

BOMA Magazine

Legal-Ease: Daycare Insurance Considerations for Building Owners

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Daycare businesses showed consistent growth through the Great Recession and will continue to have some of the fastest employment growth of all industries through 2020, according to the U.S. Bureau of Labor Statistics. With this rate of growth, commercial building owners are likely to encounter a potential daycare center tenant at some point in the future. While there are many issues to consider in deciding whether a daycare center would be a successful tenant, key among those concerns for landlords is their potential liability.

If a child is injured, who is at fault? The center operator? The landlord? In any leasing negotiation, the allocation of risk—which often is buried deep in the boilerplate language of indemnification and subrogation—is an important element in any landlord-tenant relationship. If your tenant is a daycare provider with children, a group especially prone to injury, this risk allocation becomes even more important.

Two primary mechanisms in any lease allocate liability between the landlord and tenant: indemnification and insurance:


Indemnification. An indemnification provision ensures that one party to a lease assumes the obligation to indemnify the other party against claims posed by third parties for personal injury or property damage. The indemnity provision will require the tenant to protect, indemnify and defend the landlord from and against any claim brought by a third party.

Indemnification can either be tied to injuries or loss that occur in a specific place, like the tenant's premises, or that occur because of the action of a specific party, like the tenant's employees. A properly negotiated indemnification provision ensures that the risk between the landlord and the tenant is allocated based on which party is best suited to control and limit the potential risk.

Insurance. In addition to indemnification, insurance coverage is an essential component of a lease's risk allocation. The insurance carried by the landlord or tenant will act as the funding source for the party's indemnity obligations.

In all states in the U.S., a daycare facility is required to obtain certain licensing approvals in order to operate. The licensing authority will typically require that the daycare provider obtain liability insurance to get the license needed to operate the facility. Daycare insurance is a specific type of insurance that provides business owners with daycare liability insurance coverage, as well as business property coverage.

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Daycare liability coverage allows the daycare tenant to essentially assign the funding of its indemnity obligation to the insurance carrier. By doing so, the landlord will have comfort in knowing that there is a source of funding available to satisfy the indemnity obligation. The amount allocable to the insurance carrier is subject to the limits on the liability policy. Any amount in excess of the policy will be covered by the tenant.

In addition to liability insurance for the tenant, the landlord or building owner will need to have liability insurance of its own. The landlord also may require that the tenant name the landlord and its associated parties as an additional insured. While coverage can be more limited, adding the landlord as an additional insured can afford critical protection for the costs involved with legal defenses, as well as third-party lawsuits for bodily injuries and property damage.

Understanding the importance of the indemnification and insurance provisions of your lease are necessary in protecting yourself against liability. Consulting with an attorney experienced in commercial leasing matters is crucial in ensuring the proper allocation of the risks and in recommending additional provisions for protection from liability.

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