

THE RISKS OF EMPLOYMENT PRACTICES LIABILITY

Employment practices liability can pose a potentially significant risk exposure for you, your managers, and your business—and the risks have escalated in the past 10 years. During the 2008 recession, as layoffs and terminations increased, the frequency of such claims and suits increased in kind. The frequency could remain elevated as millennials become a larger part of the workforce and seek better work–life balance as well as quick advancement while generally showing lower loyalty to their employers. Employees and candidates also are more aware of employee rights and protections today. These factors should motivate you to understand EPL and identify how to protect yourself and your business.

THE BASIS FOR EPL CLAIMS

EPL claims typically relate to U.S. laws, including Title VII of the Civil Rights Act, the Americans With Disabilities Act, Age Discrimination in Employment Act, Equal Pay Act, Pregnancy Discrimination Act, Immigration Reform and Control Act, Family and Medical Leave Act, and Genetic Information Nondiscrimination Act. Many similar state and local laws could trigger an EPL claim as well. The Insurance Services Offices' 2008 employment practices liability insurance policy form identifies violations employees commonly assert in such claims: wrongful demotion or failure to promote, negative elevation, reassignment or discipline, or wrongful refusal to employ; wrongful termination, either actual or constructive; wrongful denial of training, wrongful deprivation of career opportunity, or breach of employment contract; negligent hiring or supervision; retaliatory action; harassment; libel, slander, invasion of privacy, defamation, or humiliation; or verbal, physical, mental, or emotional abuse arising out of discrimination.

Mitigate the risk of an EPL claim against your business by implementing rigorous human resources practices. At a minimum, be sure to craft workplace policies on employment practices and communicate them by posting them and sharing them in an employee handbook, provide training on EPL to your managers and employees, implement rigorous hiring practices and candidate screening procedures, and document and maintain records of EPL matters.

INSURING AGAINST EPL RISK

Insurance is a common way to transfer EPL-related business risks. Employment practices liability insurance policies typically provide coverage for the defense and indemnification of such acts. Some policies may provide separate limits for defense and indemnification, but most provide a single limit that would be reduced by any defense costs the insurer expends. You and your broker must consider the appropriate limit of coverage for your business. Lower limits of \$25,000 to \$100,000 are readily available in the marketplace and even can be packaged with other lines of coverage. Stand-alone EPLI policies are available with lower limits or with significant limits—into the millions. Deductible and co-insurance options can offer reduced premiums.

When considering EPLI policies, understand the difference between occurrence-based and claims-made coverage terms. Most EPLI policies are written on a claims-made basis, meaning the coverage is triggered whenever a claim is made during the reporting period, even if the violation occurred outside the policy period. Occurrence-based policies, in contrast, cover claims for violations that occurred during the policy period, even if the claim is made outside that period. Also be sure to understand any exclusions that may be part of an EPLI policy, such as criminal acts not related to the laws already mentioned, workers' compensation, Social Security and unemployment matters, and most violations related to the Employee Retirement Income Security Act, Fair Labor Standards Act, National Labor Relations Act, Worker Adjustment and Retraining Notification Act, Consolidated Omnibus Budget Reconciliation Act, and Occupational Safety and Health Act. Protect your company from EPL risks by requesting more information from your broker or carrier on the benefits of an EPLI policy. ■



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Dan Curran is senior vice president and underwriting officer for AmWINS Program Underwriters (Portsmouth, N.H.), which underwrites RecycleGuard®, the ISRI-sponsored insurance program. Reach him at 603/334-3027 or daniel.curran@amwins.com. RecycleGuard has prepared this article for informational purposes only. It is not intended to provide legal advice. Readers should not rely on this document or act upon any of the information it contains without first consulting competent legal counsel.

