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.

  For developers, schedule compression and delay present potential balance sheet risk as time to revenue is a critical business consideration.

- **Regulatory and jurisdictional constraints.** Local and regional limitations on water, power, noise, and environmental impact can affect project site viability, permitting and schedule certainty. In addition, evolving municipal and state legislative and regulatory initiatives governing data center site location factors, utility consumption, and environmental impacts can disrupt both planning and execution. These factors are largely outside the control of developers, 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.

- **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. Developers and property managers should be aware of this risk as it can impact the project schedule, and the lack of trade expertise may exist post-occupancy making warranty repairs or system maintenance a challenge.

  Limited labor resources in complex trades can be a risk which needs to be proactively managed during construction and after occupancy.

- **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, performance expectations, and warranties 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.

  Developer and property manager exposure does not end at substantial completion or project turnover and operational failures can drive disputes, lease renegotiations, or damage reputations.

Contractual risk and sophisticated ownership structures. Data center developers often seek aggressive downstream risk transfer, but the technical complexity of these assets and the scale of potential operational losses require careful calibration of liability exposure to ensure contracts remain commercially viable and insurable. Overly broad performance obligations, uncapped consequential damages, or misaligned carve-outs can create vicarious liability for developers where contractor failures lead to downtime, revenue loss, or tenant claims that exceed available insurance.

Effective developer risk management requires balancing meaningful accountability with realistic liability structures, supported by clear scope definition, negotiated caps, and contemporaneous decision-making that preserves intended risk transfer without destabilizing project delivery.

- **Insurance capacity and project-specific programs.** Data center projects present heightened insurance requirements for owners, developers, contractors, and design professionals due to elevated construction values, technical complexity, and loss severity potentials. All firms involved should maintain sufficient professional, pollution, and general liability insurance appropriate to their scope of services and risk profile. Developers may need to assess the risk and need specific cyber insurance. 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.

- Delegated-design exposure.
  Data center developments frequently rely on delegated design for critical electrical, mechanical, fire protection, and control systems, with responsibility contractually assigned to contractors and specialty trades; however, failures in execution can still create vicarious professional liability exposure for developers where scopes, performance standards, or insurance requirements are unclear or misaligned. Errors or omissions in delegated design can ultimately impact asset performance, uptime, and tenant obligations, drawing liability back to the ownership entity despite contractual attempts to transfer responsibility downstream.

  For developers, effective delegation hinges on clear scope definition, enforceable performance criteria, and confirmation that delegated parties' qualifications and insurance meaningfully support the risks being transferred.

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 Service Professionals as experience with this project type continues to evolve.

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For risk management information, contact:

Tom Rea
Executive Vice President
trea@berkleysp.com
860.781.6340

Amanda Federici
Vice President
afederici@berkleysp.com
860.781.6336

Andrew D. Mendelson, FAIA
Executive Vice President, Chief Risk Management Officer
amendelson@berkleyalliance.com
312.340.3475

Jude Sedliak, RPLU
Chief Underwriting Officer
jsedliak@berkleysp.com
404.702.4053

Savannah Peterson
Assistant Vice President
speterson@berkleysp.com
303.357.2614

Diane P. Mika
Senior Vice President, Risk Management Officer
dmika@berkleyalliance.com
831.293.6243

Berkley Service Professionals
a Berkley Company

180 Glastonbury Blvd, 4th Floor
Glastonbury, CT 06033
In California:
a division of Berkley Managers Insurance Services, LLC
CA License #0H05115