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## **LAW FIRMS ARE NOT IMMUNE**

### **Employment lawsuits rise as layoffs hit the industry**

By W. Brian Ahern

The rash of layoffs that has recently seized the legal industry is making law firms quite susceptible to employment-related claims and lawsuits.

In 2008, 7,000 jobs were lost to downsizing in the legal industry. According to Lawshucks.com's Layoff Tracker, nearly 8,000 attorneys and staff members have been let go from major law firms in 2009, 3,677 of those in March alone. Experts are predicting that there will be a dramatic increase in employment lawsuits against law firms costing law firms significant monies in defending the claims and/or in indemnity payments.

According to Catherine Padalino, the worldwide employment practices liability manager for the Chubb Group of Insurance Companies, "The growing trend toward more single-plaintiff EPL lawsuits will hit small to mid-size firms the hardest. These firms may find it difficult to bear the financial burden of a lawsuit without insurance protection."

Most law firms elect to carry professional liability insurance to provide coverage for malpractice claims. More firms, however, elect not to carry employment practices liability (EPL) insurance. Some believe that such coverage is too expensive. With the average cost of an Equal Employment Opportunity Commission lawsuit exceeding \$140,000, law firms will find the investment in EPL insurance far less expensive

While it is true that when EPL products first became available the cost was prohibitive for many firms, today coverage is quite affordable. Rates currently range from \$130 to \$280 per employee for limits of \$1 million with a modest deductible.

The rates for EPL insurance are based upon several factors including the number of employees; claims history; written procedures such as a comprehensive employee handbook; turnover and termination rates; employee demographics; profitability of the firm; and the number of exempt and nonexempt employees. An experienced insurance broker can work with a firm to find appropriate coverage at a competitive rate.

Some firms have the mistaken belief that, as attorneys, their employment practices are stellar, and they do not need coverage. Unfortunately, no law firm is immune.

Firms should think of EPL coverage as a vehicle for managing the risk of employee lawsuits. At a minimum, a law firm's executive committee should be made aware of the coverage options and the respective cost. Although competent counsel and consultants can provide the most updated risk management techniques to minimize employment practices exposure, the potential for a frivolous or a nonmeritorious claim is still an unfortunate reality. Many terminated law firm employees are well educated and view their former employers as having significant resources.

The scope of most EPL policies provides coverage for claims alleging one or a combination of four broad categories of conduct: discrimination, wrongful termination, sexual harassment and workplace torts (misrepresentation, defamation, infliction of emotional distress, wrongful discipline, breach of an employment contract, etc.).

Many insurance companies offer policy enhancements specifically for law firms, which can include third-party liability coverage for claims brought by clients for discrimination and/or harassment; definition of insured to include partners; coverage for failure to promote partners; and toll-free prevention hotlines. A sub limit for defense costs is also provided with some policies for wage and hour claims.

A good defense is always a good offense. Padalino of Chubb recommends that law firms take steps prior to a layoff to minimize their potential EPL exposure.

Evaluate the overall anticipated impact of the layoff, including the potential for litigation as well as public scrutiny.

Use quantitative criteria such as tenure and performance, rather than "soft" criteria, such as social situations and financial hardship, to determine which employees to let go. Be consistent in applying the criteria, which should be communicated to all employees.

Review the demographics of the staff that will be laid off to eliminate any appearance of discrimination. Consider the status of each employee, including whether he or she recently requested a leave under the Family Medical Leave Act or filed a workers compensation claim.

Use outside counsel to evaluate employment practices and severance policies. Law firms should refrain from self-diagnosis.

Many firms will find themselves defending both meritorious and nonmeritorious claims over the next 12 months. Understanding the coverage and pricing structure will help you determine the cost benefit analysis of adding this policy to your insurance portfolio.

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