

Employment Practices Liability - Frequently Asked Questions

What is Employment Practices Liability Insurance?

- Employment Practices Liability (EPL) insurance protects an employer from employees' claims alleging discrimination, wrongful termination or harassment, including sexual harassment.
- EPL insurance pays for liability damages and defense costs due to these charges brought by full-time, part-time, temporary and seasonal employees.

Why do small businesses need EPL coverage?

- About 50 percent of EPL charges are filed against small businesses. Employment laws that employees may use as a basis for action against their employer apply to the majority of businesses, including small firms.
- Even groundless employment charges may require legal defense and defense costs can be significant – often \$10,000 or more. Insureds need EPL coverage to have those defense costs covered and to get access to attorneys experienced in defending employers from employment-related charges.
- Small businesses often don't have human resource professionals to develop the formal personnel policies and procedures that can help prevent employment related charges. And they don't have deep pockets so just the cost to defend them from EPL claims or charges can hurt a small business.

Why would a reputable well-run business need EPL insurance?

- No matter how well they run their business, an employee can allege anything at anytime.
- Employers need to defend themselves from employment related charges, even if the charges are without merit.
- EPL coverage pays for defense costs even when the charges are groundless. Defense costs can be significant, well beyond what many small businesses can afford to pay.

What's changed that now makes EPL insurance important for small businesses?

- Today's business and legal climate is different today than it was years ago. Employees are more aware of employment laws, their rights and how to exercise their rights by taking action against employers.
- Federal and state employment related laws and regulations have been broadened.
- Employees see a lot of news coverage and publicity about employment cases and awards against employers.
- The workforce is more diverse with women, older workers and minorities representing a significant percentage of employees.

What advantages does our EPL insurance have to others in the market?

- Our EPL coverage was designed for the needs of small businesses.
- It's affordable and costs only a small fraction of EPL insurance premiums when sold as a separate policy.
- It's easy to handle, there's no need to complete a separate EPL application.
- EPL coverage is conveniently endorsed on to the package policy, there's no additional policy to handle.
- Coverage is on a par with many of the EPL coverages offered to large businesses.
- Claim service is provided by EPL claim specialists.
- Insureds needing legal defense are represented by experienced employment law firms whose services would normally be cost prohibitive for a small business owner.
- The program includes a loss prevention website where your agency and insureds can access information and tools to help minimize exposure to employment claims.
- The program also includes a help line for insureds.

What loss prevention services does our EPL program include?

- Our program includes an EPL loss prevention website that provides employers with tools and information to help them avoid situations that can lead to an employment claim.
- When facing an EPL charge, it is critical for an employer's defense to present evidence of efforts to "prevent or correct" unlawful employment practices. The tools in our EPL loss prevention website can help them document those steps.
- It provides insured employers access to important information such as:
 - EPL Risks and Loss Examples
 - Applicable employment laws
 - Model employment policies and procedures
 - Library of recent developments in employment law and
 - Library of EPL frequently asked questions (FAQ's)

How much does Employment Practices Liability insurance cost?

- For \$50,000 in EPL limits with a \$5,000 deductible our EPL coverage would cost only 11.2% of your total Business Owner policy premium.
- Our program costs a small fraction of what separate EPL insurance policies cost which are often \$2,000 or more.

What does an Employment Practices Liability claim typically cost an employer?

- 81% of EPL claims are resolved for between \$22,400 and \$40,500. This includes defense costs and liability damage payments.
- This isn't an exposure that a small business should self-insure; given the risk, our EPL program is a tremendous value.

What laws and statutes create the necessity for EPL?

The need for Employment Practices Liability insurance arises from a number of federal and state laws under which employees may bring actions against their employers for such matters as sexual harassment, discrimination and wrongful termination.

