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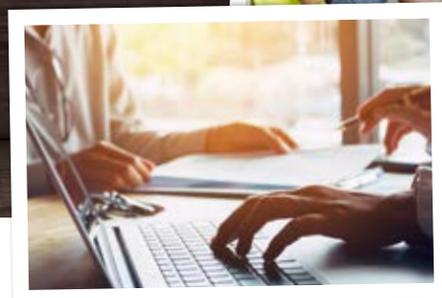
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UNDERSTANDING YOUR EMPLOYMENT PRACTICES LIABILITY POLICY REPORTING PROCEDURES

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Allegations of wrongful acts by high profile celebrities and media moguls exposed through the #MeToo movement have been in the news for some time, now. However, main street businesses also need to be paying attention to their employment risks. Many businesses have increased employee and management training on appropriate behavior in the workplace. Another step taken by most businesses is to augment their employment risk exposures and purchase employment practices liability (EPL) insurance.

The EPL policy is a claims-made policy form that contains different coverage triggers...

Purchasing an EPL policy can be an excellent way to protect your firm and its employees from allegations of workplace violations, such as wrongful termination, discrimination, or failure to accommodate. But unfortunately, the EPL policy is often misunderstood by policyholders. This misunderstanding can lead to failure to report claims timely, which is the number one cause of denial of coverage by insurance companies. Most denials can be avoided by understanding what constitutes a claim.

WHAT IS A CLAIM?

Understanding the definition of a “claim” under the EPL is critical to using the policy effectively. Most EPL policies define a claim as being a written demand for monetary or non-monetary relief. These claims can originate from the employee directly or their attorney. Most, if not all EPL policies define a claim to also include a charge or notice from an administrative agency such as the EEOC or similar state, local, or foreign agencies.

HOW DOES THE EPL POLICY WORK?

The EPL policy is a claims-made policy form that contains different coverage triggers than policies with which most insureds are familiar, such as general liability or auto liability policies, which are occurrence based.

“Occurrence based” means the policy that was in place when the accident occurred is the policy that responds for the insured’s protection. So, if an employee had an accident with a company vehicle today, but no lawsuit was made by the struck party until next year, then the policy in place when the accident occurred would respond for protection.

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That is much different than an EPL policy. EPL policies are “claims made,” which means the policy that responds was in place when the claim was made against the policyholder, not when the wrongful act was alleged to have taken place.

For example, an employee was demoted for cause two years ago. Unfortunately, the employee believed his demotion was based on age discrimination by his superiors, and filed a charge of discrimination with the Equal Employment Opportunity Commission (EEOC), but the employer did not advise its insurance company when the EEOC complaint was received. Subsequently, a lawsuit from the EEOC is received today by the employer, who now makes notice of a claim to their EPL insurance company. This claim will likely be denied for coverage due to late notice, as the “claim” (see [“What Is A Claim”](#)) was made when the employer received the notice of charge from the EEOC.

An additional aspect that causes most policyholders’ misunderstandings and coverage denials is that the EPL policy is usually both a claims made and reported within the policy period form. Therefore, in our example of the employee being demoted, the policyholder would need to report the charges to the insurer in place when the EEOC complaint was received by the employer, not to the EPL insurer when the lawsuit is received.

WHAT IF IT’S UNCLEAR WHETHER A CLAIM MIGHT BE MADE? – NOTICE OF CIRCUMSTANCES

You might wonder, “Well, I don’t have a claim with this employee, but I think I will in the future.” There is a provision in the EPL policy to accommodate these types of matters.

The policy contains language allowing policyholders to notify the EPL insurer of potential claims, even if a current or former employee has made no written demand. For example, if an employer is aware an employee who was terminated for cause is a litigious individual and will likely make some type of claim, then the employer can make what is called a “notice of a circumstance” to their EPL insurer.

Alternatively, maybe an attorney representing a terminated employee sends a request for the former employee’s personnel file without a demand for monetary relief. If it is expected an attorney’s involvement might lead to a claim, such a letter can be sent to the EPL insurer as a “notice of a circumstance.” Reporting notices that might lead to a claim ensures that, if a written demand does not arrive until several years later, the matter was properly reported to the insurer in place at the time of the notice of circumstance.

✓ PRACTICAL RECOMMENDATIONS

Continued training and employee education is a key component to a company’s risk management program. Nevertheless, if your company is buying EPL coverage, be sure to review the policies carefully, especially the claim reporting requirements.

Additionally, as most companies’ human resources departments generally receive the first notice of aggravation from an employee, provide your HR team training regarding the EPL policy and what constitutes a claim as described in your company’s EPL policy. Even better, contact your insurance broker who can assist in understanding the nuances of EPL policies and its claim reporting provisions.