

SELLER'S REMORSE:

Common legal issues for retail businesses
...and tips on how to protect yourself



Retail liability 101

What is “liability”?

Litigation is common in our society. Law firms advertise their services often, and lawsuits can take aim at a variety of targets. Some of those targets are retail businesses like yours.

As soon as you're open for business, you're open to liability. A customer, browser, or even a passer-by could potentially sue your business if they believe your company has caused them harm. Liability refers to your company being responsible for damages to a third party in the eyes of the law.

What are the most common liability claims for retail businesses?

There are three: bodily injury, property damage, and cyber liability.

While bodily injury and property have been threatening businesses for ages, cyber is an emerging risk that demands more attention as businesses move farther into the digital space.

Keep in mind that your business doesn't have to deliberately do anything wrong to be sued – in fact, a lawsuit could stem from an incident that you or your employees weren't even aware of. In any case, you should be prepared to defend yourself.

What makes your retail store vulnerable?

Customers are your source of revenue, and ultimately responsible for your company's success, but they're also one of your biggest risks. When you own and operate a retail store, anyone who interacts with your business could potentially file a claim against you if they get hurt or if their property is damaged because of your operations.

Your retail store could expose itself to liability in a number of ways. From bodily injury caused by your products to defects in the items you sell – or even customer data theft – there's a multitude of liability concerns to prepare for. If you offer delivery services, contracting services, or repair services, you could face even more risk that could call for an extra level of protection.

Remember, even if you think your business isn't at fault for a given incident, you could be held legally responsible.

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Common liability risks in the retail sector

Any legal event that disrupts your retail business could impact your bottom line – and that's something you'll want to avoid. **Here are four common liabilities that could be affecting your retail small business right now.**

Bodily injury liability – what's on the line?

Third-party bodily injury is a common type of liability exposure: if a bodily injury is traced to your retail operation, the injured party could bring a lawsuit against your business.

This legal trouble can result from a business interaction involving:

- Customers
- Maintenance personnel
- Another type of visitor
- A guest, visiting supplier, or another person attending your offsite event

The potential for bodily injury isn't limited to your store's interior; accidents can also happen on the property that accommodates your business. For example, if someone has a tripping accident on the steps leading up to your storefront, that could be cause for a lawsuit. In fact, according to [Statistics Canada](#), falls are the main cause of hospitalized injuries in Canada: they're responsible for 50% of adolescent injuries and 63% of senior injuries.

In the face of these statistics, business owners will likely agree that it's important to establish and implement an inspection and monitoring procedure to identify and manage tripping hazards on your property. Regular maintenance is just as important.

Here are a few tips to help minimize the chance of tripping on your property:

- Have the parking lot inspected at regular intervals for uneven surfaces, potholes, and other debris, and have issues repaired as soon as possible. Until the repairs are completed, indicate any hazards with items like construction cones and signage.
- Keep your walkways clear and inspect them regularly for tripping hazards.
- Ensure your stairways are regularly inspected to keep walking surfaces and handrails in good condition.
- Ensure appropriate lighting is installed and maintained throughout your property.
- Keep a log of all the maintenance performed on your property, the time it was performed, and who was responsible for doing so.

When it comes to maintenance, put in place a process to report any problems that require quick action, such as water puddles or wet bathroom floors that could lead to injury. It's a good idea to hire a professional to complete maintenance rather than rely on your employees to stay on top on everything.

Of course, you'll need to cover your bases when working with any third party: be sure to obtain proof of insurance from them before you bring them on board.



What's the worst that could happen?

Unfortunately, your take on the event can't prevent a lawsuit; if the injured party believes your business was at fault, they could file a claim against you. For example, if the steps to your store were clear of ice, water, debris, hazards, and other obstacles, yet a customer still managed to trip, you could face legal action.

Bodily injury liability claims can be financially devastating. You could be on the hook for a number of costs and losses, including damages related to:

- Pain and suffering
- Lost wages
- Medical bills
- Legal fees

The lesson here is that accidents can bring more consequences than you might imagine. When you consider a wide range of outcomes, you can better prepare your business to deal with the range of problems that could arise.

Product liability – what's involved?

Product liability can impact any business that sells goods, whether you make a product or you purchase your products from a wholesaler. Lawsuits aren't just tied to your action (or inaction), they can also result when the product you sell leads to third-party bodily injury or property damage.

Product liability claims are often related to:

- Bodily injury caused by an alleged faulty product
- Products that cause damage to a third party's property

Consider a bakery: if a batch of cookies was unintentionally contaminated with a hazardous material (broken glass or bacteria, for instance), customers could file a legal action against the business if they were injured or became ill. The bakery owner didn't knowingly introduce the hazard, but they can still be held responsible for the consequences.

Your prevention plan

In some cases, a product will need to be recalled, and for that you'll need to have a plan already in place to help mitigate any further risks quickly and efficiently.

