



COMMON  
LAWSUITS YOUR  
RETAIL BUSINESS  
COULD FACE...

...and tips to help you protect yourself from them.

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# RETAIL LIABILITY: THE BASICS



## *What is “liability”?*

We live in a very litigation-conscious world. On a daily basis, you probably see law firm ads on billboards and TV asking if you’ve been injured in an accident. What you might not realize is that a number of the lawsuits from these firms may be seeking damages from businesses – and possibly from retail businesses like yours.

The day you start your business is the day your business is exposed to liability. Why? Well, at any time, your business could be the target of a lawsuit from a customer, someone browsing in your shop or even just a passer-by. Liability refers to your company being responsible for damages to a third party in the eyes of the law. The most common claims from third parties that might arise as a result of the operations of your business include bodily injury and property damage. 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.

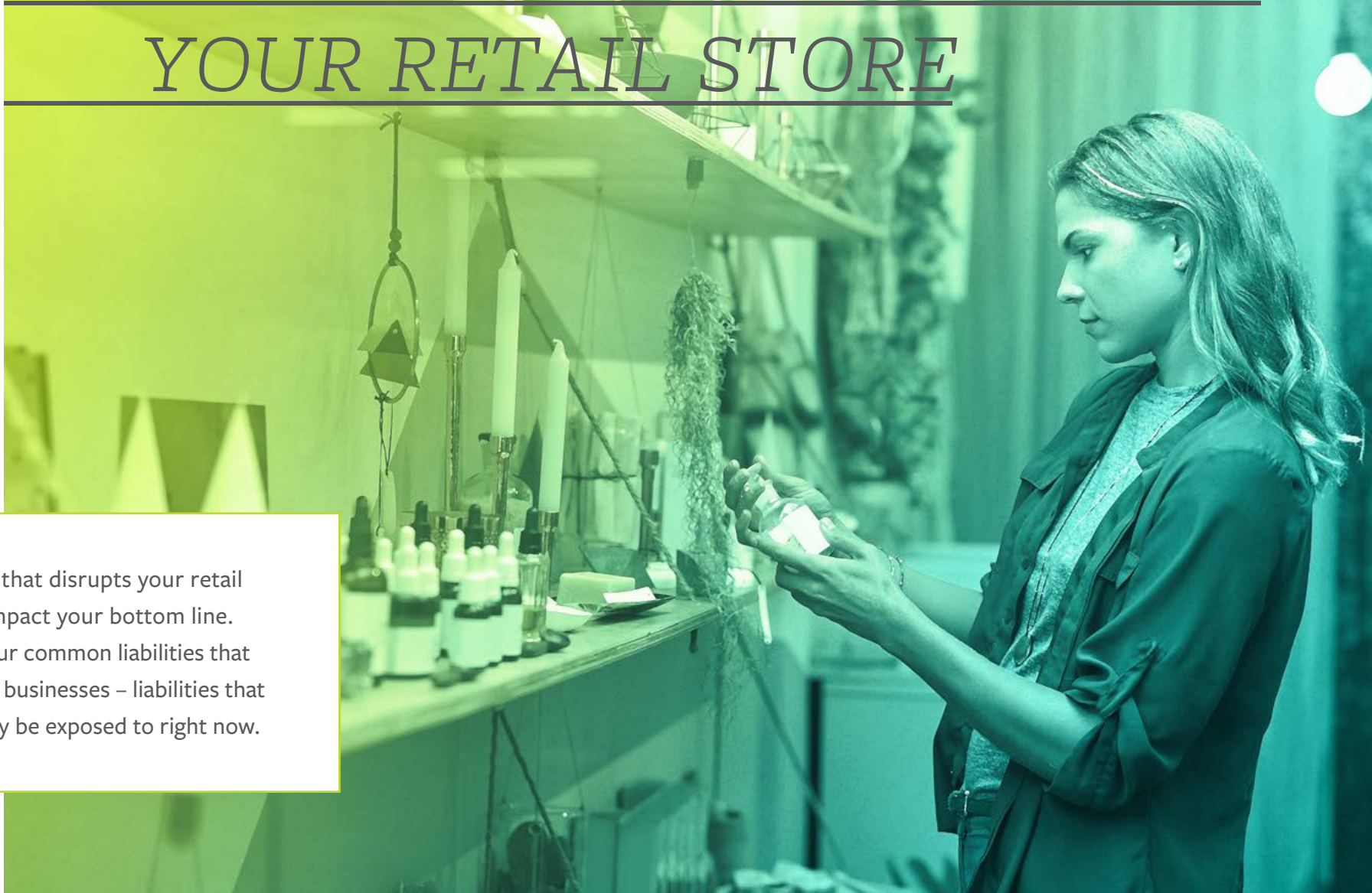
## *Why is your retail store particularly vulnerable to liability?*

