

MANAGEMENT

Liability Focus

Preventing Employment Practices Liability Claims



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Any employer that has employees could face claims of wrongful employment actions. These allegations can lead to time-consuming litigation, reputational damage and financial loss. To mitigate these risks, employers should implement risk management strategies to reduce the likelihood of these claims occurring. They should also secure employment practices liability insurance (EPLI) that can provide coverage should these claims arise.

This article provides tips on preventing employment practices liability claims and discusses the importance of EPLI insurance.

What Are Employment Practices Liability Claims?

Employment practices liability claims can stem from a variety of situations. They typically arise when a current employee, former employee or job applicant believes their workplace rights have been violated by an employer or its representatives. Examples of employment practices liability claims include:

- Discrimination based on a protected class
- Sexual harassment
- Wrongful termination
- Failure to promote or hire
- Infliction of emotional distress
- Wrongful demotion or discipline
- Retaliation for protected conduct
- Breach of employment contract

Strategies to Prevent Employment Practices Liability Claims

Employers can implement several measures to proactively address exposures that may lead to employment practices liability claims. These actions can also improve employee morale and productivity and strengthen employee relationships. Strategies to consider include the following:

- **Develop and maintain an employee handbook with thorough policies and procedures.** Employers should have a comprehensive employee handbook with detailed policies and procedures that define and address issues that can lead to employment practices liability claims. Specific sections that should be included in the handbook include antidiscrimination policies, anti-harassment policies, anti-retaliation policies and equal employment opportunity policies. The handbooks should outline the employer's standards of conduct and explain the progressive disciplinary measures employers will take if those standards are not met. The handbooks should be readily available to all employees and be routinely reviewed by the HR department, in-house counsel and outside employment law counsel. Employees should acknowledge that they reviewed the handbook, and the records of those acknowledgments should be maintained in their personnel files.
- **Conduct regular training.** Employers should ensure they deliver regular training on their expectations for appropriate workplace conduct, illegal or prohibited conduct, and applicable laws and policies. Trainings should detail how to report workplace misconduct and emphasize that all allegations will be investigated and taken seriously. Essential topics to cover include nondiscrimination training, anti-harassment training and how managers may not retaliate against employees for reporting issues. Employers should also make sure the content, format and frequency of the training meet any specific

requirements mandated by applicable laws. Finally, new hires should receive this information during their orientation or onboarding program.

- **Establish standards to prevent discrimination during recruitment.** Employers should implement best practices to reduce the likelihood of discrimination occurring during the recruitment process. This includes posting job descriptions that identify essential job functions and comply with all applicable laws, including those that may require compensation transparency. Hiring managers should also be trained in proper interviewing and hiring techniques and ensure background checks are conducted but not impermissibly utilized.
- **Implement best practices during the employment relationship.** Employers should model appropriate behavior and ensure all workplace policies are enforced, including zero-tolerance policies regarding discrimination and harassment. Employers should make sure employees feel comfortable having open discussions, asking questions and bringing forward complaints without the fear of retaliation.
- **Apply effective strategies for making employment decisions.** Employment decisions, including promotions and terminations, should be made on the basis of job-related, objective criteria. Employment decisions should be based on lawful reasons and conducted in a nondiscriminatory manner.
- **Investigate allegations of misconduct.** All accusations of wrongful employment practices should be taken seriously and immediately investigated. Employers should ensure that policies and procedures are in place to prevent retaliation against employees for reporting misconduct or participating in a misconduct investigation or lawsuit. The investigative process should be well-documented and thorough, allowing the investigators to draw complete and logical conclusions. Employers should also rely on outside counsel to conduct investigations when necessary. When unlawful discrimination, harassment or inappropriate conduct is found, appropriate corrective action, including disciplinary action, should be taken. It is also essential to have policies and procedures in place to protect the potential victims of harassment and to have resources available to support them.
- **Maintain documentation.** Organizations should have policies ensuring they have procedures to create, maintain and securely store documentation related to employment practices while complying with applicable privacy laws and regulations.

Securing EPLI

Even with robust preventive measures in place, employers of all sizes and industries still may face employment practices liability claims. EPLI is a specialized policy that can cover the costs associated with these claims. Other commercial insurance policies (e.g., general liability insurance or workers' compensation insurance) typically do not cover employment practice liability claims, and EPLI can help fill this coverage gap.

EPLI coverage may be packaged with other management liability policies, such as directors and officers liability insurance and fiduciary liability insurance, or it may be written as a standalone policy.

Conclusion

Employment practices liability claims can be complex and costly, but employers can take proactive steps to reduce their exposure and improve their overall workplace culture. Obtaining EPLI can also mitigate an employer's risks and be an important aspect of their overall risk management plan. Contact us today for more information.

Management Liability Made Clear - Provided by Winters-Oliver Insurance Agency

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