

When employees turn

EPL insurance can protect businesses from losing money to employee lawsuits. **Interviewed by Usha Viswanathan**

Employment practices liability (EPL) suits have mushroomed since the early 1990s, following Anita Hill's allegations of sexual harassment during the Clarence Thomas Senate confirmation hearings and the passage of certain amendments to the Civil Rights Act — both of which occurred in 1991.

EPL claims can include a wide range of allegations, but most involve some form of wrongful termination/discharge, sexual harassment or discrimination. Due to the restrictions contained in most Commercial General Liability (CGL) policy forms, stand-alone EPL policies have become an important component of a company's overall insurance portfolio.

Smart Business spoke with Jim Lopiccio, vice president of DLD Insurance Brokers Inc., about the value of employment practices liability insurance to today's business owner.

Why did CGL insurance become insufficient for most companies in providing protection for EPL claims?

The Civil Rights Act of 1991 substantially increased the liability exposure to employers by, among other things, giving the complaining party the right to a jury trial and awarding compensatory and punitive damages. This resulted in a dramatic increase in the potential frequency and severity of EPL claims, which CGL policies were not designed to address.

For example, many CGL policies have relatively low premiums and pay defense costs outside of (or in addition to) the basic limit of liability. Early on, because EPL claims often include allegations such as emotional distress, mental anguish and/or humiliation, some CGL carriers were forced to respond under the bodily injury or personal injury portion of coverage.

However, most Commercial General Liability carriers now have specific exclusions to clarify it is not their intent to cover claims arising out of the employer-employee relationship.



Jim Lopiccio
Vice president
DLD Insurance Brokers Inc.

What does EPL insurance cover?

EPL insurance typically covers the directors, officers, employees and the company itself for defense costs and any resulting damages arising out of claims brought by employees alleging wrongful termination, sexual harassment and/or discrimination. Coverage for punitive damages may also be included, where insurable.

Do claims from nonemployees ever trigger EPL coverage?

Claims brought by nonemployee third parties alleging discrimination and harassment are on the rise — as evidenced by some very large cases against national rental car companies, restaurants and others. Customers, vendors, tenants or anyone who does business with your firm could be potential plaintiffs. In response, EPL carriers will selectively include third-party discrimination and harassment coverage — typically for an additional premium charge.

Who buys EPL insurance?

Although cases against big public companies tend to get the most press, employment claims can be among the most fre-

quent faced by private companies and non-profit organizations. Many of the key federal employment laws apply to employers with more than 15 to 20 employees; however, many states have laws that apply to smaller employers, create additional protected statuses (like sexual orientation, marital status and residency), and allow for broader damage awards.

The attorneys' fees to defend a claim by a single plaintiff alone can reach in excess of \$50,000, with an additional \$100,000 or more paid in damages. These amounts can be much higher if the case alleges particularly egregious behavior. As such, we believe it is prudent for employers of all sizes to at least explore EPL coverage.

Is EPL insurance expensive?

Due to substantial competition in the EPL insurance marketplace over the past several years, this coverage has become very affordable for most employers. Numerous specialty carriers are set up to provide coverage for companies with fewer than 100 employees, and coverage for the smallest employers can start at \$2,500 in premium with deductibles of \$2,500 to \$5,000.

How difficult is it to obtain a quotation?

It is actually quite easy in most cases. Many carriers have short-form applications available, which simply inquire about the location of the insured, nature of operations, number of employees and claims history. Larger employers would be required to provide a copy of the company's financial statements, employee handbook, employment application, EEO-1 report and other supporting materials.

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