

Employment Practices Liability: What You Don't Know, What You Should Know and What You Can't Afford Not to Know

By Renee Azelby

Employment practices liability insurance is often the last thing a client considers, but the first area an attorney is going to reach for when it comes to a lawsuit. Especially in this day and age of litigation and a faltering economy with layoffs and possible forced retirements, EPLI has become even more important to each of our clients no matter the size and scope of their business.

Let's start with the basics. EPLI protects the company against damages for events relating to their workforce, including but not limited to; wrongful terminations, harassment, discrimination, defamation and unfair hiring/firing practices. The policy should provide defense costs associated with responding to employment related lawsuits. The basic policy would protect businesses against claims from employees, former employees, and potential employees. Third party discrimination is an important coverage enhancement to protect the company against claims from third parties including, but not limited to customers, vendors and other parties not employed by the business. Types of discrim-

ination can include age, disability, equal compensation, national origin, pregnancy, race, retaliation, sex and sexual harassment.

According to the EEOC (Equal Employment Opportunity Commission), in 2008, there were 95,402 charges filed with the Commission. This is the highest number ever reported. The EEOC tracks the following categories; race, sex, religion, national origin, religion, retaliation (all states) retaliation (Title VII only), age, disability, equal pay act.

Take a Step Back.

How are we protecting our clients? Are we offering them employment practices insurance with sufficient limits? Are we really explaining this coverage to them when we sell them a policy? Are we trying to sell them a stand-alone policy rather than sub-limited coverage on another insurance policy? Or, are we walking away and taking the "I don't need this, my employees won't sue me" answer?

Companies of all sizes are being

forced to make difficult staffing decisions. Recent reductions in staff give us proof that now is not the time to ignore the need for stand-alone EPLI. This is the time when most businesses are at high risk for allegations relating to wrongful termination. These clients need to remember that the allegations are costly – usually running an average of over \$100,000 to simply defend. Damage awards can be significantly higher. Costs to defend carry reason enough for the purchase of a stand-alone policy. As an insurance professional there are certain risk management techniques that you can share with your clients that can help them, especially during these tumultuous times. First of all, they should remember to document everything! Sound familiar? We have been saying this in the insurance industry for years, but it is important now more than ever.

In addition, you can inform clients that they should maintain written personnel files with detailed correspondence on hand. Second, it is a good idea to always have two people in the room when addressing a negative employee review or disci-

plinary proceeding. The additional party present should not be someone that can benefit from the negative review. Third, agents can recommend that their clients ensure that any human resources, managerial or supervisory personnel are properly trained. It is also suggested that not only the managerial/supervisory staff, but all employees receive some type of discriminatory practices and/or sexual harassment training if possible. This should be documented in your human resources manual. Finally, insurer help-lines and resources are available. These are available to guide policyholders through tough employment matters and should be utilized as valuable risk management tools.

From an insurance agent's prospective, EPLI is an important tool not just for the protection it will provide clients. This policy should be

looked at as a door-opener and door-closer, and utilized as an important cross-selling tool throughout the agency's business. Each business client should have a quote on EPLI – whether it is offered as a package or not. The importance of the coverages, the risk management tools, the lawsuits and claims should all be mentioned in order to make the sale. Failure to offer EPL coverage, or not enough EPL coverage, can grow in to an errors and omissions exposure for the agent. Utilizing EPLI as a cross-selling tool allows an agency to round out their book of business, and solidify their relationships with clients. We know this is a relationship business, and the provision of adequate insurance products and limits will result in client retention. Once a competing agent is able to come in and take even a small bite from that client, we have a chance at losing it all. This will hold especially true in this economy where every-

thing is constantly being shopped.

While price will become an issue, and many clients are going to balk at the additional premium, the benefits (such as the defense costs alone) far outweigh the costs and must be discussed. It is highly recommended that companies that refuse this coverage sign-off in writing that they are declining to purchase EPL, or higher EPL limit on a stand-alone basis.

Whether a client is a Fortune 500 company or a small Main Street business purchasing a BOP, EPLI is important. And one thing is for sure ... If you as an insurance professional are not out there aggressively selling the benefits of EPLI insurance, there is someone else out there who will. ■

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