

# AMC Insurance Services



## Why is Employment Practices Liability Insurance needed?\*

❖ Statistics show an employer is more likely to have an employment claim than a property or general liability claim.

❖ The average amount paid for out-of-court settlement is \$40,000.

❖ Defense of the average EPLI case, through trial, costs over \$45,000.

❖ The median compensatory award in EPLI cases is \$218,000.

❖ 67% of all employment cases that litigate result in a judgment for the plaintiff.

❖ 10% of awards in cases involving discrimination and wrongful termination are in excess of \$1,000,000.

❖ Six out of ten employers have faced employee lawsuits within the last five years.

\* Society for Human Resource Management – 2002

Today's employees are diverse, autonomous and highly mobile. One result of this transformation is a surge in employment related claims. Typically, an employee alleges that the employer committed a wrongful act, which violated the employee's rights to equal opportunity in the workplace. Employment related suits usually involve one or more of the following:

• **Discrimination** – unfair treatment of a person, relative to others, so as to deprive that person of equal employment opportunities on the basis of race, color, sex, religion, national origin, disability or wage discrimination based on sex. The laws apply to all aspects of the employment process, from recruitment and selection, to promotion and termination.

• **Sexual Harassment** – unwanted sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature where the employee's

compliance with or refusal of the request must affect his or her job performance, or create a hostile work environment.

• **Wrongful termination** – termination of employment in an illegal manner. Most state laws allow an employer to terminate an employee "at-will", that is, without notice. There are exceptions, however. Depending on the jurisdiction, the discharge may be considered wrongful if the employee can prove:

- Breach of contract, either express or implied.
- Violation of public policy.
- Breach of an implied covenant of good faith and fair dealing.

• **Workplace Torts** – Workplace torts consist of various offenses which do not fit the other three categories. A tort is a violation of a person's civil rights under common law. Workplace torts include negligent hiring and failure to promote.

An employee alleging discrimination or sexual harassment in the workplace cannot simply sue his or her employer in federal court. Rather, he or she must first file a complaint with the Equal Employment Opportunity Commission (EEOC). The EEOC investigates the complaint to determine whether it is valid. In many situations, the case is resolved via mediation. If the case cannot be resolved, then the employee is usually permitted to sue.



## **EPLI Program Risk Management + Insurance**

The purpose of the EPRMA program through AIS is to provide proper training to physicians and their staffs to minimize exposure to employment practice lawsuits (risk management) and to enable members to purchase economically priced insurance that provides for defense costs against employment related allegations.

Interested employers members will become members of the Employment Practices Risk Management Association (EPRMA), a non-profit organization that provides web-based training for members, office managers and employees. Utilizing the services offered by EPRMA will not only provide the training, but in doing so help ensure that members have proper anti-discrimination policies in place. The training also provides the basis for a strong legal defense in the event of a claim.

**ComplyAmerica**

**Comply America Training** – The training consists of two courses:

- **Member/Manager's Course** – For members and employees who hire, fire, supervise or manage people including senior management and corporate officers. Employment Practices Liability Insurance
- **Employee's Course** – Sexual Harassment Prevention – For all employees. Concentrates specifically on training all employees regarding corporate anti-discrimination and anti-harassment policies.

**Legal Information Helpline** – Members have toll-free access to Burke, Warren, McKay and Serritella of Chicago, specialists in employment practices liability.



Martin LaPointe, Esq.  
Helpline Director

**Insurance** – The third component is an insurance policy for members that provides for legal defense costs in the event of an employment practices liability claim. It also pays for losses an insured becomes legally obligated to pay on account of a claim covered by the policy.

Loss means damages, judgments (including pre- and post-judgment interest) and settlements. The program is written as a Risk Purchasing Group with a

master policy issued to the Employment Practices Risk Management Association (EPRMA). Policy Highlights Claims Made Coverage – This program is underwritten on a claims made basis. This means that coverage is provided for insured events that take place during the policy period and



reported while the policy is in force but in no event later than 60 days after policy termination.

Coverage for events reported after policy termination is subject to limited and extended reporting

endorsements.

**Who is Covered** – Individual and spouse, corporation, stockholders, named partnership or joint venture, partners, joint ventures and spouses, employees, executive officers, directors, trustees while acting within scope of employment; dedicated independent contractors, volunteers, temporaries, part time, leased employees (in-sourced).

**Extended Reporting Endorsement** – If policy is cancelled or non-renewed by carrier, (except for non-payment of premium), an ERP of 12 months may be purchased for an additional 100% of premium. Written request received within 15 days of termination and payment within 30 days of termination.

**Insured Event** – Actual or alleged acts of discrimination, harassment and/or inappropriate employment conduct by an insured against an employee, former employee or applicant for employment with an insured entity.

**Inappropriate Third Party Conduct** – Actual or alleged acts of discrimination or harassment by an insured against any natural person who is not an employee of any insured. It does not include actual or alleged acts of assault and battery or multiple claimants.

**Consent to Settle** – Contingent upon named insured's consent; if fails to consent, caps carrier's liability at amount could have settled.



*Thinking Ahead.*

**Full Prior Acts or Retro Date Inception** coverage available. First Time buyers standard coverage is retro date inception.

**Claim** – a written complaint, charge or demand made against an insured in which damages are alleged or where specific charges of discrimination, harassment, inappropriate employment conduct or inappropriate third party conduct are brought. Includes civil actions, civil suits or administrative proceedings.