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

There are many different ways your retail store could expose itself to liability. Whether it’s bodily injury caused by the products your customers purchase from you, faulty products, or even customer data theft, there’s a multitude of liability concerns that you need to prepare for, some of which you may not even know exist. Even though you might not think these incidents are your business’ fault, they could be seen as such in the eyes of the law.

# *EXAMPLES OF LIABILITY RISKS THAT COULD AFFECT YOUR RETAIL STORE*

Any liability risks that disrupts your retail business could impact your bottom line. We'll touch on four common liabilities that affect retail small businesses – liabilities that your business may be exposed to right now.



## Bodily injury liability

Third party bodily injury is one of the most common types of liability exposures. Bodily injury can happen to anyone who interacts with your business, including:

- Customers
- Maintenance personnel
- Any other type of visitor

When your business operations are responsible for causing bodily injury to a third party, you could end up facing a lawsuit for that bodily injury.

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 slips, trips, or falls on the steps leading up to your store, you could be facing a potential lawsuit. In fact, according to **Statistics Canada**, the main cause of hospitalized injuries in Canada is falls. 50% of adolescent injuries are caused by a fall and the number increases to 63% for seniors. It's important to establish and implement an inspection and monitoring procedure to identify and manage slip and fall hazards on your property. Here are a few tips to help minimize the chance of these types of accidents on your property:

- Having the parking lot inspected at regular intervals for uneven surfaces, potholes and other debris.
- Keeping your walkways clear and inspecting them regularly for tripping and slipping hazards.
- Ensuring your stairways are regularly inspected to keep walking surfaces and handrails in good condition.
- Ensuring there is appropriate lighting installed and maintained on your property.
- Keeping a log of all the maintenance performed on your property, including who performed it.

Even if you don't believe you were responsible for the bodily injury that a third party suffered on your premises, they could still file a claim against your business. For example, if there was nothing wrong with the steps to your store (they weren't icy, wet, slippery, blocked by a hazard, etc.) and a customer still managed to trip, you may still face legal action. Even though you think you have done all you can to create a safe environment and you believe that this injury isn't your fault, the injured customer may still file a claim against your business.

Bodily injury liability claims could involve a variety of financial burdens that can land squarely on your shoulders. 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

Accidents can bring more consequences than you might imagine, and it's important to consider a wide range of outcomes in order to prepare your business.



## Product liability

Product liability exposures are relevant to any business that sells goods of any kind. They're relevant whether you create your own products or you are purchasing your products from a wholesaler.

When the product you sell is responsible for third party bodily injury or property damage, you could end up facing a lawsuit. Product liability claims are typically the result of a few reoccurring complaints, related to:

