

Employment Practices Liability Insurance Coverage Section

CLAIMS MADE NOTICE FOR POLICY

NOTICE: THIS POLICY PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS SUBJECT TO ITS TERMS. THIS POLICY APPLIES ONLY TO ANY CLAIM FIRST MADE AGAINST THE INSUREDS AND REPORTED TO THE INSURER DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD THAT MAY APPLY.

PLEASE READ AND REVIEW THE POLICY CAREFULLY AND DISCUSS THE COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

In consideration of the payment of the premium, in reliance on all statements in the **Proposal** and all other information provided to the **Insurer**, and subject to all provisions of this **Policy**, the **Insurer** and **Insureds** agree as follows:

I. Insuring Agreements

A. Wrongful Employment Acts Coverage

This **Policy** shall pay on behalf of the **Insureds** all **Loss** up to the Limit of Liability applicable to this coverage section arising from any **Employment Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Wrongful Employment Act**.

B. Third Party Wrongful Acts Coverage

If purchased as indicated in Item 3. of the Declarations, this **Policy** shall pay on behalf of the **Insureds** all **Loss** up to the Limit of Liability applicable to this coverage section arising from any **Third Party Claim** first made against the **Insureds** during the **Policy Period** and reported to the **Insurer** in accordance with section VII. of the Common Policy Terms and Conditions Section of this **Policy**, for any actual or alleged **Third Party Wrongful Act**.

II. Extensions

A. Severability of Exclusions

The **Wrongful Act** of an **Insured** shall not be imputed to any other **Insured** for the purpose of determining the applicability of the Exclusions set forth in section IV. of this coverage section.

B. Retaliation Carve-Out of Exclusions

No exclusion set forth in section IV. of this coverage section shall apply to any **Claim** for any actual or alleged **Retaliation** of an **Employee** or applicant for employment by the **Insured**.

C. Application of Deductible in the Event of Bankruptcy

In the event the **Insured Entity** is financially or legally unable to pay **Loss** by reason of bankruptcy, no Deductible amount shall apply with regard to such **Loss** during the pendency of the bankruptcy proceeding.

III. Definitions

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section of this **Policy**, whenever printed in boldface type, and whether in the singular or plural form in this coverage section, the following terms shall have the meanings indicated below.

A. **Claim** means:

1. an **Employment Claim**; or
2. if purchased as indicated in Item 3. of the Declarations, a **Third Party Claim**.

A **Claim** shall be deemed to have been first made at the time notice of the **Claim** is first received by any **Insured**.

B. **Claimant** means:

1. a past or present **Employee** of, or applicant for employment with, any **Insured Entity**; or
2. a governmental entity or agency, including the Equal Employment Opportunity Commission or similar federal, state, local or foreign agency, when acting on behalf of, or for the benefit of, a past or present **Employee** or applicant for employment with any **Insured Entity**.

