



HUB



Broker Insight Report:

How Insurance Oversights Can Lead to Devastating Claims Denials

EMPLOYMENT PRACTICES LIABILITY (EPL)

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Playing by the book doesn't always mean you're in the clear: a lesson in EPL claims.

There are many reasons an employee might bring an Employment Practices Liability (EPL) claim against you or your company. From discrimination to retaliatory discharge, companies with 100 or more employees can expect an employment liability claim every three years.⁴

The problem is, even if you believe you are doing everything by the book, you can still end up on the hook for a costly lawsuit. Defending an EPL claim can easily take a year's time, consume huge amounts of money and resources, and distract you from normal business operations — putting your career, reputation, balance sheet and workflow in jeopardy.

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Businesses cannot survive without adequate employment liability insurance. No one is immune from this type of litigation today. Risk managers and HR executives often ask us, ‘Why should I fear litigation if I've done nothing wrong?’ Unfortunately, this reasoning doesn't apply today. Smaller organizations are particularly at risk due to their limited resources.

— Senior Client Advocate

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⁴ Westlaw, 2012-2013 Edition of Jury Award Trends and Statistics

The Statistics Are Not in Your Favor

Employees have a 51% chance of winning an EPL lawsuit, and even when an employer prevails, it's often at great cost.⁵ Legal expenses, such as eDiscovery, have introduced a significant financial burden to the business and its balance sheet.

COMMON DISCRIMINATION CLAIMS

Normal employment-related activities such as hiring, terminating and promoting employees all carry liability exposure. The most common allegations in employment claims are:

- Disability (ADA), age, race and gender discrimination
- Termination for retaliatory reasons
- Violation of Family and Medical Leave Act (FMLA) rights

51%

of EPL lawsuits are won by employees or other plaintiffs.⁵

The median EPL judgment is

\$200K

not including defense costs.⁶

25%

of EPL cases result in judgments of \$500,000 or more.⁷



⁵ Westlaw, 2012–2013 Edition of Jury Award Trends and Statistics

⁶ 2015 Hiscox Employee Lawsuit Handbook - Employment Practices Liability: Jury Award Trends and Statistics 2013 Edition, Thompson Reuters

⁷ Ibid

EPL Misconceptions vs. Reality

Until recently, only about 30% of privately held companies purchased EPL coverage,⁸ but that number is rising fast as companies learn the truth about how exposed they really are.

Misconception #1: My general liability policy covers employment liability claims.

Reality: A general liability policy is not a master liability policy. Rather, it applies only to bodily and advertising injury and property damage. Without employment liability insurance, an employer will be left to defend costly employment claims on its own.

Misconception #2: I have a great relationship with my employees. I don't have an employment liability risk.

Reality: You may indeed know your employees very well. Regardless, for 2015 the Equal Employment Opportunity Commission (EEOC) reported the filing of close to 90,000 employment claims. At the same time, there has been an increase in disability and age discrimination claims, and monetary recoveries for employees by the EEOC have risen significantly, to \$420,000,000.

All it takes is one employee complaint to raise the red flag to a regulatory agency such as the EEOC, which can create a second, larger class action lawsuit from even the smallest EPL claim. EPL insurance covers claims against any employees and customers — including the ones you have a great relationship with.

Misconception #3: As long as I did nothing wrong, I don't need to worry about an EPL claim.

Reality: It almost doesn't matter if you are innocent. The average EPL claim takes just under a full year to resolve and can bring with it outrageous, untruthful, reputation-damaging accusations against your leadership, employees and management. While settlements can minimize exposure, the financial loss to your business will still be significant. EPL insurance can help resolve a claim efficiently and minimize the financial impact to your organization.

⁸ Chubb's 2013 Private Company Survey; <http://www.insurancejournal.com/magazines/features/2014/01/13/316347.htm>

Real EPL Claims Stories

One organization's nightmare: from a small employment claim to a \$1 million class-action lawsuit

A disgruntled worker brought a wrongful termination claim against his previous employer — a small organization with a diverse employee base — alleging the action was related to his ethnicity. In the process of interviewing other staff members to assess the validity of the individual's claim, the EEOC determined there was enough evidence to expand the claim into a class action involving several hundred current employees. What could have been a small settlement escalated into a \$1 million claim. Had it not been for its EPL insurance and adequate policy limits, the organization would have had to finance the settlement on its own, which would have had a devastating effect on the donor base upon which it relies.

Failed background check puts firm at risk

Although the commercial real estate firm hiring him performed a background check, it somehow missed the fact that a new employee was a convicted sex offender. When the firm's HR department found out, they terminated him immediately. Unfortunately, the company had not purchased EPL insurance, and without it, any harassment claim from co-workers will be the firm's financial responsibility.



Protect what matters most.

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