

## SMALL BUSINESS

# Companies should consider coverage against employee-related claims

In a perfect world, employers could predict "bad weather" and stave off the storm of employee lawsuits crossing the country. However, today even the most proactive measures might not keep the rain away.

The cost of settling a claim of discrimination, litigating a harassment case through trial, or paying a wrongful discharge judgment can rock a company right to its core.

Employment-related claims and monetary damages resulting from such claims have increased significantly. Since the 1980s, employment discrimination cases have increased by 2,000% in federal court alone. In 2003, employees filed more than 81,000 charges of discrimination with the Equal Employment Opportunity Commission, resulting in awards in excess of \$236 million.

Many factors have contributed to the increase in employment-related claims. The Family and Medical Leave Act, the Americans with Disabilities Act, amendments to Title VII of the Civil Rights Act of 1964 and other new legislation have broadened potential employer liability exponentially.

Employers have turned to employment practices liability insurance to protect their assets in the face of potentially devastating employment litigation.

Employment practices liability insurance typically provides coverage for a multitude of employment-related administrative charges and lawsuits, including

those involving work place harassment, discrimination and wrongful discharge. Policies also might provide coverage for lawsuits involving emotional distress, negligent supervision and other nonstatutory claims.

In 1991, only five companies offered employment practices liability insurance coverage. These days, employers can choose from more than 60 companies offering this insurance. All this variety can provide a boon to employers, but it also should raise some important considerations. Like any other type of insurance, employers should make sure the policy they select meets their needs at a competitive price.

Employers also should understand that by purchasing the insurance, they become "partners" with their insurance companies in deciding how to tackle claims.

In addition, different policies apply deductibles and coverage limits on different bases. For example, some policies include per-claimant deductible limits instead of covering all claimants involved in a matter under one deductible. Finally, some policies include a "hammer clause" that allows the insurance company to decrease or cut off coverage if the employer refuses to settle a claim per the insur-

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er's request.

Here are other tips to consider:

■ **Don't brave it alone.** Ideally, your employment practices liability insurance team should include representatives from your human resources, finance and risk management departments, as well as in-house counsel and outside employment counsel.

■ **Consider the terrain.** Consider company policies, past claims, work force makeup, turnover statistics, level of in-house experience and any other relevant information.

■ **Pick your cloud cover.** Carefully consider the following:

■ **Type of claims covered.** Some policies might cover lawsuits but not administrative actions; others might not cover all aspects of the employment relationship.

■ **Individuals/entities covered.** Some policies cover only the company. Others insure the company and its directors, officers, managers and other employees.

■ **Scope of coverage.** If a policy provides defense-only coverage, the insurer pays the cost of defending the claim but not for settlement or judgment. If the policy provides defense and indemnity coverage, the insurer also pays for any settlement or judgment. ■

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