



Elements of a Products Liability Risk Control Program



Products liability is the legal responsibility of a commodity provider to market items free from design and manufacturing defects and provide adequate instructions and safety warnings. When a business uses a new material supplier, production process, or design, or expands its customer base or product line, a formal Products Liability Risk Control Program can help mitigate unexpected risks and exposures.

A Products Liability Risk Control Program is a company-wide strategy to continuously identify both obvious and hidden hazards of the company's commodities and to implement solutions to eliminate or control these exposures to protect the commodity users. Many elements of such a program probably already exist in your company, and communication between departments may readily identify these elements. However, top management support is the foundation of successful program implementation.

Risk Control Approach

Each department or division within a company should participate in the Products Liability Risk Control Program to ensure all aspects of the operations are involved and to share their knowledge and expertise.

Focus Areas

Design

Companies design and engineer products to meet or exceed applicable regulations and industry standards. Engineering out hazards should be your first goal, as a safer design is preferred over a safety label. A product risk assessment, or hazard analysis, can assist in identifying potential design defects. Similar to a job hazard analysis, a product hazard analysis helps identify exposures that may be harmful to the user or bystanders. If safety equipment or precautions are needed, determine whether the hazard can be reduced, better controlled or eliminated. As products are updated and revised, the product hazard analysis should be revisited. In addition, companies should complete a new hazard analysis when product lines are acquired or expanded.

Design for user safety by eliminating hazards that present the potential for a loss. The industry standard control pyramid below

illustrates the levels of controls – from the most effective through hazard elimination to the least effective by requiring the user to wear safety equipment.

Requiring the use of personal protective equipment is the least effective safety control, presents the highest hazard to the user and presents the highest potential for a loss.

Production

The use of quality materials and component parts is key to product fabrication. Vetting suppliers as well as subcontracted fabricators and processors includes obtaining liability insurance certificates, regular audits, and a clear understanding of expectations and specifications, ensuring product integrity. Contractual business agreements with suppliers and subcontracted fabricators can define levels of responsibility and ensure proper risk transfer. Before a supplier sources materials from another entity, your company must know in advance and provide approval. Maintaining multiple suppliers can help reduce the potential for supply chain disruptions.

Employ a quality control program for product inspections, starting with raw materials and component parts throughout the fabrication process to minimize the potential for manufacturing defects. Then, conduct a final inspection and product test prior to sale. Types of product testing vary by industry but may include functional, destructive, cyclical and extreme environmental use. Testing may be conducted both in-house and by third-party testing laboratories. Document every step of the quality control process, and evaluate product instructions, user manuals, quick-start instructions and warning labels, as "failure to warn" claims are fairly common.

Eliminate

Remove the hazard.

Substitute

Use a less hazardous option.

Engineering Control

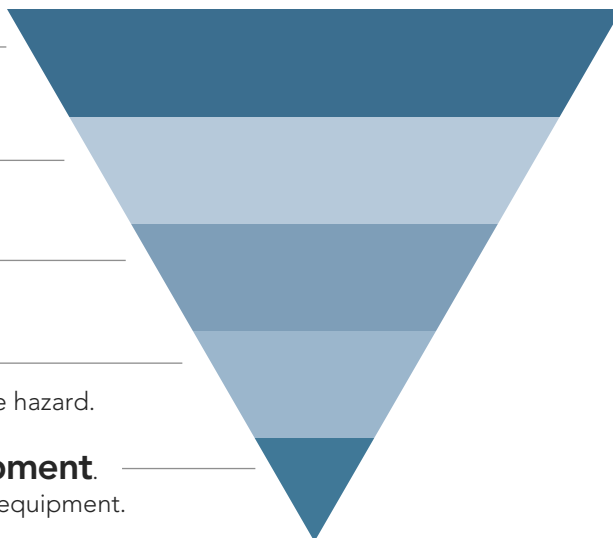
Separate the user from the hazard.

Administrative Controls

Procedure to keep user away from the hazard.

Personal Protective Equipment.

Keep the hazard. Require user safety equipment.



Legal

Legal counsel supports the production and marketing sides of your operations, and is critical during the due diligence process for a merger or acquisition.

Legal counsel should review contracts, purchase order terms and conditions, instructions, safety warnings, and user manuals prior to sale. Legal counsel can help with proper risk transfer mechanisms between your company, suppliers, contract manufacturers and vendors. Certificate of Insurance requirements may vary by exposure, with coverage needs ranging from primary to excess coverage levels.

In addition, legal counsel should review product marketing and demonstration videos, website content, all other marketing materials, and sales contracts. Exported products may be subject to different standards. Legal counsel should also oversee the verification of translations.

Hold harmless clauses, indemnity clauses, liability limitations, and additional insured status are risk transfer mechanisms in sales contracts and purchasing and service agreements. Legal counsel review of these documents and terminology can ensure they are written in your favor. Also, legal counsel review and guidance regarding your comprehensive requirements for document retention can help avoid discarding information too soon.

International exposures can pose unique product concerns. If your company directly imports and sells products domestically, it may assume all of the product liability exposures. Exporting products may subject your products to additional regulations and require additional insurance coverage.

Marketing and Customer Service

Marketing communicates your products and services to your customer base. Evaluating these communications for hazard identification and safety precautions is critical. For example, video advertisements and demonstrations are expected to

portray proper use. If a user is required to wear personal protective equipment, the video provides an opportunity to mirror those requirements. Industry best practices require sales staff to fully understand the required safety equipment and proper operation of the products, which can help them avoid overselling the ability or features of a product. Finally, providing safety materials and instructions in the same languages as marketing materials demonstrates a comprehensive approach to communication.

Your Products Liability Risk Control Program guides the procedures to document and respond to customer questions and critiques, customer service and field service issues, returns and warranty issues, and sales representatives' feedback. Field service technicians talk with customers and see your products in operation. They can relay customer difficulties, near-miss incidents, problems, unexpected applications, abuse and misuse concerns to the Risk Management team. Therefore, regular review of questions, comments and product servicing issues can result in early identification of a loss exposure, which may quickly be addressed by engineering or production. Also, monitoring your industry allows you to gather information on similar products and services.

Documentation

Your Products Liability Risk Control Program provides an avenue to document all aspects of risk management, including communications within your organization. Documentation can be critical when a company is involved in product liability litigation. The traceability of raw materials, component parts, and product sales will vary by industry and may already be documented in customer service records and recall programs. If activities are not documented, the court may view them as if they didn't happen. Your legal counsel can provide guidance for your documentation and records retention policies.

For more information, visit cna.com/riskcontrol.