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

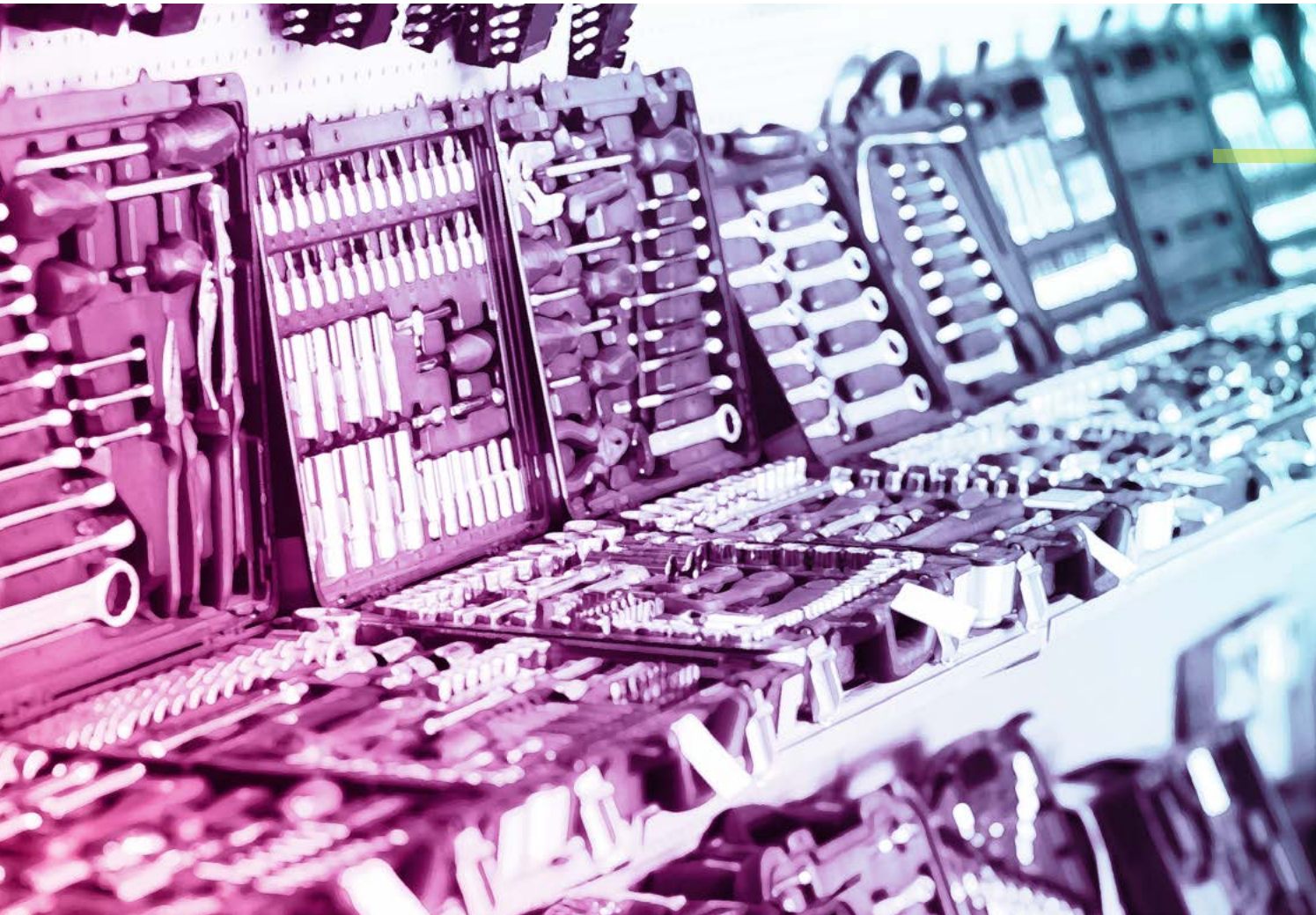
Let's say you own a bakery, and your baked goods become contaminated with something hazardous, like broken glass or even salmonella. Even though you never intentionally introduced the hazard into your products, your customers can still file a claim against your business if they suffered bodily injury as a result of your baked goods.

Sometimes this may lead to a recall on the products you've already sold. Should this be the case, it's important to have a plan in place to help mitigate any further risks as efficiently as possible. Often, commercial general liability insurance policies do not include coverage for product recall. Here are a few tips that can help:

- 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.

Keep in mind that product liability doesn't only affect business-to-customer operations, but business-to-business operations as well. Do you sell software, hardware, POS systems or other related products? These can still form the basis of a product liability issue, though in these cases it would be between two businesses and not a single business and customer.





### *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 causing damage to a third party's property, you could end up facing a lawsuit for that property damage.

Let's take an electronics store that sells laptops as an example. If a customer purchases a laptop from you, and the laptop later malfunctions and causes damage to the customer's property, you could have a property damage liability claim on your hands.

Some other types of businesses that are at risk for property damage liability would include:

- Hardware stores
- Houseware stores
- Music equipment stores

Technology is advancing every day to meet the growing demands of users, and this ever-changing technical landscape presents a new liability concern for retailers to combat. Cyber theft, data breaches and other incidents where private information is at risk are a top concern for small business retailers. **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** and in some cases it can take internal IT departments up to a year to even detect the hack.

