

CHAPTER 13: EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI)

Employment Practices Liability Insurance (EPLI)



A type of liability insurance covering wrongful acts arising from the employment process. The most frequent types of claims covered under such policies include: wrongful termination, discrimination, sexual harassment, and retaliation.

In addition, the policies cover claims from a variety of other types of inappropriate workplace conduct, including (but not limited to) employment-related: defamation, invasion of privacy, failure to promote, deprivation of a career opportunity, and employees as insureds. The most common exclusions are for bodily injury (BI), property damage (PD), and intentional/dishonest acts. EPLI policies are written on a claims-made basis.

The forms contain “shrinking limits” provisions, meaning that insurer payment of defense costs – which are often a substantial part of a claim – reduce the policy’s limits. This approach contrasts with commercial general liability coverage, it is also frequently sold as part of a management liability package policy. In addition to providing directors and officers (D&O) and fiduciary liability insurance, management liability package policies afford the option to cover employment practices liability.



Many EPLI policies cover punitive damages, where the payment of such damages is allowed by law.

EPLI coverage should be one element of a robust risk management plan. Insureds can prevent most claims from occurring by establishing proper employment policies and procedures. It is the obligation of the business owner to understand their obligations under local, state, and federal anti-discrimination laws. (i.e. – Civil Rights Act of 1964, The Americans with Disabilities Act, Age Discrimination in Employment Act, Family and Medical Leave Act and the Equal Employment Opportunity Commission)

The Equal Employment Opportunity Commission recognizes ten types of employment discrimination practices: Age, Disability, Equal Pay/Compensation, Genetic Information, Natural Origin, Race, Religion, Retaliation, Sex, and Sexual Harassment.



Under most EPLI policies there is no exclusion for fraudulent or intentional acts such as wrongful termination.

Some Types of EPLI Claims -

Wrongful Termination Claims:

More than any other aspect of the employment relationship, the discharge of an employee has the potential to result in litigation. EPLI policies cover claims by former employees alleging that he or she was wrongfully terminated. Some policies also cover claims of "constructive discharge" by employees who claim that they could no longer tolerate the work environment and were compelled to resign or retire.

Discrimination Claims:

Policies can also cover claims by current, former or prospective employees who charge that they were the victim of employment-related discrimination on the basis of any federal, state or local law that prohibits discrimination by employers on the basis of:

Race	Sexual Orientation
Color	Marital Status
Creed	Sex
National Origin	Religion
Gender	Age
Military Service	Disability
Pregnancy	Handicap

The definition of discrimination can include any future changes in those laws such that any additional categories of discrimination against employees will be included within the coverage afforded by a policy. Claims by employees who charge that they were discriminated against for exercising their rights under worker's compensation, COBRA or other similar laws, can also be covered.

Sexual Harassment:

Coverage for sexual harassment claims against your company, including claims against supervisors and fellow employees, can be included. In addition, the policy can cover all categories of sexual harassment as currently defined by the Equal Employment Opportunity Commission.

Whistleblower Claims:

Policies can also cover claims by employees who charge that they were the subject of an adverse employment decision solely because they disclosed an unfair or illegal practice by the employer. This is one of the few policies to specifically cover whistleblower claims. Sometimes these matters are referred to as "Section 132".

Wage & Hour Claims:

The FLSA sets the minimum wage and maximum hour/overtime requirements. The Wage and Hour Division of the Department of Labor manages the administration of the FLSA. FLSA actions are frequently NOT covered without specific EPLI insurance policies.

Other Employment-Related Claims:

Other additional causes of action which are alleged in employment litigation, such as libel, slander, or other defamation, invasion of privacy, mental anguish, infliction of emotional distress, loss of consortium, assault, battery, breach of contract, negligent hiring, supervision, promotion or retention in connection with any other employment-related claim, can often be covered.



EPLI policies define “claim” as a written demand from the terminated employee for **monetary relief** (damages for wrongful termination) or **non-monetary relief** (reinstatement of the terminated employee to his/her previous occupation with the employer).



The EPLI policy includes a carve-out for emotional distress and mental anguish in the bodily injury exclusion.

The EPLI Policy excludes coverage for bodily injury to an employee. The exclusion should “except out” claims for emotional distress or mental anguish, since both are often alleged in employment-related claims and should be covered.

EPLI covers damages resulting from the employment practices including settlements, judgements, back pay and front pay awards, pre and post judgement interest, attorney’s fees and costs, defense expenses, and if permitted by state law punitive damages.

Management Liability Insurance:

Management liability insurance covers exposures faced by directors, officers, managers, and business entities that arise from governance, finance, benefits and management activities. This includes Directors and Officers liability insurance, Employment Practices liability insurance, Fiduciary liability insurance and Special Crime insurance (covering kidnapping, ransom, extortion exposures and cyber liability). These coverages may be written as “stand alone” policies or as a package policy (which usually provides a discount when written, since much of the same information is needed to underwrite D&O, Employment Practices, Fiduciary, and Special Crimes policies). It is important the agent/broker can explain to the insured’s these exposures are specifically not covered by a commercial general liability policy.