RISK MANAGEMENT
INSIGHTS

by W. Brian Ahern, RPLU

EPL Insurance:
New Reasons to Have It

EPL insurance provides coverage for claims alleging discrimination, wrongful termination, sexual harassment and/or workplace torts and is different than other types of insurance your firm may already have.

If your law firm carries malpractice insurance but not employment practices liability (EPL) insurance, your firm is still vulnerable to costly lawsuits by employees. If you currently have EPL insurance, such coverage has been expanded in recent years to include additional types of claims. For firms both with and without EPL insurance, we suggest working with your insurance broker to review your needs and to make certain you are taking advantage of all types of coverage offered.

"It is highly advisable to at least explore the purchase of employment practices liability insurance," states San Diego defense attorney Thomas Ingrassia of Pettit Kohn Ingrassia & Lutz. "The employer's cost of 'winning' employment litigation (without insurance) is often cost prohibitive, and the cost of 'losing' is often overwhelming."

When working with your insurance broker to select an EPL policy, consider the following:

- Review the policy's coverage to ensure it is providing you with broad based coverage.
- Negotiate for deletion of any unfavorable exclusions.
- Consider who is insured (predecessor firms, employees, independent contractors, etc.).
- Determine if any co-insurance applies.
- Does the retroactive date of the policy include full prior acts?
- Ensure that the policy provides a "Duty to Defend" provision so that the insurer will advance the defense costs associated with any claim (after the deductible is exhausted).
- Understand what constitutes a claim and how coverage is triggered under a policy.
- What services are provided with respect to risk management by the insurance company?
- The experience of the insurer with EPL policies and law firms.

EPL policies may now offer additional coverage for:

- Social media – workplace bullying, defamation, invasion of privacy and wrongful failure to hire can result from an insured's use of social media.
- Privacy violation coverage – covers employers for liabilities they may incur in the event of a loss or theft of employee personal information.
- Employment event coverage – provides employers with a sublimit to cover the cost of hiring a public relations firm, security firm or mental health professionals to cope with the aftermath of layoffs, public allegations of harassment or workplace disaster.
- Breach of contract defense sublimit - for claims involving contract disputes to include written partnership agreements.
- Wage & hour sublimit for defense coverage may also be available.

While EPL insurance was prohibitively expensive for some in the past, an influx of carriers in the marketplace has driven down costs. Policies now start as low as $130 per employee for limits of $1 million in coverage with a modest deductible. If cost is an issue, some insurance carriers offer additional endorsements to their client's professional liability policy that can provide limited protection for a firm.

The San Diego County Bar Association recently expanded the EPL coverage it offers to members so there is no better time to review your needs and ensure you are fully covered.

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