Many retail stores keep information about their customers stored in some sort of internal database, either through a cloud storage solution or a local drive. When this confidential information about customers or employees is stolen as a result of poor digital security practices, you may face serious legal trouble. After your business notifies those affected that their personal information has been compromised, you might be met with cyber liability issues.

The process often begins with the cyber criminals attacking a business through a phishing email or call. Once they've made their way in, the hackers can upload malicious software programs to find and download targeted information. Many of the cyber liability cases that have appeared in the media over recent years stem from the theft of credit card information from company databases. When this personal information is stolen, the retail business may be responsible for the data breach and may be held

## Cyber liability

liable. As more information moves to digital platforms, from customer addresses and credit card numbers to employee social insurance numbers, the risk of a data breach is more prevalent than ever before.

Often, commercial general liability insurance policies do not include coverage for cyber liability. Here are 3 tips that can help your retail business manage the threat of cyber attacks.

1. **Educate your employees:** Make sure your employees are aware of how to recognize cyber threats by providing examples. 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 restrict network access to only employees and necessary third parties. Educate your staff members on creating strong passwords and not writing them anywhere. Ensure there are 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.





# WHAT HAPPENS WHEN YOU DON'T HAVE LIABILITY INSURANCE FOR YOUR RETAIL BUSINESS?

Retail liability insurance is fundamental to your retail business safety net, whether you run a one-person shop or a larger multi-employee operation. The right insurance coverage may protect your business from many of the costs that may be associated with the legal repercussions of liability-related issues.

When should you purchase liability insurance? It should be on your radar the minute you decide to start a business. No matter how small your business is—it's still at risk for various forms of liability. Just how important is retail liability insurance? Here are a couple of things that may happen if you're not protected by a retail liability policy:

1. If you find yourself tangled up in a lawsuit because of bodily injury or property damage to a third party, 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 slips, trips, or falls on an icy set of stairs in front of your store, your company may be on hook for covering these costs and losses.
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 require that you have liability insurance as well.
3. There are many instances where you may be asked to provide proof of your insurance coverage. Often when participating in events such as tradeshow, the venue requires that all vendors provide a certificate of insurance showing evidence of liability coverage being in place. Also, if you want a bigger retailer to carry your products, the company may request proof of insurance before signing a contract.



# *YOUR SAFEGUARD: LIABILITY INSURANCE*

Simply put, liability insurance can provide protection against the costs associated with liability claims that your business may face. Here are just two types of insurance coverages that small business retailers should consider.



### *Commercial general liability (CGL) insurance*

Commercial general liability coverage, or CGL insurance, is designed to cover damages that your business is found legally liable for in situations of bodily injury or property damage to a third party. For example, 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*

