Employment Practices Liability Insurance

From Chubb Executive Protection

It really no longer is a matter of whether an employer is sued over its employment practices, but when.

It’s a fact that employment practices liability (EPL) lawsuits constitute the most common type of liability lawsuit today, and once a claim gets rolling it is difficult to stop the financial devastation.

More and more companies are finding out the hard way how complex the employment relationship is. With more federal, state, and local employment laws on the books than ever before, employers now operate in an environment fraught with EPL landmines and tripwires. Every day, the Equal Employment Opportunity Commission (EEOC) receives some 200 new EPL complaints alleging discrimination based on race, sex, disability, age, religion, and national origin; sexual harassment; wrongful termination; retaliation; and other complaints. Employment practices litigation is a huge and growing industry, to the point where some law firms now specialize in bringing EPL actions against employers in the form of “demand letters” for class actions; such cases can settle early for huge sums and don’t show up in the EEOC’s numbers. Neither do cases filed with state agencies or private cases filed without the EEOC’s participation.

Even so, the EEOC’s statistics are numbing. The commission handles about 80,000 employment practices grievances a year, and total annual monetary awards to plaintiffs now top $250 million. With significant merger and acquisition activity, expense-driven downsizing and outsourcing, and a more informed public, EPL litigation shows no sign of abating.

Most employers don’t intentionally condone practices of discrimination or harassment—the two leading allegations brought by plaintiffs—and may follow good employment practices. Yet even employers that are innocent of wrongdoing can be targets of EPL lawsuits, which can be devastating—and not just to a company’s bottom line. A charge of discrimination, for example, may cost millions, but it can also tarnish a company’s image and hurt employee morale, negatively affecting revenues as well as its employee recruiting and retention efforts and potentially causing concern for shareholders. Even an innocent company may be strongly tempted to settle out of court.
What employers need more than ever in today’s changing world is a trusted ally, a professional working in their corner who understands EPL risks and can help ward off potential EPL claims through proactive risk management programs. That’s where Chubb’s long experience in the EPL market, outstanding Employment Practices Liability Insurance (EPLI) coverage, and leading-edge loss control services can make a critical difference.

A World of Risk. A World of Coverage.

CHUBB EPLI PROTECTION FEATURES INCLUDE:

- **Worldwide coverage**—Chubb has been underwriting EPLI globally for years, and this experience is written into the policy language. Our customers benefit from our experience, no matter where they employ people. The policy is specifically designed to address and respond to the varied employment practices allegations made throughout the world.

- **Broad definition of insured persons**—Our policy insures full-time, part-time, leased, temporary, and seasonal employees, as well as volunteers. The policy is also designed to allow the insured to elect coverage for complaints against its independent contractors.

- **Mass/class action retention**—Whether an employer is coping with EPL allegations from an individual or from a group/class of people (five or more), our policy clearly spells out what the retention is. In the case of a multiple claimant complaint or “mass action,” our policy gives the insured certainty when compared to most other forms in the market.

- **Co-insurance provision**—Customers who, at the time of policy purchase, agree to pay a specified percentage of any defense costs, settlements, awards, or judgments (in excess of the applicable retention) may receive a reduced premium (from standard rates), in exchange for their participation at the time of loss.

- **Broad definition of covered loss**—Includes defense costs, damages, judgments, settlements, back pay, front pay, pre- and post-judgment interest, as well as court-awarded claimant’s attorney’s fees.

- **Punitive damages coverage**—One of the largest financial exposures presented by EPL claims is punitive damages. Chubb provides insurance for these damages, where they are insurable by law. Coverage may also be purchased without punitive damages protection at a reduced premium.

- **Broad definition of employment practices wrongful act**—Our definition is designed to address the various employment-related allegations that employees can make against their employer.

- **Duty to defend (in most circumstances)**—Chubb will appoint highly qualified and experienced counsel from our list of employment law defense firms to defend most covered claims, relieving our customer of this responsibility. However, our policy may be amended by endorsement to permit a qualified customer to use designated counsel that it knows and trusts in sensitive claim situations.

- **70/30 settlement participation provision**—If our customer decides not to consent to a settlement recommended by Chubb, and a judgment is ultimately made against the customer, we will pay 70% of the amount, both judgment and defense costs, in excess of our recommended settlement.