Here are a few items to consider including in that plan:

- Assign and assemble qualified personnel with sufficient authority to coordinate the recall.
- Notify and report the defective product to applicable authorities, such as a Health Canada Product Safety Officer or a Canadian Food Inspection Agency Representative.
- Identify all products needing to be recalled.
- Identify, quarantine, and clearly mark all remaining stock of recalled products on the property.
- Track the products that have been distributed.
- Determine the action that your clients or consumers must take.
- Prepare and distribute a recall notice to all clients and consumers who may be affected.
- Dispose of remaining recalled products.

Commercial general liability insurance policies don't often cover expenses related to product recall; you would need additional coverage to ensure you have financial support in that scenario. This is an excellent topic to bring up to your broker, who can determine whether this coverage is right for you.



Keep in mind that product liability doesn't only affect businesses that sell to customers, but also business-to-business operations. Do you sell products, materials, or components like cleaning supplies, raw materials, or electrical parts? These types of goods can trigger a product liability issue, too.

Recommendations to help avoid a product liability lawsuit:

- Have proper product labeling in place (especially for food allergies).
- Include manuals with clear instructions on how to use the products.
- Put in place a product inspection routine before anything is sent to a retail location.
- Use products from reputable manufacturers.
- If the product is imported from another country, make sure that the product meets Canadian standards.

Some more care and attention at the outset can make a big difference down the line. Make it a priority to do everything in your power to avoid a product recall situation – and the health or safety issues that can go along with it!

Property damage liability

Third-party property damage is a serious concern for all businesses, including retail stores. If a product you sell is responsible for damaging someone else's property, you could end up facing a claim for damages.

If, for instance, you sell machinery for landscaping or agriculture, the expectation is that the machinery will operate as promised without adversely affecting your customer's property. If a defect causes that equipment to malfunction during regular use and it damages a structure on the client's property, the cost could fall squarely on your shoulders.



Cyber Liability

Technology is advancing at an alarming pace, and as the digital landscape evolves, so do liability concerns for retailers. Cyber theft, data breaches, and other incidents where private information can be exposed are top concerns for small business retailers.

In fact, [70% of Canadian businesses](#) claim they have experienced some type of cyber attack, with the average financial loss totaling over \$14,000. Some cyber criminals are capable of hacking a device within [15 minutes](#), but it can take internal IT departments up to a year to even detect the hack.



Many retail stores keep personal information about employees and customers in some sort of database, either through a cloud storage solution or a local drive.

Online retail faces big risk

When you do business in the digital realm, combatting cyber risk should be a top priority. After all, you likely store reams of information that could compromise customer privacy or lead to fraud. Do you collect contact details? Transaction history? How about credit card info? Your business may be a prime target.

For businesses that live and prosper online, consider:

- Backing up information frequently, and testing the integrity of those backups regularly.
- Installing strong antivirus programs.
- Regularly auditing and updating your systems and software.
- Paying close attention to where you keep your data.

If you handle sensitive data that's likely to attract unwanted attention, take some extra time to ensure you have adequate defences in place. Not sure if you're doing all you can? Consider calling on cyber security professionals to help you refine your cyber plan.

How does cybercrime happen?

Cyber theft can begin with a phishing email or phone call that allows the thief to gain access to your system. Once they've made their way in, the hackers can upload malicious programs to find and download targeted information. Not surprisingly, they're particularly fond of addresses, credit card numbers, and social insurance numbers.

Once you discover the problem and notify the customers or employees affected by the crime (or worse – they find out on their own), they could bring a cyber liability case against your business for the loss of their sensitive data.

You'll want to do your best to manage your cyber risk, and these three tips can help:

- 1. Educate your employees.** Provide examples of suspect information or activity to help your employees recognize cyber threats. Demonstrate how to hover a mouse over a link to see real web addresses. Instruct staff to be cautious of the information they post online, and avoid using personal information when creating passwords.
- 2. Develop policies and procedures.** Have policies in place to manage user privileges and extend network access to employees and third parties only when necessary. Teach your staff members what makes a strong password and remind them not to write it down. Put protocols in place for when electronic devices are stolen or lost, and implement regular audits to make sure cyber security measures are being followed.
- 3. Be prepared.** Make sure all private and sensitive information is encrypted when transferring files online. Back up all your files to an external hard drive or cloud sharing service in case of a hardware breakdown. Have a contingency plan if your systems go down, and monitor your systems closely to detect and react to hacks quickly.



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No business insurance? Here's what could happen

Retail liability insurance is a crucial part of your business safety net, whether you run a one-person shop or a larger operation. The right insurance can help you cover the costs that come with liability-related issues and their legal repercussions.

Liability insurance should be a top priority when you start a business, no matter how big or how small it is. Not convinced you need this coverage?

Consider these things that may happen if you're not protected by a retail liability policy:

1. If bodily injury or property damage to a third party results in a lawsuit against your business, and you don't have business insurance, your company may have to cover the costs associated with the legal process and the losses that stem from the lawsuit. For example, if someone trips on an icy set of stairs in front of your store, your company may be on hook for covering the resulting expenses.





