

#### **How long have insurers offered stand-alone Employment Practices Liability Insurance?**

In the 1990's, D&O underwriters began to offer the industry's first EPLI stand alone policy. Because the exposures were not fully understood and there was not a historical basis for underwriting prices and underwriting loses quickly became unprofitable. In hindsight underwriters would say that their pricing and use of retentions was not wisely utilized. Recently, the industry has started to raise prices, choose insurers wisely and increased retentions in order to return to profitability.

#### **Who are included as insureds under an EPLI policy?**

Employment Practices Liability Insurance is different than D&O that the entity is included as an insured as are directors, officers, employees, former employees and in some policies independent contractors, leased, and temporary employees.

#### **What does "3rd party" coverage mean?**

Third party coverage originally addressed the exposure that insured has when their employees committed wrongful acts outside the insureds environment. The most common example is an outside sales force. The next generation increased coverage to extend to third parties that although were not employees came in to the insureds' environment and were a result of an employees' wrongful act. We call this two way 3rd party coverage. Recently, many insurers have considered this coverage to be better addressed under an insured's general liability policies and have started to exclude all types of third party coverage.

#### **Is EPLI catastrophic or a frequency problem?**

In the early 1990's when EPLI became available most thought of it as a catastrophic coverage, however the exposure has experienced great frequency. Both business type and geographic local has shown that EPLI has great accessibility to frequency. In addition, in the last 7 or 8 years defense and settlements are not uncommon to exceed seven digits. The litigation trend is also now experiencing class action status. There is a great concern by the underwriting community that professional plaintiffs have will continue to targeted corporations with large employees for class action litigation.

#### **What things should insureds consider when evaluating EPLI?**

Other than premium, retentions, contractual wordings, continuity, claims handling, consideration should be given to the insurer's loss prevention services offered its insureds.

#### **What is Employment Practices Liability Insurance?**

Employment Practices Liability (EPL) insurance protects an employer from employees' claims alleging discrimination, wrongful termination, retaliation, or sexual harassment. EPL insurance pays for liability damages and defense costs due to these charges brought by full-time, part-time, temporary and seasonal employees, applicants for employment and volunteers. Optional coverage for claims brought by non-employee third parties such as customers, clients and vendors, is available for an additional premium.

#### **Why do small businesses need EPL coverage?**

Many EPL charges are filed against small businesses. Employment laws that employees may use as a basis for action against their employer apply to the majority of businesses, including small firms. Even groundless employment charges may require legal defense and defense costs can be significant – often \$10,000 or more. Insureds need EPL coverage to have those defense costs covered and to get access to attorneys experienced in defending employers from employment-related charges.

**These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.**

#### What's changed that now makes EPL insurance important for small businesses?

- Discrimination claims have been growing as much as 32 percent over the past five years – and over the last year reached the highest level ever recorded by the EEOC.
- Today's business and legal climate is different than it was years ago. Employees are more aware of employment laws, their rights and how to exercise their rights by taking action against employers.
- Federal and state employment-related laws and regulations have been broadened.
- Employees see a lot of news coverage and publicity about employment cases and awards against employers.
- The workforce is more diverse, with women, older workers and minorities representing a significant percentage of employees.

#### What laws and statutes create the necessity for EPL?

- The need for Employment Practices Liability insurance arises from a number of federal and state laws under which employees may bring actions against their employers for such matters as sexual harassment, discrimination and wrongful termination.
- Title VII — A federal law enacted in 1964 and amended by the Civil Rights Act of 1991. Title VII prohibits discrimination or harassment on the basis of race, color, religion, gender, or national origin. Title VII also created the Equal Employment Opportunity Commission (EEOC) as a venue for employment-related grievances.
- The Equal Pay Act of 1963 — Prohibits unequal pay for men and women serving in substantially the same position.
- The Age Discrimination in Employment Act of 1967 — Prohibits discrimination against persons who are 40 years of age or older.
- The Americans with Disabilities Act (ADA) of 1990 — Prohibits discrimination against people with physical or mental disabilities. Employers also must make any “reasonable accommodations” for their disabled employees to conduct their duties as long as such an accommodation does not pose an undue hardship on the employer. In late 2008, the Americans with Disabilities Act Amendment Act (ADAAA) expanded the protections under the ADA.
- The Family and Medical Leave Act of 1993 — provides that an employee can take up to 12 weeks of unpaid leave to care for a new child or a seriously ill family member, including themselves.
- Fair Employment Practices statutes — Individual state statutes that expand many of the protections provided under federal laws. These laws increase the protected classes to include such classifications as sexual orientation, transgender, medical conditions, obesity and others. These laws also extend their reach so that they apply to even the smallest employers and also lengthen the statutes of limitations. Additionally, the states have created Fair Employment Practices Agencies (or FEPAs) as the state equivalents to the EEOC.
- Common Law — Employees can also allege such tortious acts as violation of their civil rights, infliction of emotional distress, invasion of privacy and others under common law.

**These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.**

#### **Why Choose Employment Practices Liability Insurance?**

According to researchers, three out of five employers will be sued by a prospective, current or former employee while they are in business. While many suits are groundless, defending against them is costly and time-consuming. Employment Practices Liability Insurance provides protection from the following wrongful employment practices, including:

- Harassment
- Discrimination
- Actual or alleged wrongful dismissal, discharge or termination
- Employment-related misrepresentation
- Employment-related libel, slander, humiliation, defamation or invasion of privacy
- Wrongful failure to employ or promote
- Wrongful deprivation of career opportunity, wrong demotion, or negligent evaluation
- Wrongful discipline
- Vicarious liability for intentional acts
- Punitive damages
- Coercion or humiliation in relation to race, marital status, gender, age, physical and/or mental impairments, pregnancy, sexual orientation and any other protected class established by federal, state and local statutes
- If I use contract employees, could I still have employment practices liability?
- Yes. "Employer" has been broadly interpreted by case law to include any personnel who works primarily in your place of business, regardless of whether or not they are directly on your payroll.

#### **Isn't this coverage available under a general liability policy?**

With rare exceptions, claims resulting from the above types of offenses are not covered under general liability policies. First, the majority of these acts are not accidental, so they are not considered occurrences. Also, the injuries they cause do not constitute bodily injury or personal injury as defined under general liability.

#### **Isn't this covered under my Workers' Compensation policy?**

Workers' Compensation policies specifically exclude coverage for employment-practice issues. A sample exclusion from one policy states: damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, harassment, humiliation, discrimination, against or termination of any employee; or any personnel practices, policies, acts or omissions are excluded.

#### **Why would a reputable well-run business need EPL insurance?**

- No matter how well a business is run, an employee can allege anything at anytime.
- Employers need to defend themselves from employment-related charges, even if the charges are found to be without merit.
- EPL coverage pays for defense costs even when the charges are determined to be groundless. Defense costs can be significant, well beyond what many small businesses can afford to pay

**These scenarios are not intended to be interpreted as coverage positions. Coverage for any given claim is based upon its facts and the specific terms and conditions of the policy.**