- **Loss prevention services**—Chubb’s EPLI customers automatically gain access to our state-of-the-art EPL Loss Prevention Program. See Employment Practices Loss Prevention Program for Stand-Alone EPLI Customers (form #14-01-0508).
Primary coverage—Unless specifically stated otherwise, for employment claims made against employees (other than leased or temporary employees) and/or the employer, our policy will respond first.

No “intentional acts” exclusion—Most employment-related claims arise out of some form of intentional conduct, so excluding coverage for intentional acts, which some insurers do, can seriously erode coverage. Chubb’s policy does not contain this exclusion.

Reporting provision—The policy is designed to allow insureds to report claims as soon as practicable, with a 60-day reporting requirement on policyholders where there is a cancellation or nonrenewal of the policy. It’s important for policyholders to understand that these reporting requirements do not alter the duty-to-defend provision in the policy. Therefore policyholders should be aware of our panel counsel requirements.

Optional third-party coverage—Our policy can respond to claims made by nonemployees (such as customers, vendors, service providers, or other business invitees) for discrimination or sexual harassment by our customer or its employees. This optional coverage requires additional underwriting information, often requires additional premium, and may involve sublimited coverage or a separate self-insured retention.

Policy limits up to $25 million are available.

“Claims made” coverage—We write our policy on a “claims made” basis.

Extended reporting period—Whether our customer cancels the policy, or Chubb chooses to nonrenew coverage, our policy entitles the customer to purchase an extension of coverage for subsequent claims alleging wrongdoing prior to the cancellation or nonrenewal.

Worldwide coverage—Chubb’s policy reimburses covered losses that occur anywhere in the world.

THE CHUBB ADVANTAGE

Chubb has earned its leadership position in the EPLI marketplace by consistently providing broad coverage, superior service, outstanding expertise, and unflinching commitment to helping employers solve their employment-related problems. In particular, we stand apart from other insurers in numerous key areas:

Financial stability—Our financial stability and ability to pay claims rate among the best in the insurance industry, as attested by Standard and Poor’s and A.M. Best Company, two of the leading insurance rating agencies. Agents, brokers, and prospective customers often seek out our services because our reputation in the market is well known.

Experience and expertise—We were among the first insurers to begin offering EPLI coverage in the early 1990s, making us one of the most experienced insurers in this market. We know how to deal with class action, multiple-claimant, and global and domestic claims. We have built solid relationships with experienced outside EPL counsel, and the breadth of our EPL Loss Prevention Program is unmatched in the insurance industry.

Innovation—we’re not afraid to tailor our product to meet a customer’s specific needs. Typically, our insurance products include enhancements and specific coverages that are missing or even excluded from other policies in the industry.
Commitment to customers—We underwrite selectively because we strive to build strong business partnerships with our customers over time. We provide comprehensive EPLI coverage that is built to last and designed to protect customers even before a claim arises.

Claims philosophy of fairness—Our claim examiners are experienced in EPL matters and are committed to a high level of professionalism, open dialogue, and the amicable resolution of disputes whenever possible. Our philosophy is one of cooperation and partnership with producers and customers to provide both a vigorous defense against meritless claims and appropriate settlements where warranted. Our reputation for expert, fair claims handling is renowned in the industry.

DON’T TAKE A CHANCE

New and often vague employment laws are continually being put to the test in the courts. The plaintiffs’ attorneys have learned how to litigate EPL claims, and they aggressively pursue employers for EPL lawsuits. Many companies, once believing “it can’t happen here,” have already been targeted and paid out millions.

Don’t take any chances. Turn to Chubb, your trusted executive protection ally. Chubb works with customers, both with loss prevention services to help prevent claims and with insurance should claims arise. Executive Protection Portfolio EPLI from Chubb is available through your trusted Chubb-appointed agent. For more information, contact your agent or broker, email csi-info@chubb.com, or look on the Internet at http://csi.chubb.com.

Executive Protection Portfolio is a comprehensive insurance solution from Chubb, specifically designed to help publicly owned companies cope with potentially devastating threats to their financial well-being. With Executive Protection Portfolio, companies have choice and flexibility in managing their most complex and catastrophic exposures. Coverages include Crime Insurance, Directors and Officers Liability Insurance, Employment Practices Liability Insurance, Fiduciary Liability Insurance, Kidnap/Ransom and Extortion Insurance, and Outside Directorship Liability Insurance.