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Occurrence vs Claims-Made: Roles within Environmental Coverage

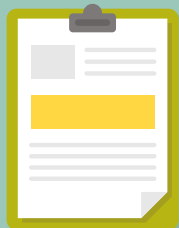
*5 Key Things to Know About Occurrence vs Claims-Made
Environmental Coverage*



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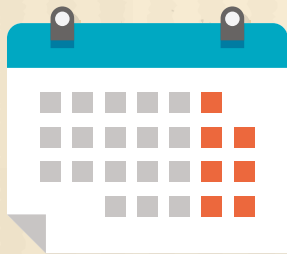
Back to the Basics

**Occurrence
- vs. -
Claims-Made**



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Never, Ever Advance a Retroactive Date on a Claims-Made Policy



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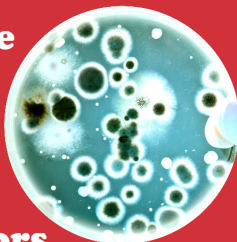
**Site Pollution Liability
is Almost Always on a
Claims-Made Basis
and Here's Why.**



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**Claims-Made
Coverage is a
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**Switching Between
Occurrence and
Claims-Made
Policies**



Doing It Right.

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OTHER ENVIRONMENTAL PROSPECTS WE CAN HELP WITH!

- General Construction Firms
- Fire & Water Restoration Contractors
- Mold/Asbestos/Lead Contractors
- Asphalt and Paving Contractors
- Environmental Contractors
- Waste Water Treatment Plants
- Landfills
- Farms
- Municipalities
- School Districts
- Plumbers, Roofers, and Artisan Contractors
- Hotels, Condo & Apartment Building Owners or Managers
- Property Transfers Including Purchase & Sales, Mergers & Acquisitions
- Roustabouts, Freshwater Haulers, & Fracking Support Contractors

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Back to the Basics

Occurrence - vs. - Claims-Made



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The two policies are quite different, making it imperative that insurance professionals know the characteristics of each to properly place coverage for varying risks. An occurrence policy is triggered by the occurrence of bodily injury (BI) or property damage (PD). The timing of the claim reporting and filing is not of much concern. When it comes to occurrence policies, the focus is on when the BI or PD actually took place. For example, if an insured has an occurrence policy in place January 1, 2016 to January 1, 2017, it will provide coverage only for claims where the BI or PD occurred within that timeframe. If a claim comes in but it is determined that the injury and damage did not occur during the policy periods, for example, on December 31, 2015, the 2016-17 policy would not provide coverage for that claim.

A claims-made policy, on the other hand, is triggered by a claim that is made against and reported by the insured. Emphasis is on when the claim is actually made not when the BI or PD took place. However, the occurrence of the injury or damage is important if the claims-made policy has a retroactive date (retro date). Simply put, a retro date limits how far back a claims-made policy can reach to provide coverage for occurrences that resulted in a claim. If a claims-made policy has no retro date, there is no limitation on the prior acts coverage it provides. It's easiest to depict this with an example, so imagine an insured has a claims-made policy effective January 1, 2016 to January 1, 2017 with a retro date of January 1, 2010. If a claim were to come in during the policy period it would be covered by this policy even if the BI or PD did not occur during the policy period. However, since there is a retro date, the BI or PD must have occurred after that date for the policy to trigger. So, if the injury and damage took place on January 1, 2010, then the policy would cover the claim. If the BI and PD took place on December 31, 2009, the policy would not respond, because of the retro date limitation. If there was no retro date on the policy, the insured has full prior acts coverage going back to the beginning of time.

The main takeaways are that occurrence policies are focused on when the BI or PD actually took place and claims-made policies look at when a claim was actually made against the insured.



Never, Ever Advance a Retroactive Date on a Claims-Made Policy



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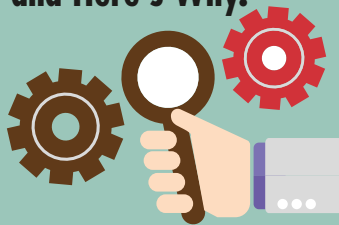
In the previous section, retroactive dates (retro dates) were introduced in the discussion on claims-made policies. When it comes to claims-made coverage, it is so important to pay attention to a retro date or dates. Adding a retro date when there was not one before or advancing one that exists is erasing coverage for periods of time that were covered on a prior policy or policies. For example, if an insured has an expiring policy with no retro date and an insurance broker puts in place a renewal policy with a retro date of policy inception, they are deleting all of the coverage that the insured had up to the inception date of this renewal policy.

Remember that claims-made policies are triggered by a claim being made against and reported by the insured. When the injury and damage took place is not important unless there is a retro date. In the example above, the

insured originally had no retro date on their policy, so they essentially had coverage for prior acts going all the way back in time. The new policy that was put in place by the naive insurance agent severely limited their coverage, because a retro date of inception was added. Now if the insured has a claim during the policy period they only have coverage for injury or damage that occurs after the new policy's inception date.

Do not get caught making this mistake. It would most definitely be an Errors & Omissions claim against your agency. It is something that is avoidable if you know what you're doing and what you're looking for.

Site Pollution Liability is Almost Always on a Claims-Made Basis and Here's Why.