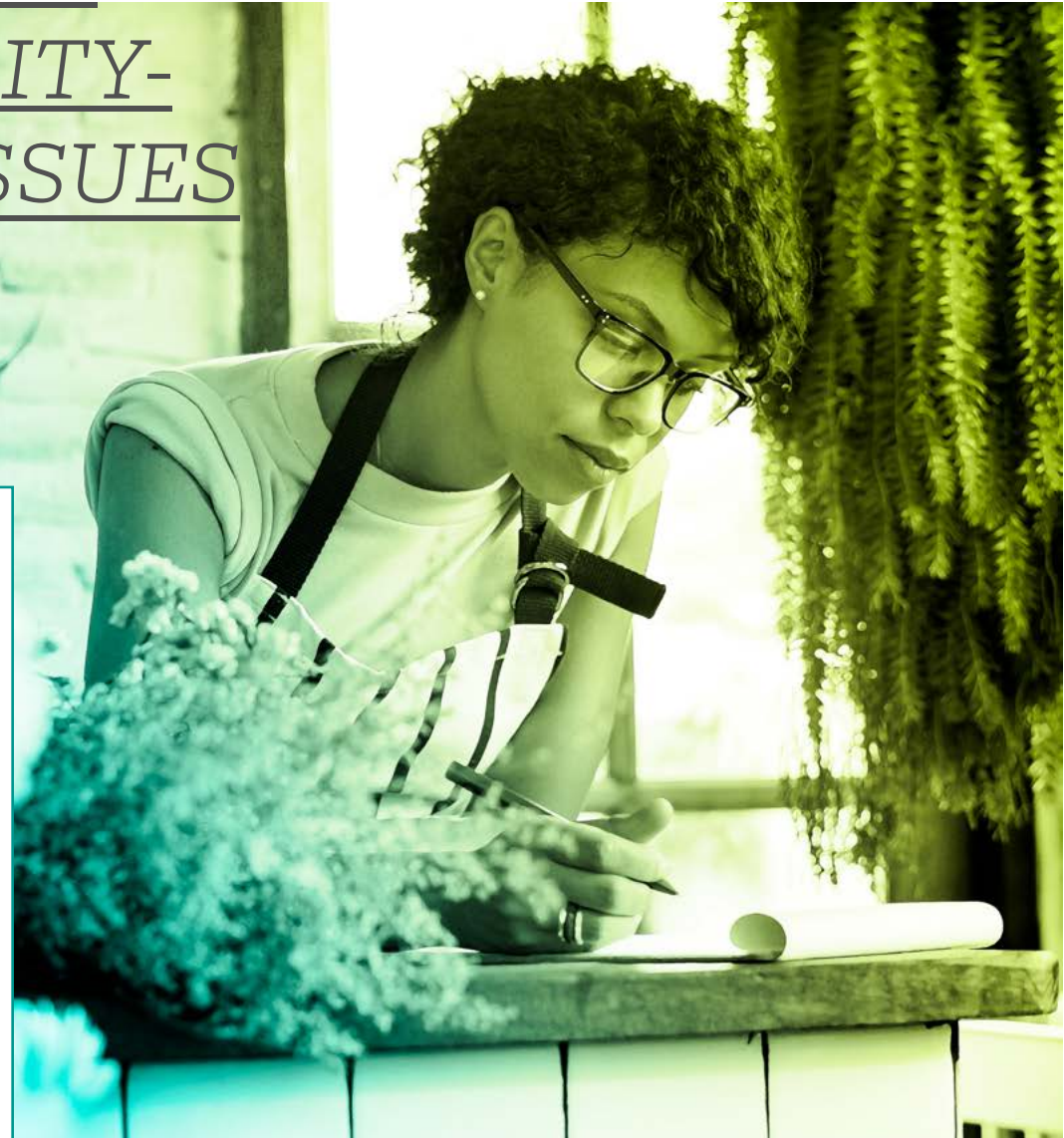
Product liability insurance is often included in a CGL insurance policy, but not always. It's important to make sure your policy can protect you from this type of risk. Product liability coverage helps protect your retail business from:

1. Bodily injury to a third party caused by your product. For example, if you sell jewelry and someone claims the earrings they bought from you caused them bodily harm, you'd look to your product liability insurance to help protect you from any lawsuits that might follow.
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 kitchen supplies and a customer claims that your product malfunctioned and damaged their kitchen countertop, you'd turn to your product liability coverage to protect you.

