

# EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE SECTION

## CLAIMS MADE AND REPORTED WARNING 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 INSURED 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:

### SECTION I. – INSURING AGREEMENT

#### Employment Practices Liability Insurance

This "Policy" shall pay on behalf of the "Insureds" all "Loss" arising from any "Claim" first made against the "Insureds" during the "Policy Period" and reported to the "Insurer" in writing during the "Policy Period" or within 90 days thereafter, for any actual or alleged "Wrongful Act".

### SECTION 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 retaliatory treatment of the claimant 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.

### SECTION III. – DEFINITIONS

In addition to the Definitions listed in section III. of the Common Policy Terms and Conditions Section of this "Policy", defined terms are in quotation marks throughout this "Policy" and may be used in either the singular or plural as appropriate.

#### A. "Claim" means:

1. a written demand for monetary or non-monetary relief, or
2. an administrative or regulatory investigation or proceeding brought or initiated by or before a federal, state, local or foreign agency, or
3. a written request made by a claimant to the "Named Insured" to toll or waive the statute of limitations for any "Wrongful Act", or
4. the service of a subpoena,

provided, however, the term "Claim" shall not include any grievance or arbitration subject to a collective bargaining agreement. A "Claim" shall be deemed to have been first made at the time notice of the "Claim" is first received by any "Insured".

- B. "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 or potentially 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.
- C. "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 a claimant would have been entitled to as an "Employee" had an "Insured Entity" provided the claimant 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, profit sharing, severance payments, unpaid wages, or amounts due pursuant to the Fair Labor Standards Act including amendments thereto, or any similar provisions of any federal, state, local or foreign statutory or common law, 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.
- D. "Employee" means an individual whose labor or service is engaged by and directed by an "Insured Entity", including, a volunteer, an intern, a part-time, 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".
- E. "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.
- "Harassment" also means assault or battery, but only if related to a charge of sexual harassment.
- F. "Insured" means any "Insured Person" or any "Insured Entity".
- G. "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.

Coverage will automatically apply to all new "Insured Persons" after the "Policy" inception date.

H. "Wrongful Act" means a "Wrongful Employment Act".

I. "Wrongful Employment Act" means:

1. any actual or alleged act by an "Insured" arising from an actual or potential employment relationship with the claimant for discrimination or "Harassment" because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, marital status, or any other basis prohibited by law which:
  - a. results in termination of the employment relationship, or demotion or failure or refusal to hire or promote, or failure to accommodate an "Employee" or potential "Employee", or denial of an employment privilege, or the taking of any adverse or differential employment action, or
  - b. creates a hostile or offensive work environment that interferes with work performance, or
2. any actual or alleged act by an "Insured" arising from an actual or potential employment relationship with the claimant for sexual "Harassment" including unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature that is made a condition of employment, is used as a basis for employment decisions, or creates an intimidating, hostile or offensive work environment that interferes with work performance, or
3. any actual or alleged act by an "Insured" arising from an actual or potential employment relationship with the claimant for termination, constructive discharge, wrongful failure to hire, wrongful demotion, negligent retention, negligent supervision, negligent hiring, retaliation, misrepresentation, infliction of emotional distress, defamation, invasion of privacy, humiliation, wrongful evaluation, or breach of any implied contract or implied agreement relating to employment arising out of any personnel manual of the "Insured Entity", policy statement or oral representation.

#### **SECTION 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. physical injury to or destruction of any tangible property, including the loss of use thereof, or
2. bodily injury, sickness, disease, and death, provided, however, this exclusion shall not apply to emotional distress, mental anguish, defamation, invasion of privacy or humiliation in connection with a "Claim" for a "Wrongful Act";

B. for any actual or alleged violation of the Employee Retirement Income Security Act of 1974, including amendments thereto, or any similar provisions of the state statutory law or common law;

- C. for any actual or alleged breach of, or any amounts owed pursuant to, any oral or written contract or agreement, provided, however, this exclusion shall not apply to:
1. any "Claim" for any actual or alleged breach of any implied contract or implied agreement relating to employment arising out of any personnel manual of the "Insured Entity", policy statement or oral representation, or
  2. "Costs of Defense";
- 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, 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 the federal, state, local or foreign wage and hour laws, including, without limitation, the Fair Labor Standards Act, provided, however, this exclusion shall not apply to any "Claim" for any amounts owed under the Equal Pay Act of 1963.

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