Learn more about Segal Select’s Compensation for Insurance Brokerage Services.

**Service:** With our specialized knowledge, we can explain complex coverage issues, respond to inquiries, and clearly and effectively communicate the technical aspects of these coverages to trustees.

**Resources:** We use a proprietary and confidential fiduciary liability insurance benchmarking database to analyze the activities of more than 1,000 plans. Our database — the most comprehensive of its kind — can help you decide what limit of liability to purchase and evaluate the competitiveness of a quoted premium.