

EPLI - More Than Sexual Harassment



Sexual harassment has been in the forefront of the news for some time, and is also probably the first thing that comes to mind regarding **Employment Practices Liability Insurance**. But EPLI covers a lot more ground, and that ground is expanding. The past several decades have brought new challenges and exposures to what falls under EPLI.

Discrimination

In 2014 the [Equal Employment Opportunity Commission](#) filed the [first lawsuit](#) in its history challenging transgender discrimination under the 1964 Civil Rights Act. EPLI policies usually cover claims of employment-related discrimination based on the violation of any federal, state or local law that prohibits discrimination on the basis of race, sexual orientation, color, marital status, creed, national origin, religion, gender, age, military service, disability or pregnancy. Newer EPLI policies explicitly cover discrimination based on sexual preference or orientation. Many EPLI policies also contain provisions that more generally extend coverage to "other protected classes." For example, a policy may afford coverage for claims based on nondescript "discrimination." [D&O policies also may apply when the discrimination comes from a corporate dictate.]

Social Media

Employees can use social media to defame, disparage or harass organizations as well as co-workers. What this means for employers is that a negative online comment about an employee could go viral. EPLI does not cover negative comments made by employees against one another, but it may protect employers when the co-worker sues the employer for failing to prevent such harassment. When a manager makes the inappropriate comments EPLI does cover the employer.

Family Medical Leave Act Violations

As the workforce gets older and employees defer retirement, more requests for medical leave and the reasons for those requests are on the rise. Some are clearly justifiable grounds but others are questionable. Unfortunately a denial of leave is a potential for a claim against the employer and/or the individual manager or HR professional. In fact, many courts have ruled that individual liability attaches to those involved with [Family and Medical Leave Act](#) (FMLA) decisions that affected aggrieved employees based on the FMLA definition of "employer," which allows for personal liability of managers and company officials. Insureds, therefore, should look to their EPLI and D&O coverages to respond to such claims.

Data Breaches

Corporate data breaches are becoming more common or perhaps just reported more often. As the employer and/or executives shoulder the responsibility more often they also incur the liability. Claims against the board or executives should be covered under most D&O policies, which typically do not contain data-breach or cyber exclusions, whereas claims against negligent employers or supervisors may trigger EPLI coverages.

Alternative Work Arrangements

Alternative working arrangements - Shorter workweeks (longer hours over fewer days), telecommuting, and staggered schedules, continue to increase in popularity, especially in urban areas - mean increased potential employer liabilities. Examples include - discrimination in which of employees are allowed alternative work arrangements, missed opportunities

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at promotion, [Fair Labor Standards Act](#) (FLSA) violations of nonexempt employees working longer days, among others. If the claim falls under "wrongful acts" the employer is provided coverage under EPLI.

Then of course there are the exposures that one generally associates with EPLI.

Wage and Hour Claims

Such claims may arise out of a variety of scenarios, such as when employers alter time records to avoid paying overtime, misclassify exempt and nonexempt employees and independent contractors, or fail to provide due rest and meal periods. Defense costs for these lawsuits can be substantial, especially when they become class actions. Most employment practices liability insurers now specifically exclude coverage for wage and hour claims, among other types of FLSA violations.

However, as with whistle-blower and retaliation claims, wage and hour claims may still be entitled to the cost of their defense under many EPLI policies' broad "duty to defend" language. Likewise, the wage and hour claim may implicate coverage where the claim is itself based on a generally unfair business practice that is otherwise covered under the policy.

Sexual Harassment

Claims of sexual harassment are usually covered under EPLI. As these claims often alleged failures at the corporate level as well (e.g. failing to put in place workplace safeguards and policies), such claims may involve D&O coverage as well.

Retaliation

The number of whistle-blowers and claimant retaliation claims continue to rise as workplace regulations and whistle-blower protections increase. Coverage for these claims, and their high cost of defense, is usually available under EPLI.

[Employment Practices Liability - Wrap+](#) from Travelers is modular coverage offered as a stand-alone product on [Big "I" Markets](#) and also as part of the [Wrap+ Executive Liability for Private Companies](#). EPLI - Wrap+ is currently available to insureds in all states with the exception of: CA, LA, NE, NV, VT and WV.