



Navigating Through Statutes, Insurance Policies, and Regulations
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Insurance Coverage in Employment Cases

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Employment Practices Liability (EPL) Insurance

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Typical Coverage Terms

- ☞ Claims and lawsuits filed by employees against employer
- ☞ Includes current and former, seasonal, and in some case independent contractors
- ☞ Includes claims for violation of legal rights arising from the employment relationship

Claims Include

- ☞ State and Federal harassment and discrimination based on age, gender, sex religion, ethnicity, national origin or disability
- ☞ Termination or emotional distress based upon any of the above
- ☞ Breach of employment contract
- ☞ Violations of FMLA and other Federally protected rights

Typical Policy Exclusions

- ☞ Wage and hour disputes
- ☞ ERISA
- ☞ Unemployment benefits
- ☞ Union-related claims
- ☞ Claims that are typically covered elsewhere, i.e. bodily injury, worker's compensation, employer liability for intentional torts

Who Is Protected & How

- ☞ Employer
- ☞ Directors & Officers
- ☞ Current and former employees
- ☞ How Protected – Cost of defense and satisfaction of settlement/judgment up to policy liability limit
- ☞ Who decides when or if to settle – **consent to settle**

Other Policy Features

- ☞ Defense costs may erode limit of liability, or may be outside the limits of liability
- ☞ Policy can either be claims-made, which covers claims reported during the policy period, or an occurrence-based policy, covering claims that occur during the policy period
- ☞ Both types of policies can be extended by endorsement to cover extended reporting and prior-acts coverage

Triggers of Coverage

- ☞ Demand Letter
- ☞ Lawsuit
- ☞ Administrative Complaint
- ☞ Oral Demand

Current Issues in EPL

- ☞ How is a “claim” defined
- ☞ See Cracker Barrel Old Country Store, Inc. v. Cincinnati Insurance Co., 2012 U.S. App LEXIS 19161 (6th Cir. 2012)
- ☞ Gay and Lesbian Marriage & Relationships – has status changed under discrimination/Federal/State