- **Title VII** — A federal law enacted in 1964 and amended by the Civil Rights Act of 1991. Title VII prohibits discrimination or harassment on the basis of race, color, religion, gender, or national origin. Title VII also created the Equal Employment Opportunity Commission (EEOC) as a venue for employment-related grievances.
- **The Equal Pay Act of 1963** — Prohibits unequal pay for men and women serving in substantially the same position.
- **The Age Discrimination in Employment Act of 1967** — Prohibits discrimination against persons who are 40 years of age or older.
- **The Americans with Disabilities Act of 1990** — Prohibits discrimination against people with physical or mental disabilities. Employers also must make any “reasonable accommodations” for their disabled employees to conduct their duties as long as such an accommodation does not pose an undue hardship on the employer.
- **The Family and Medical Leave Act of 1993** — provides that an employee can take up to 12 weeks of unpaid leave to care for a new child or a seriously ill family member, including themselves.
- **Fair Employment Practices statutes** — Individual state statutes that expand many of the protections provided under federal laws. These laws increase the protected classes to include such classifications as sexual orientation, transgender, medical conditions, obesity and others. These laws also extend their reach so that they apply to even the smallest employers and also lengthen the statutes of limitations. Additionally, the states have created Fair Employment Practices Agencies (or FEPAs) as the state equivalents to the EEOC.
- **Common Law** — Employees can also allege such tortious acts as violation of their civil rights, infliction of emotional distress, invasion of privacy and others under common law.

Does the EPL endorsement provide coverage for claims brought by customers and other non-employees?

- Yes, Our EPL insurance does provide coverage for third party claims for an additional premium.

What limits and deductibles are available?

- We provide \$50,000 in EPL limits subject to a \$5,000 deductible for all eligible insureds. We also offer EPL limit options of \$25,000, \$75,000, \$100,000 and \$250,000. With EPL limit of \$100,000 there are deductible options of \$5,000 or \$10,000 and with an EPL limit of \$250,000 there are deductible options of \$10,000 or \$25,000.

Does the EPL limit include defense costs?

- Yes. Defense costs are included within the limit of liability. That means that the limit is reached by a total of both defense costs and indemnity payments.

How do you define “small business” - is there a maximum employee count?

- Yes. The maximum is 50 employees or fewer per policy regardless of the number of locations. Policies with more than 50 employees are not eligible.

How is employee count calculated?

- Employee count equals all full-time, part-time, seasonal and temporary employees as well as any owners. Each employee is counted as one regardless of their status as full-time, part-time, seasonal, etc.

Are there any classes that are ineligible for the program?

- Yes. While most classes will be eligible for our EPL program, the following classes are ineligible: law firms, employee leasing firms, temporary help firms, private golf clubs, municipalities and schools.

Can we (the agent) or our insureds opt-out of EPL coverage?

- Yes, while we would advise our clients to retain the coverage so they are not at risk, you or your insureds may request that EPL coverage be removed from their policy.

Is the EPL coverage written on a claims-made or occurrence basis?

- EPL coverage is written on claims-made and reported basis, meaning that a **claim must be made against the insured and reported** to the primary carrier within the policy period (or within a subsequent renewal period assuming there has been continuous coverage) and the **wrongful act must have occurred** after the effective date of the first EPL policy written (in our partnership with HSB.)

When is the insured obligated to pay the deductible?

- Assuming a \$5,000 deductible, the insured is responsible for the first \$5,000 of covered loss. Above the deductible amount, EPL insurance would pay additional covered loss within the limit of liability.

What type of legal representation is provided with the coverage?

- Our EPL coverage includes legal representation by law firms specializing in employment law. In the event that a claim warrants defense, we will choose and retain one of these law firms to represent the insured.

How will this protect our agency from an E&O claim?

- Our EPL program allows you to provide your insureds with meaningful coverage at an affordable premium in a very easy to administer manner. Coverage not only protects insureds, it also protects your agency. If an insured suffers a loss and this coverage was not offered, your agency may have an increased exposure to an E&O claim.