



# The Risks of Employment Practices Liability

Employment practices liability (EPL) can pose a significant risk for you, your managers and your business. The risks have escalated in the past several years as employees and candidates are more aware of employee rights and protections today.

During the 2008 recession, as layoffs and terminations increased, the frequency of such claims and suits also increased. This frequency could remain elevated as millennials become a larger part of the workforce, seeking better work-life balance and quick advancement while generally showing lower loyalty to their employers.

## **CONTACT**

To learn more about how Amwins can help you place coverage for your clients, reach out to your local Amwins broker.

## **LEGAL DISCLAIMER**

Views expressed here do not constitute legal advice. The information contained herein is for general guidance of matter only and not for the purpose of providing legal advice. Discussion of insurance policy language is descriptive only. Every policy has different policy language. Coverage afforded under any insurance policy issued is subject to individual policy terms and conditions. Please refer to your policy for the actual language.

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## The basis for EPL claims

→ **EPL claims typically relate to U.S. laws**, including:

- Title VII of the Civil Rights Act
- Americans With Disabilities Act
- Age Discrimination in Employment Act
- Equal Pay Act
- Pregnancy Discrimination Act
- Immigration Reform and Control Act
- Family and Medical Leave Act
- Genetic Information Nondiscrimination Act

→ **Many similar state and local laws could trigger an EPL claim as well.** The Insurance Services Offices' 2008 employment practices liability insurance policy form identifies violations employees commonly assert in such claims:

- Wrongful demotion or failure to promote
- Negative elevation, reassignment, or discipline
- Wrongful refusal to employ
- Wrongful termination, either actual or constructive
- Wrongful denial of training
- Wrongful deprivation of career opportunity
- Breach of employment contract
- Negligent hiring or supervision
- Retaliatory action
- Harassment
- Libel, slander, invasion of privacy, defamation, or humiliation
- Verbal, physical, mental, or emotional abuse arising out of discrimination

→ **Mitigate the risk of an EPL claim against your business by implementing rigorous human resources practices.** At a minimum, be sure to:

- Craft workplace policies on employment practices and communicate them by posting them and sharing them in an employee handbook
- Provide training on EPL for your managers and employees
- Implement rigorous hiring practices and candidate screening procedures
- Document and maintain records of EPL matters



## Insuring against EPL risk

Insurance is a common way to transfer EPL-related business risks. Employment practices liability insurance (EPLI) typically provides coverage for the defense and indemnification of such acts. Some policies may provide separate limits for defense and indemnification, but most provide a single limit that would be reduced by any defense costs the insurer expends.

You and your broker must consider the appropriate limit of coverage for your business. Lower limits of \$25,000 to \$100,000 are readily available in the marketplace and can even be packaged with other lines of coverage. Stand-alone EPLI policies are available with lower limits or with significant limits—into the millions. Deductible and co-insurance options can offer reduced premiums.

When considering EPLI, it's important to understand the difference between occurrence-based and claims-made coverage terms.

- ➔ Most EPLI policies are written on a **claims-made basis**, meaning the coverage is triggered whenever a claim is made during the reporting period, even if the violation occurred outside the policy period.
- ➔ In contrast, **occurrence-based policies** cover claims for violations that occurred during the policy period, even if the claim is made outside that period.

Also, be sure to consider any exclusions that may be part of an EPLI policy, such as criminal acts not related to the laws already mentioned, workers' compensation, Social Security and unemployment matters, and most violations related to the Employee Retirement Income Security Act (ERISA), Fair Labor Standards Act (FLSA), National Labor Relations Act, Worker Adjustment and Retraining Notification Act, Consolidated Omnibus Budget Reconciliation Act (COBRA), and Occupational Safety and Health Act.

## Amwins helps you win

You can help to protect your company from EPL risks by requesting more information from your wholesale broker or the carrier on the benefits of an EPLI policy. At Amwins, our team of professional lines brokers have the expertise, market access and proprietary products to help you find solutions for accounts of all sizes and complexities.

### **Insight provided by:**

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