- C. **Costs of Defense** means reasonable and necessary fees, costs and expenses (including premiums for any appeal bond, attachment bond or similar bond, but without any obligation to apply for or furnish any such bond) resulting solely from the investigation, adjustment, defense and appeal of a covered **Claim** against the **Insureds**, but excluding salaries, wages, overhead or benefit expenses associated with any **Insured**, or any amount covered by the duty to defend obligation of any other insurer.
- D. **Damages** means:
1. a monetary judgment, award or settlement, including front pay, back pay, emotional distress, or attorney's fees (where recoverable by statute); or
 2. pre-judgment interest and post-judgment interest;
- provided, however, **Damages** shall not include:
- a. taxes (provided, however, that the **Insurer** will reimburse an **Insured Entity** for any employer share of payroll taxes on any portion of damages or settlements which constitute back pay otherwise considered **Damages**), civil or criminal fines, sanctions, or penalties imposed by law; or
 - b. payment of insurance, disability, pension, health or other plan benefits claimed by or on behalf of any former or current **Employee**, or that an **Employee** would have been entitled to as an **Employee** had an **Insured Entity** provided the **Employee** with a continuation of insurance; or
 - c. costs incurred by any **Insured** to make any building or property more accessible or accommodating to any disabled person; or
 - d. commissions, bonuses, distributions, profit sharing, severance payments, unpaid wages, or amounts due pursuant to any federal, state, local or foreign wage and hour laws whether statutory or common law, including without limitation, the Fair Labor Standards Act, including any amendments thereto, and/or any payroll policies, practices and procedures, including the reimbursement of claimed business expenses; or
 - e. future wages or benefits of any reinstated **Employee** or wages or benefits associated with the continued employment of an **Employee**; or
 - f. any actual or potential ownership, partnership or membership interest in an **Insured Entity** or the value of any such ownership interest, including but not limited to, stock and/or stock options; or
 - g. matters which are uninsurable under the law pursuant to which this **Policy** is construed.
- E. **Employee** means an individual whose labor or service is engaged by and directed by an **Insured Entity**, including any part-time, volunteer, intern, leased, seasonal or temporary individual. An independent contractor is not an **Employee**. An individual's employment status shall be determined as of the date of the **Wrongful Act**.
- F. **Employment Claim** means:
1. a written demand for monetary or non-monetary relief, including but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process, brought by or on behalf of a **Claimant**, arising from a **Wrongful Employment Act**; or
 2. a civil, administrative, regulatory or arbitration proceeding, brought by or on behalf of a **Claimant**, arising from a **Wrongful Employment Act**; or
 3. a written request made by a **Claimant** to an **Insured** to toll or waive the statute of limitations for any **Wrongful Employment Act**;
- provided, however, the term **Employment Claim** shall not include any grievance or arbitration based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving a collective bargaining agreement.
- G. **Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature that:
1. are explicitly or implicitly made a condition of employment; or
 2. are used as a basis for employment decisions; or
 3. create a work environment that interferes with performance.
- H. **Insured** means any **Insured Person** or any **Insured Entity**.
- I. **Insured Person** means:
1. any past, present or future duly elected or appointed director or officer of an **Insured Entity**; or
 2. any past, present or future duly elected or appointed member of the board of managers, member of the management committee, or equivalent executive of an **Insured Entity** if organized as a limited liability company; or

3. an **Employee** while acting solely within the course and scope of employment with an **Insured Entity**; or
 4. an independent contractor for an **Insured Entity**, but only if the **Insured Entity** provides indemnification to such individual in the same manner as that provided to the **Insured Entity's** employees.
- J. **Retaliation** means any actual or alleged retaliatory act of an **Insured** alleged to be in response to the actual or attempted exercise by an **Employee** or applicant for employment with the **Insured Entity**, of any right that such **Employee** or applicant has under law, including without limitation, any of the following activities: (1) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; or (2) the exercise of rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; or (3) the filing of any claim under the Federal False Claims Act or any other federal, state, local or foreign "whistle-blower" law; or (4) strikes of an **Employee** or applicant, or any legally-protected work stoppage or slowdown; or (5) assisting, cooperating or testifying in any proceeding or investigation into whether an **Insured** violated any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder.
- K. **Third Party Claim** means:
1. a written demand for monetary or non-monetary relief, including but not limited to, any demand for mediation, arbitration or any other alternative dispute resolution process; arising from a **Third Party Wrongful Act**, which is solely brought and maintained by or on behalf of a **Third Party Claimant** against an **Insured**; or
 2. a civil proceeding which is: (a) brought against an **Insured**; and (b) arising from a **Third Party Wrongful Act**; and (c) which is solely brought and maintained by or on behalf of a **Third Party Claimant** against whom a **Third Party Wrongful Act** is alleged to have been committed; or
 3. a written request made by or on behalf of a **Third Party Claimant** to an **Insured** to toll or waive the statute of limitations for any **Third Party Wrongful Act**.
- L. **Third Party Claimant** means any natural person(s) who is a customer, vendor, service provider or other business invitee of any **Insured Entity**, other than an **Employee** or applicant for employment with any **Insured Entity**.
- M. **Third Party Wrongful Act** means any actual or alleged:
1. discrimination prohibited by applicable law; or
 2. harassment on the basis of race, color, religion, age, gender, disability, pregnancy, national origin, sexual orientation, gender identity or expression, or marital status; or
 3. harassment in the form of unwelcome sexual advances, requests for sexual favors or other verbal, visual or physical conduct of a sexual nature;
- committed by an **Insured**.
- N. **Workplace Bullying** means verbal, written or visual intimidation, harassment or threats by an **Insured** while acting solely within the course and scope of employment with an **Insured Entity**, including but not limited to, an **Insured's** use of social media to intimidate, harass or threaten.
- O. **Wrongful Act** means:
1. a **Wrongful Employment Act**; or
 2. if purchased as indicated in Item 3. of the Declarations, a **Third Party Wrongful Act**.
- P. **Wrongful Employment Act**, means any actual or alleged:
1. wrongful dismissal, discharge or termination of employment (either actual or constructive), including breach of an implied agreement to employ; or
 2. **Harassment**; or
 3. harassment on the basis of race, color, religion, age, gender, disability, pregnancy, national origin, sexual orientation, gender identity or expression, or marital status (including but not limited to: **Workplace Bullying**); or
 4. discrimination (including but not limited to, discrimination based upon age, gender, gender identity or expression, race, color, national origin, religion, sexual orientation or preference, genetic information, pregnancy, marital status, military status, disability or any other basis prohibited by law); or
 5. **Retaliation**; or
 6. employment-related misrepresentation; or
 7. employment-related: libel, slander, humiliation, defamation or invasion of privacy; or
 8. false arrest or false imprisonment; or

