



Employment Practices Liability
June 23, 2015

In 2013, the Equal Employment Opportunity Commission received nearly 100,000 charges of workplace discrimination. All employers, small as well as large, are subject to federal and state discrimination and employment laws, giving rise to exposures of employment-related claims. Employment Practices Liability Insurance provides liability and defense coverage for claims arising out of discrimination, wrongful termination, sexual harassment, breach of contract and emotional distress. The policy can be endorsed to provide coverage for wage and hour law violations.

Small, privately held companies are just as likely to be hit with an employment practices claim as large, publicly traded corporations. The Employment Practices Liability claims discussed herein all involved Private Corporations with anywhere between 40 and 240 employees and were compiled by Chubb over the last few years.

Bad Employees...Just Get Worse

A mid-level supervisor with a long history of documented performance issues was terminated for smoking in a restricted area. The terminated employee, who was 54 years old, responded by suing the company for wrongful termination. He alleged age discrimination on the basis of comments made by his supervisor (such as "You're too old") and disability discrimination because the company refused to make accommodations for his high blood pressure. He also alleged he could only be terminated for good cause. The plaintiff sought back pay, front pay, special damages, and attorney's fees totaling an estimated \$275,000, in addition to punitive damages. The company settled with the former employee, paying \$350,000, but not before it had paid \$130,000 in defense costs.

Discrimination...Doesn't Get Better With Age

"ABC International" terminated a long-time manager for alienating employees and customers and disinterest in his job. The manager was 59 years old when the termination took place, and "ABC" checked off "other" instead of "poor performance" on the termination form. The manager filed a charge of discrimination with the Equal Employment Opportunity Commission, alleging he was terminated because of his age. In his charge he stated that he had always received regular merit pay increases, was replaced by a worker in his 30s, and that some members of senior management had made comments about needing "to get rid of the old guys". The manager subsequently filed a lawsuit against the company seeking two years of loss wages and benefits, as well as compensation for emotional distress. Although "ABC" believed it was innocent of the allegations, the company determined that defending against the lawsuit would be costly. The case eventually settled out of court for \$250,000, while expenses totaled more than \$60,000.

Inappropriate Jokes...The Punchline is Not Funny

According to a female employee, a supervisor allegedly made abusive and sexually explicit comments to her and several coworkers. The supervisor also made sexual advances toward the employee, who rebuffed the advances. Shortly thereafter, the employee was terminated as part of a wider company reduction in force.

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The former employee later brought suit against the company and two managers, alleging sexual harassment, intentional infliction of emotional distress, wrongful termination, retaliation, and sexual discrimination. She sought \$275,000, plus reimbursement of legal fees. The employer responded with a defense stating that the ex-employee's personnel file showed she had often been tardy for work, had conflicts with managers, and had patchy performance and that her termination was the result of a broad reduction in force. Records indicated she had been a problem employee, frequently talked about her sex life, and made vulgar comments at work. However, it also came to light that management had tolerated sexual jokes around the office but assumed no one was offended. A court panel ruled against the company, ordering it to pay the plaintiff \$100,000 plus her legal fees. In addition, the company accrued \$31,000 in defense costs.

Although employers cannot completely eliminate the possibility of an employment practices liability lawsuit, there are ways to manage the risk proactively. Employment Practices Liability (EPL) Insurance is designed to protect you against these exposures that can threaten your company's bottom line.

Please contact Eleanor Garvey, Commercial Lines Manager at Powers Craft Parker & Beard, Inc., a Subsidiary of The Bryn Mawr Trust Company. She can provide you with a competitive EPL Insurance quotation. Eleanor's direct dial is 610-527-1884 and her email address is e.garvey@pcpbinc.com.

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