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Data Center Projects: Key Risk Considerations for Professional Liability

Data centers dominated commercial construction in 2025 and are expected to continue this trajectory in 2026 and beyond, driven by sustained demand associated with the AI boom. While the building type itself shares characteristics with manufacturing or processing facilities—a large structure with complex interior fit out—data center projects introduce a combination of scale, technical complexity, and delivery expectations that can drive high severity claims across the planning, design, construction, and post occupancy phases of a project.

Key Risk Considerations

The following factors reflect conditions and characteristics commonly present on data center projects that have the potential to materially influence professional liability exposure and claim severity in design and construction.

- **High construction value.** These "mega-projects" frequently exceed billions of dollars per project, resulting in elevated exposure across all phases.

  On large-scale projects, claim severity exposure often reflects cumulative exposure across multiple phases, underscoring the importance of early alignment between scope, delivery method, and limits of liability.

- **Schedule compression and zero tolerance for delay.** Data center projects are treated as "critical infrastructure," with heightened sensitivity to construction delays or post-occupancy interruptions. Compressed schedules heighten the risk that downstream impacts of design, coordination, or approval delays could be magnified into high-severity claims.

  Clear allocation of schedule responsibility, realistic milestone assumptions, and disciplined documentation of delay drivers are foundational to managing consequential damages exposure.

- **Regulatory and jurisdictional constraints.** Local and regional limitations on water, power, noise, and environmental impact can affect project viability, permitting and schedule certainty. In addition, evolving municipal and state legislative and regulatory initiatives governing data center siting, utility consumption, and environmental impacts can disrupt both planning and execution. These factors are largely outside the control of design and construction professionals, yet they can intensify schedule pressure and increase exposure to third-party and neighbor claims post-occupancy.

  Project teams should recognize regulatory approvals and infrastructure availability as material schedule risks and document assumptions, dependencies, and owner-driven decisions accordingly.

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- **Limited electrical and mechanical trade resources.** Data center MEP and controls/security systems are significantly more complex than those in traditional industrial facilities. Labor shortages—particularly in non-metro locations—often require the engagement of multiple electrical and mechanical subcontractors across discrete scopes, increasing interface risk. This aggregation elevates the potential for execution gaps during construction and performance issues post-occupancy.

  Where multiple specialty trades are engaged, loss severity often turns on how clearly responsibility for system performance is defined and documented across interfaces.

- **Use of modular or prefabricated components.** Off-site fabrication, often driven by labor constraints and compressed schedules, increases reliance on precise coordination among designers, construction firms, subcontractors, subconsultants, and fabricators. Design responsibility, quality control, and transportation-related damage can complicate professional liability exposure.

  Where off-site fabrication is used, alignment of design responsibility, quality control protocols, and performance expectations across all parties is essential to managing downstream liability.

- **Operational readiness and handover risk.** Achieving operational readiness on data center projects depends on sustained coordination across design, construction, and operations, particularly where complex, integrated Building Management Systems (BMS) are involved. When key processes—such as system interoperability, documentation, deficiency resolution, and the transition from design intent to operational use—are rushed or incomplete, post-occupancy performance issues and claims frequently emerge. Handover should be managed as a structured, multi-phase process, not as a single event.

  Owner operational readiness—including staffing, training, and decision-making authority—plays a critical role in successful transition to operations and materially influences post-occupancy loss experience.

- **Contractual risk and sophisticated ownership structures.** Data center owners, often supported by private equity, typically attempt to impose aggressive risk transfer through contract terms for service providers and contractors. Construction and design professionals, especially those engaged in electrical, mechanical, fire protection, and controls disciplines, must carefully evaluate whether contractual obligations are fair, balanced, and insurable.

  Risk allocation is further influenced by the clarity of scopes of service and responsibility of each member of these complex project teams, the timeliness of owner decision-making, and the quality of contemporaneous project documentation along critical delivery paths.

- **Insurance capacity and project-specific programs.** Data center projects present heightened insurance requirements for owners, contractors, and design professionals due to elevated construction values, technical complexity, and loss severity potentials. All design and construction firms involved should maintain sufficient professional, pollution, and general liability insurance appropriate to their scope of services and risk profile. At the same time, the scale and concentration of these projects are straining primary and excess insurance capacity, including Owner's Protective Professional Indemnity (OPPI) policies and other project-specific strategies. These factors may further affect professional liability placement, with increasing scrutiny from the reinsurance market.

  Early understanding of project insurance structures, capacity constraints, and coverage alignment across all participants is increasingly important on large, consolidated risk profiles.

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- **Delegated-design exposure.** Data center projects frequently rely on delegated design, with responsibility for discrete system design elements contractually assigned to the construction firms and flowed down to subcontractors, suppliers, or subconsultant design professionals. When professional duties are delegated in this manner, scopes of service must be clearly defined and aligned with the delegated party's qualifications and insurance coverage. Without that, errors or omissions in delegated design can create vicarious professional liability exposure at multiple levels of the project team, including prime contractors, design-builders, and upstream design professionals.

  When professional duties are delegated through the construction contract, clarity of scope, performance requirements, and insurance alignment—coupled with careful vetting of downstream responsibilities—plays a key role in whether professional liability is allocated to the performing party or unintentionally assumed by others on the project team.

Conclusion

Data center projects combine unprecedented scale, technical complexity, accelerated delivery expectations, and continuous operational dependence in ways that materially reshape professional liability exposure. While loss experience continues to develop, these projects present concentrated risk conditions that warrant heightened attention to project structure, role definition, and risk allocation throughout the delivery lifecycle. As delivery models continue to evolve—particularly through design-build and engineering, procurement, and construction (EPC) approaches—professional liability outcomes are likely to be shaped less by isolated technical errors and more by how effectively responsibility, compensation, and insurability are aligned across the project team.

This paper reflects ongoing analysis and dialogue within Berkley Construction Professional as experience with this project type continues to evolve.

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