



# **Managing Employment Practices Liability:**

Strategies to reduce your risk

Presented by: York International Agency, LLC

# Agenda

- Increasing monetary exposures
- Employment Practices Liability (EPL) insurance specifications, coverage, and exclusions
- EPL insurance policies
- Limiting exposures

# Increasing monetary exposures

There were 79,432 charges filed for harassment with the EEOC in 2004, with settlements resolved at a total cost of \$251.7 million\*

Win or lose, the average cost of legal fees and related defense costs for the average liability claim is \$114,000, *not* including settlement amounts\*\*

\* Per 2004 data from EEOC (Equal Employment Opportunity Commission) Charge Data System. Includes race, sex, national origin, religion, retaliation, age, disability, and equal pay act harassment

\*\*Watson Wyatt Company

As cost for litigation and damage awards climb, experts predict that employment liability will only become more complex. As a result, it is critical for employers to limit their exposure. Two effective strategies focus on:

- ✓ Desirable human resources policies & practices
- ✓ EPL insurance coverage

# **Strategy: Human Resources Policies & Practices**

Conduct an HR Audit to review:

- ✓ Employee Handbook
- ✓ Recruitment and hiring practices
- ✓ Disciplinary and termination practices
- ✓ Performance review requirements
- ✓ Promotion and demotion procedures
- ✓ Workplace rules
- ✓ Training & supervision of employees

- Establish solid recruitment & hiring processes that stress a 'zero-tolerance' policy for discrimination/harassment
- Institute proper employee orientation
- Establish standard disciplinary action & termination plans
- Keep records and be consistent

Job interviews pose extra liabilities if interviewers are not aware of the laws

- All employees involved in supervisory positions should receive additional training, particularly in interview skills
- Educate supervisors/interviewers with periodic training to avoid questions pertaining to the following when conducting interviews:
  - Age
  - Religion
  - Race
  - National Origin

- At-will agreement
- EEO statement
- Authorizations to verify information
- Perform due diligence
- Contact references
- Check school records
- Verify degrees earned
- Conduct aptitude testing
- Explain & conduct drug/alcohol testing

Employment at-will:

Make job offer in writing; specify position, duties, salary, vacation accrual and stipulations of any bonus or incentive pay

Contract employees:

- Be aware of contract breaches
- State salary in bi-weekly or monthly increments
- If stated as annual, may be misconstrued as contract for a year

Orient all new hires:

- Review employee handbook
- Explain all workplace policies and rules
- Explain grievance procedure
- Require employee to sign and acknowledge information was reviewed and understood

When conducting annual reviews:

- Be specific
- Be objective vs. subjective
- Offer positive criticism
- Set performance-based criteria

Require employee to conduct self-assessment

- Be part of goal setting process
- Encourage to write comments
- Sign performance-based criteria

If an employee's performance is sub-par:

- Outline areas of improvement in writing
- Set timelines for improvement
- Explain consequences if no improvement

Institute uniform disciplinary actions:

- Actions should be equitable per similar infraction
- Review policies and consequences
- Increase action in severity

Document all occurrences:

- Indicate action taken
- Acknowledge employee with results of your actions

# Investigate complaints

In order to investigate all complaints thoroughly:

- Give employees options for reporting grievances, and communicate procedure effectively
- Document all phases in writing
- File initial report including date and details
- Conduct follow-up conversations
- Decide course of action

Courses of action include:

- Disciplinary
- Training
- Reassignment of duties
- Restructure workplace
- Periodic review for employees/Supervisors
- Workplace polices and rules
- Employee handbook
- Performance management

When all else fails:

- Conduct a review of employee's personnel file with labor attorney or legal council to identify possible legal ramifications
- Proceed with termination or review disciplinary process

Present notice calmly and concisely:

- Inform employee in person, privately
  - Human resources representative should be present as a witness and present continuing benefit options, such as COBRA
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- Consider Security Personnel
  - Escort employee out of building, if necessary

Reduce your liability by putting the proper procedures in place, communicating them to management and employees, and promptly addressing all complaints.

- Consider additional employee/supervisor training that stresses a zero-tolerance policy for discrimination/harassment
- Utilize written employment policies and best practices
- Thoroughly investigate every incident of harassment; give employees options for reporting grievances
- Conduct objective annual reviews; have employees participate in review process via self-assessment
- Document all occurrences and be consistent

# Strategy: EPL Insurance Coverage

Three main categories of exposure:

- Discrimination - age, gender, race, religion
- Harassment, and
- Wrongful termination

Also includes:

- Libel & Slander
- Defamation of character
- Invasion of privacy
- Wrongful failure to promote
- Breach of employment contract
- Numerous others

# Are you covered?

- Assumptions of coverage
- Commercial General Liability (CGL)
- Most CGL policies do not cover EPL exposures

A separate EPL insurance policy will protect against the actions of:

- ✓ Employees
- ✓ Directors and officers
- ✓ Volunteers
- ✓ Corporate entity

Exclusions include but are not limited to:

- ✓ Failure to comply with the law,
- ✓ Dishonest acts, and
- ✓ Prior knowledge

# EPL insurance coverage

- ✓ Terms vary
- ✓ Conditions, exclusions, and inclusions vary
- ✓ Review all available options

Claims made policy covers:

- any claim defined by coverage that occurs and is reported during the policy period

# Occurrence policy

Coverage reverts back to the policy in which occurrence took place

# Control litigation expenses

- ✓ Duty to defend
- ✓ Selection of defense
- ✓ Settlement authorization
- ✓ Binding arbitration

Consider enhancing coverage for:

- ✓ Automatic subsidiary coverage
- ✓ ERP-Extended Reporting Periods
- ✓ { Broker to add customized points }

# Be aware of typical exclusions!

- ✓ Prior Acts
- ✓ Bodily Injury
- ✓ Intentional Acts

**What can do?**

Take the first step in reducing your employment practices liability. We can help to:

Secure custom EPL insurance coverage

Conduct an HR audit

Establish loss control procedures & policies

Avoid Litigation

Working together to reduce employment-related risks