9. wrongful failure to employ or promote; or
10. wrongful deprivation of career opportunity, wrongful demotion, or negligent evaluation, including the giving of negative or defamatory statements in connection with a reference; or
11. wrongful discipline; or
12. failure to grant tenure; or
13. negligent hiring, retention, training or supervision, infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate policies and procedures, or violation of an individual's civil rights;

committed by an **Insured**.

IV. Exclusions

In addition to the Exclusions listed in section IV. of the Common Policy Terms and Conditions Section of this **Policy**, the **Insurer** shall not be liable to make any payment for **Loss** in connection with a **Claim** made against any **Insured**:

- A. for:
 1. damage to or destruction of any tangible property, including the loss of use thereof; or
 2. bodily injury, sickness, disease, death, and assault or battery of any person; provided, however, solely with respect to a **Claim** for a **Wrongful Employment Act**, this exclusion shall not apply to: emotional distress, mental anguish, defamation, invasion of privacy or humiliation;
- B. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of state statutory law or common law;
- C. for any actual or alleged breach of any oral or written contract or agreement, or for any amounts owed pursuant to an oral or written contract or agreement; whether brought as breach of contract, misrepresentation or otherwise;
- D. based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:
 1. any prior or pending litigation, administrative or arbitration proceeding, or investigation as of the **Prior and Pending Litigation Date**; or
 2. any fact, circumstance, situation, transaction or event underlying or alleged in such litigation, administrative or arbitration proceeding, or investigation;regardless of the legal theory upon which such **Claim** is predicated; provided, however, solely for the purpose of this exclusion, filing for unemployment benefits does not constitute an administrative proceeding;
- E. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving any actual or alleged violation of the Worker's Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act, the National Labor Relations Act or the Health Insurance Portability and Accountability Act of 1996, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law;
- F. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving any actual or alleged obligations under any workers' compensation, social security, disability benefits, or unemployment compensation law, including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law;
- G. based upon, arising out of, directly or indirectly resulting from, or in consequence of, or in any way involving any actual or alleged violations of any federal, state, local or foreign wage and hour laws, whether statutory or common law, including without limitation, the Fair Labor Standards Act, including any amendments thereto; provided, however, this exclusion shall not apply to any **Claim** for any amounts owed under the Equal Pay Act of 1963.

V. General Conditions

Other Insurance

Unless specifically stated otherwise, the coverage afforded under this coverage section for:

1. an **Employment Claim** shall be primary to any other valid and collectible insurance policy (including coverage afforded by any other **Coverage Section**), provided that with respect to that portion of an **Employment Claim** made against any leased or temporary employee or independent contractor, **Loss** payable on behalf of such leased or temporary employee or independent contractor under this coverage section shall be excess of, and shall not contribute with, any other valid and collectible policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise; and
2. a **Third Party Claim** shall be excess of, and shall not contribute with, any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by this coverage section); regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

In witness whereof, the **Insurer** has caused this **Policy** to be signed by its President and Secretary, but this **Policy** shall not be valid unless countersigned on the Declarations Page by a duly authorized representative of the **Insurer**.



President and Chief Executive Officer



Secretary