2. If you're renting a storefront location from a landlord, your lease may require that you have liability insurance for your business. Similarly, if you sign a contract with a large wholesaler or distributor, they may also expect you to have liability insurance.
3. There are many instances where you may be asked to provide proof of your insurance coverage. When participating in events like tradeshow, the venue often requires that all vendors provide a certificate of insurance showing evidence of liability coverage. Also, if you want a larger retailer to carry your products, the company may request proof of insurance before signing a contract.
4. If your retail business offers services on the side – think delivery, maintenance, or installation – be sure you have the right insurance coverage for those tasks. For instance, if you require an employee to use their private vehicle for business operations, you may need non-owned auto coverage in case they're in a collision during that business visit.

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Safeguard your business with liability insurance

Simply put, liability insurance can provide welcome support in the face of potentially steep costs associated with liability claims. There are many types of insurance for retailers, and while your broker is in the best position to match your business with the correct coverage, these three important coverages apply in most cases:

Commercial general liability (CGL) insurance

Commercial general liability, or CGL, is designed to cover damages resulting from bodily injury or property damage to a third party when your business is found liable. If your business is found legally responsible for the injury of one of your customers, liability insurance can help cover your legal costs and any damages you're required to pay to the injured customer. CGL insurance also extends to instances when you or your staff are conducting business offsite.



Product liability insurance

Product liability insurance is often included in a CGL insurance policy, but not always; it's important to make sure you have this coverage if you produce or sell goods.

Product liability coverage helps protect your retail business from:

1. Bodily injury to a third party caused by your product. For example, if you sell furniture and a customer claims the chair you sold them broke and injured them, you'd look to your product liability insurance to help protect you if the customer took legal action.
2. Property damage to a third party, including their home, car, electronics, and just about anything else they could own. For example, if you sell auto parts and a customer claims that the replacement part you sold them damaged their car, you'd count on your product liability coverage to protect you from the legal fallout.

Cyber liability insurance

Cyber liability insurance is designed to support your business if digital damage or loss interferes with your operations or responsibilities. Any business that handles information electronically could face cyber risk.

Cyber coverage can respond to situations in which your data has been corrupted or information has been stolen during a nefarious third-party breach or ransomware attack. Cyber coverage could help cover the costs relating to notification expenses, business interruption, asset recovery, legal expenses, and some other consequences of a cyber event.

Cyber risk is growing – you should consider complementing your CGL policy with specialized cyber coverage to meet your business needs.

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Facing a liability lawsuit?

These tips can help you through

If you're met with a legal claim related to an injury, property damage, or cyber breach, you'll want to make the right move. Here are a few tips that could help you protect your business:

1. Don't communicate with the plaintiff

It's important that you don't communicate with the plaintiff one-on-one without first seeking the advice of a legal professional. What you say or do could be used against you.

2. Reach out to your insurance provider

Getting in touch with your insurance provider should be a top priority. They'll be able to walk you through the limits of your liability coverage and determine what you're covered for, and they can explain how your coverage may help pay for any legal fees incurred during the process.

3. Seek legal advice

Regardless of the amount of the claim, it's crucial that you seek legal advice right away. A legal team will help you make an informed decision about your next steps. If you report the claim to your insurer, they may appoint legal counsel for you if required, so make sure to check with your insurer before hiring your own lawyer.



The Northbridge difference

When you choose Northbridge for your retail liability insurance, you'll be provided with a flexible policy that fits the needs of your business. Our value-added services can help take your policy to the next level – at no additional cost to you – and will allow us to provide the support your business needs before, during, and after a liability claim.

Legal Assist

Retail business owners are exposed to legal risks daily, and since lawsuits are often costly and time-consuming, it's always better to avoid one. Northbridge can help by providing access to our Legal Assist service, which offers unlimited telephone access to general legal advice on matters related to your business.* This can help business owners better navigate their legal path and help to avoid difficult and costly lawsuits in the future.



Risk Management Assist

Wouldn't it be great if you could stop a loss before it happens? Our Risk Management Assist program gives you access to our team of Risk Services Specialists who can provide professional guidance on risk management and loss prevention planning.* This advice can help you effectively manage risks within your business that you may not have been aware of.

Trauma Assist

Suffering a loss is not an easy experience. Our Trauma Assist program is designed to help both business owners and employees cope with the emotional effects of a loss.* Through independent third-party professionals, we're able to offer personal one-on-one telephone or in-office counselling as well as critical incident stress management for groups. All our Trauma Assist services are strictly confidential.

Cyber Assist

Cyber threats are growing – in number and in sophistication. That's why we've partnered with CyberScout, a leading data risk management service provider, to offer Cyber Assist.* This program includes consultation on proactive measures to protect your business, reactive assistance in the event of a privacy breach, and other crisis response and management services.

24/7 Claims Service

Our 24/7 Claims Service is available for you whenever you need it – we don't take breaks! Our dedicated claims representatives will help you make a claim and earn your settlement without undue stress, giving you peace of mind when you need it most.

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Your next steps

If you're the owner or operator of a retail business, you need liability insurance. If you're reluctant to take on the expense, remember that lawsuits and settlements can be extremely expensive, and that expense would fall wholly on your business if you don't have the proper coverage.

Northbridge can craft a policy to suit your unique business needs, with flexible coverages and the right limits to protect your bottom line. Talk to your broker today to learn more about how we can help you protect what you've built and achieve your business potential.





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