**Harassment** – Unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual, or physical conduct of a sexual or non-sexual nature, based on a factor or category prohibited by law (including sex, race, age, national origin, disability etc.) that implicitly or explicitly are made a condition of employment, are used as a basis for employment decisions, or create a work environment that interferes with performance.

**Discrimination** – Termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of employment benefit, or the taking of adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis prohibited by federal, state, or local law.

**Inappropriate Employment Conduct** – Actual or constructive termination of any employment relationship in a manner which is alleged to have been against the law or wrongful in the breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract; allegations of wrongful demotion, or wrongful discipline, misrepresentation, infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease, or disability, false imprisonment, detention or malicious prosecution, libel, slander, defamation of character or any invasion of right of privacy or personal injury allegations made by an employee, former employee, or an applicant for employment which arise from a decision to hire, fire, promote or demote.

**Underwritten by an “A” rated  
Surplus Lines company.**

## First Time Buyers must meet the following criteria:

- No current EPLI coverage (No separate EPLI policy),
- No EPLI losses in the last 5 years,
- The office has less than 50 employees.

All other members are subject to standard underwriting protocols:

- Members seeking expanded coverage or limits,
- Members with over 30 employees,
- Special risk clients with loss issues,
- Full Prior Acts available.

## Claims Avoidance Tools

The entire approach to handling EPLI claims is focused on claim prevention and early intervention. If a claim manifests under the program, the right tools to address the situation are in place.

### Pre-Litigation Benefits

Web-based training means ease-of-use, continuity, objectivity and efficiency

24x7 access minimizes workplace disruptions  
Creates safe harbors as established by the U.S. Supreme Court that minimize exposure to compensatory and punitive damages  
Automated data collection provides records of the training including content

### Human Capital Benefits

- ★Real-life scenarios from court cases are used to educate managers on the sensitive nature of discrimination, harassment and other EEO issues
- ★Educates managers on the complexities of the ADA
- ★Heightens manager awareness to appropriate questioning during interviews
- ★Provides guidelines on effectively communicating reasons for selecting or not selecting candidates during the hiring process
- ★Covers many discrimination and harassment issues (i.e., sex, race, ethnicity, religion, age, disability and retaliation)



*Thinking Ahead.*



***Specifically designed to protect the insured's reputation and minimize adverse publicity  
Attorneys are committed to strongest defense of insured***

### **Limits of Liability:**

Members may select between two options. Each option is subject to a \$1,000 per claim retention, a per claim limit of coverage and a per certificate aggregate limit of liability.

Options:

1. \$500,000 per Claim Limit / \$500,000 Certificate Aggregate
2. \$1,000,000 per Claim Limit/ \$1,000,000 Certificate Aggregate

### **Exclusions:**

Workers' compensation, contractual liability, ERISA, strikes, lockouts, consequential loss, Fair Labor Standards Act, OSHA, COBRA, downsizing without legal counsel involvement, wage and hour law, stock options, fraud, collusion, prior knowledge, prior notice, financial impairment.

Your coverage will not renew if:

You cease to be a member of your association or society; you fail to pay your premium when due; the underwriting company determines you no longer meet underwriting guidelines; or the group policy is canceled.

### **How Will Claims Be Handled?**

By utilizing established claim defense protocols, skilled employment attorneys will seek to protect the reputation of members. They will also protect the confidentiality of the insured's EPL insurance coverage during the "charge and response" phase of each claim. This centralized charge response has the following advantages:

- Provides streamlined approach to resolving high-risk claims
- Consistent and cost-effective work product
- Provides strong foundation for employer's defenses (i.e. reasons for its actions)
- Strong, detailed Position Statement increases likelihood of "no cause" finding by the EEOC
- Strong, detailed Position Statement helps dissuade an attorney from taking complainant's case to court (document available after EEOC issues right-to-sue)

### **Common Questions and Answers About EPLI**

***Q. Isn't this covered under a general liability policy?***

A. With rare exceptions, claims resulting from the above types of offenses are not covered under general liability policies. First, the majority of these acts are not accidental, so they are not considered "occurrences". Also, the injuries they cause do not constitute "bodily injury" or "personal injury" as defined under general liability.

***Q. Isn't this covered under my workers' compensation policy?***

A. Workers' compensation policies specifically exclude coverage for employment practice issues. A sample exclusion from one policy states: damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, harassment, humiliation, discrimination, against or termination of any employee, or any personnel practices, policies, acts or omissions are excluded.

***Q: I'm a good manager and have a good relationship with my employees. My employees wouldn't bring a claim against me.***

A. Maybe so, but many businesses, both small and large, are more likely to be sued by an employee than a third party or customer.

***Q. Employment practices claims don't apply to my company because we have fewer than 15 employees.***

A. Not so. In fact, the accusation of a wrongful discriminatory act is cause for legal action regardless of whether you have one employee or one hundred.

***Q. I use contract employees, so I have no employment practices liability.***

A. Not so. "Employer" has been broadly interpreted by case law to include any personnel who works primarily in your place of business, regardless of whether or not they are directly on your payroll. Education for your business.

This brochure is for illustrative purposes only, and is not a contract. It is intended to provide a general overview of the services described. Remember that only the policy can provide the actual description of services, terms, conditions and exclusions.

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