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Employment Practices Liability Coverage

Employment Claims Are Time-Consuming and Expensive to Defend

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Each year thousands of workers file complaints against their employers for employment-related acts like [discrimination](#). In 2017 alone, 84,254 U.S. workers [filed](#) 156,621 charges of workplace discrimination with the Equal Employment Opportunity Commission ([EEOC](#)). The top five charges (in descending order) were for retaliation, race, disability, sex, and age discrimination. To protect themselves against such claims, businesses can purchase employment practices liability insurance.



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While any business can be hit with an employment-related claim, small companies are particularly vulnerable. Many lack a human resources professional who is knowledgeable in state and federal employment laws. Employment claims can be time-consuming and difficult to resolve. They can also be expensive to defend, even if they don't result in any damages. A single claim can devastate a small business.



Discrimination in the workplace is prohibited by various federal laws. [Seven](#) of these laws are enforced by the EEOC. They include [Title VII of the Civil Rights Act](#), the [Equal Pay Act](#), and the Americans With Disabilities Act ([ADA](#)). [Most states](#) have also enacted anti-discrimination laws. Many state laws afford broader protection than their federal counterparts. For instance, some states prohibit discrimination based on sexual orientation, gender identity, ancestry, or military status.

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Most employment-related claims are based on acts that fall into one of three categories:

- **Discrimination.** The employee claims the employer violated a federal or state anti-discrimination law.
- **Wrongful Termination.** The employer allegedly fired the worker unlawfully by breaching an implied employment contract or discriminating against him or her. Alternatively, the employer fired the worker in retaliation for filing a discrimination complaint.
- **Workplace Torts.** The employer allegedly committed a [tort](#) that violated the worker's rights under common law. Examples of workplace torts are [wrongful discipline](#), failure to promote, negligent hiring, [defamation](#), and invasion of privacy.

Employment-Related Practices Insurance

Employers can insure themselves against employment-related claims by purchasing employment-related practices (EPL) coverage. This coverage can be provided as a separate policy or via an [endorsement](#) to a [general liability](#) or [business owners policy](#). It can be also obtained in conjunction with [directors and officers liability](#) coverage as part of a management liability policy.

An EPL policy covers damages against the insured for a wrongful act. Coverage applies only to the acts specified in the policy. Acts not listed aren't covered. A list of covered acts can usually be found in the definition of the term *wrongful act*. Some policies include coverage for acts of discrimination against third parties such as customers, suppliers, and vendors. Third-party coverage is important if your [employees](#) interface directly with the public. This coverage may not be provided automatically so you may need to request it.

Virtually all EPL policies are [claims-made](#). They cover claims made against an insured during the term of the policy. A claim is generally considered "made" on the date it is received by the policyholder or the [insurer](#). To be covered, claims must arise from wrongful acts committed on or after the retroactive date listed in the policy. Claims resulting from acts committed prior to that date aren't covered.



Defense Coverage

Most EPL policies include coverage for defense. Depending on the policy, defense costs may be included in the policy limit or (preferably) covered in addition to the limit. Some policies state that the insurer has the right and [duty to defend](#) you. The “duty to defend” language obligates the insurer to defend you against covered suits. It also gives the insurer the right to control your defense and to choose your attorney. If the insurer has no duty to defend you, you can handle claims yourself. You can also choose your own counsel, although some policies require you to select from a list of attorneys approved by the insurer.

Many policies contain both “consent-to-settle” and “hammer” clauses. When a consent-to-settle provision is included, the insurer will not settle a claim without your consent. A “hammer” clause limits the amount of your loss payment if you refuse to accept a claim settlement offer recommended by the insurer and agreed to by the claimant.

Exclusions

Like all insurance coverages, EPL policies exclude certain types of claims. Here are some common [exclusions](#):

- **Criminal Acts.** Excludes criminal, fraudulent or malicious acts. Policies may defend the insured against a criminal allegation until the insured’s guilt has been confirmed.
- [Contractual Liability.](#) Excludes any obligation for damages the insured has assumed under a [contract](#).
- **Breach of Contract.** Excludes any amounts owed for breach of a written employment contract.
- **Strikes or Lockouts.** Excludes liability arising from any strike, lockout or labor dispute.
- **Violations of Laws.** Excludes violations of various federal, state or local laws. Examples are the Employee Retirement Income Security Act, the Occupational Safety and Health Act, and the Worker Adjustment and Retraining Notification Act.
- **Workers Compensation.** Excludes any obligations imposed on the insured by a [workers compensation](#) law.
- **Punitive Damages.** Excludes coverage for [punitive damages](#).