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Choosing the right basis for coverage to trigger comes down to what the possible exposures are and how long it may take for injury and damage to be realized. For example, with most General Liability (GL) claims, the occurrence that caused a loss and the claim for injury or damages fall within a relatively short timeframe: Betty Sue slips and falls in a contractor's unsafe worksite at her home and suffers significant injury; she hires an attorney and files a lawsuit within the week to recover damages. While driving to a jobsite, Bonnie Jo rear-ends Billy Bob; they swap insurance information and within the month Billy Bob's auto insurance company is subrogating against Bonnie Jo's for the damage.

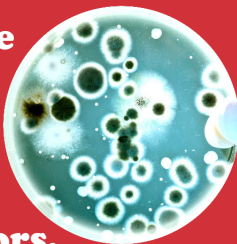
When it's simple like this to connect the act or the condition that led to the claim for injury or damage, an occurrence-based policy works well. That is why most GL policies and Auto Liability policies are occurrence policies.

Occurrence policies do not work well for insuring risks that can have longer periods of exposure before injury and damages are finally realized. This tends to be the case for most environmental exposures. For companies that hold these types of exposures, claims-made coverage is the better policy to purchase.

Take for example a chemical blend company that is found to have been poisoning the drinking water supply for a nearby town for the past 30 years only because people are just starting to exhibit symptoms now. Even if the company had continuous occurrence-based environmental policies in place since they opened their doors, pinpointing a specific occurrence in the past 30 years that resulted in the townsfolk getting sick is nearly impossible – the plant has been continuously leaking for decades. So, then, what occurrence policy kicks into provide coverage? It gets even worse if they have changed insurance companies throughout their time holding the coverage. Suddenly they have a bunch of claims adjusters playing the "It's not my job" game when it comes to paying for the damages and providing defense.

For these reasons, it is incredibly more advantageous to put environmental policies such as Environmental Impairment Liability (EIL) or Site Pollution Liability on a claims-made basis. Claims-made policies are triggered by a claim being made against and reported by the insured; it's not important to track down the occurrence that resulted in the claim. As discussed above, the only time this matters is if there is a retro date on the policy. The retro date should be the first date that environmental coverage was ever purchased. All of this eliminates the occurrence-based policy headache from above of figuring out which policy should pay the claim from the townspeople. If the chemical company had purchased claims-made policies from the get-go, the current policy in place at the time the suit was brought and the claim was reported would provide defense and pay for the injury and damages.

Claims-Made Coverage is a Must-Have for Mold Coverage on Contractors.



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We see a similar exposure pattern as the chemical plant example above with contractors and mold claims in homes and buildings. All claims related to fungi (mold, mildew, and fungus) are excluded on a standard GL policy. The solution to this coverage gap is to purchase Contractor's Environmental Liability (CEL) commonly referred to as Contractor's Pollution Liability. While CEL policies can be bought on a claims-made basis, it has become almost industry standard to provide them on an occurrence basis.

However, mold claims have shown to be as difficult as those involving natural resource and environmental damage like the one above involving the chemical company. Mold growth in homes and buildings almost always happens without anyone noticing as it grows on the inside of walls. Once it

is noticed on the outside of the wall, there is already significant damage on the interior side of the wall. On top of that, mold can make people sick and cause things like chronic asthma. Since mold growth is continuous and usually does not constitute a single occurrence, an occurrence policy is not best suited to cover this exposure. The solution is to either write the CEL coverage on a claims-made basis or make sure the mold coverage is on a claims-made basis. This protects contractors from the same headache of figuring out which occurrence policy should cover a claim resulting from mold damage. Instead, with the claims-made policy, it's just the policy that is in force when the claim comes in.

Switching Between Occurrence and Claims-Made Policies



Doing It Right.

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There may be instances where a CEL policy needs to be switched from claims-made to occurrence or vice-versa. Certain steps should be taken and considerations made when changing the coverage trigger from one to the other.

If a policy is being switched from a claims-made policy to an occurrence-based policy, something has to be done with the claims-made policy to address the need for an extended time to report incurred but not reported losses under the expiring claims-made policy.

There are two ways to do this:

1. Exercise the Extended Reporting Period (ERP) provision on the expiring claims-made policy.

2. Purchase what is commonly referred to as a "nose" endorsement on the occurrence-based policy, which, in effect, moves the effective date of the occurrence-based policy back in time. If there is a nose endorsement on the occurrence-based policy, there is no need to pay for the ERP on the expiring claims-made policy.

In reverse, switching from occurrence-based coverage to claims-made coverage, there is no need to do anything with the occurrence-based policy; it already has the unlimited ERP built into the policy form. However, the claims-made policy should not exclude new pollution events arising from the prior operations of the contractor or there will be a coverage gap in the transition. The occurrence policy covers only insured losses arising from pollution events taking place during its policy period. If the claims-made policy only insures losses from new work the contractor is performing during the policy term, there is a coverage gap for completed operations in the transition from occurrence-based coverage to a claims-made policy form.

As with dealing with retro dates, it is vitally important to pay attention to coverage basis triggers. Improperly switching from one to the other can create coverage gaps for the insured that are actually liabilities to your agency. Be sure to understand how these different coverage triggers work to ensure you are working with them correctly. Never be afraid to ask the advice of an experienced, specialized broker, especially when it comes to placing environmental coverage.

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- Roustabouts, Freshwater Haulers, & Fracking Support Contractors