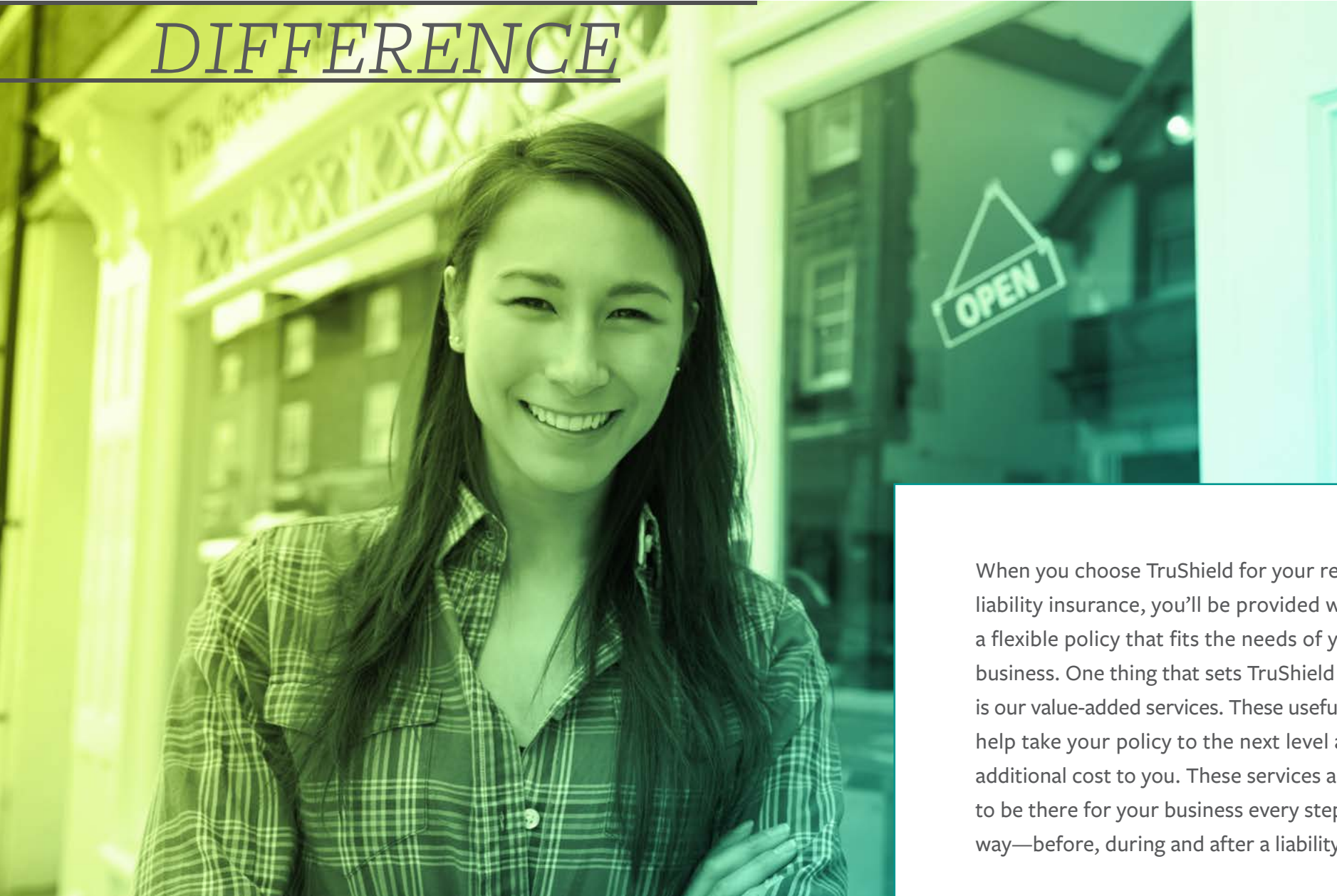
# TIPS FOR IF YOU'RE SUED FOR LIABILITY- RELATED ISSUES

If you receive a claim related to an injury, property damage or cyber breach, here are a few tips to consider to 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 are in fact covered for. They can also explain if your coverage can 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 a legal counsel for you if required, so make sure to check with your insurer before hiring your own defense counsel.



# *THE TRUSHIELD DIFFERENCE*



When you choose TruShield for your retail liability insurance, you'll be provided with a flexible policy that fits the needs of your business. One thing that sets TruShield apart is our value-added services. These useful perks help take your policy to the next level at no additional cost to you. These services allow us to be there for your business every step of the way—before, during and after a liability claim.



### *Legal Assist\**

Retail business owners are exposed to legal risks on a daily basis and lawsuits are a costly and time consuming process – better to avoid one before it happens. TruShield can help with that. As a TruShield customer, you'll have access to the Legal Assist service giving you unlimited telephone access to general legal advice to discuss any legal matters related to your business. This can help small business owners better navigate their legal paths and help them avoid difficult and costly lawsuits before they occur.

### *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 within your business 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 of our Trauma Assist services are strictly confidential.

### *24/7 Claims Service*

Our 24/7 Claims Service is available for you 24 hours a day, every day of the week – just like the name promises! Our dedicated claims representatives will help you make a claim settlement with ease and without undue stress, giving you peace of mind when you need it the most.

# YOUR NEXT STEPS



If you're the owner or operator of a retail business, it's incredibly important that you have a liability insurance policy to protect your business in difficult times. If you're reluctant to take on the expense, remember that without insurance, you open up your business to the possibility of costly lawsuits and settlement fees.

To provide you with the best retail liability policy for your business, TruShield has flexible policies with the right coverages you need to stay protected. To learn more about our offerings and how we can help your business achieve its potential, contact us today!

[trushieldinsurance.com](https://trushieldinsurance.com)

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## *Stuff from our legal team*

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