



Understanding the Benefits of Employment Practices Liability Insurance (EPLI)

“I’ve been doing this for 20 years and I’ve never been sued. I do everything by the book. We’re a big happy family here.” That’s what many small business owners will say – and mean it. **The reality is that it doesn’t matter, at least not as much as you may think. As a business owner, you don’t have to actually do anything wrong and still get sued. Someone just has to say you did!**

Between frequent media coverage of big settlements and the ease with which an employee can take action, employers are more vulnerable than ever. Consider this: nearly 100,000 workplace discrimination claims are filed with the U.S. Equal Employment Opportunity Commission (EEOC) each year. The EEOC says 50% of those charges are filed against small and midsized employers, with the most common target being organizations with 15 to 100 employees.

Moreover, in a recent study of 446 employment claims by Hiscox insurance company, 19% of claims filed against small to midsized businesses with fewer than 500 employees cost those companies \$125,000 in defense and settlement costs. On average, those claims took 275 days to resolve. The average self-insured retention (deductible) for those claims was \$35,000. Without Employment Practices Liability Insurance (EPLI), these companies would have been out of pocket an additional \$90,000.

Most employment matters do not end up in court, but for those that do, Hiscox found that damages can be substantial. The median judgment is approximately \$200,000, not including defense costs. What's more, about 25% of court cases result in a judgment of \$500,000 or more.

In this environment, it's imperative that businesses protect themselves. EPLI provides employers with coverage to defend against current or former employees' employment lawsuits — including the cost of defense — and other employment law-related claims. While available for more than two decades, EPLI has not been as widely appreciated as some other forms of insurance. Bottom line: EPLI is an effective risk management tool for businesses that you should consider.

19% of claims filed against small to midsized businesses with fewer than 500 employees cost those companies \$125,000 in defense and settlement costs.



EPLI is gaining popularity

A 1997 study conducted by a national labor and employment law firm Jackson Lewis LLP, and the Society of Human Resource Management (SHRM) indicated that, of the companies surveyed, only 22% had EPLI insurance. By 2005, approximately half of companies with 250 employees or more had some type of EPLI, and 19% of companies with 25 to 49 employees had such coverage. Now 10 years later, it's estimated that even

more small to mid-sized companies have EPLI coverage.

Although larger employers are more likely to have EPLI, small employers actually may obtain greater protection. As discussed, defending a single discrimination claim can cost more than \$100,000. In contrast to a larger business, a significant adverse verdict could bankrupt a small business, or be a serious setback.

Insurance carriers are able to spread this risk among thousands of insured businesses and may prefer small employers who are not as likely to be the target of collective or class actions lawsuits. Although no small business owner expects its own employees to bring a claim, statistically it is more likely than suffering a fire, which almost all companies insure against.

EPLI coverage

Most, if not all, EPLI policies cover wrongful termination, sexual harassment, and discrimination claims that allege differential treatment based on a plaintiff's membership in a protected class.

Discrimination claims can arise under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, state human rights laws, the Older Workers Benefit Protection Act, the Uniformed Services Employment and Reemployment Rights Act, the Americans with Disabilities Act, and the Family Medical Leave Act. Common law tort claims, such as negligent hiring, defamation, and invasion of privacy are usually covered as well.

EPLI, in general, is somewhat counterintuitive, as employment



A single
discrimination
claim can cost
\$100,000+.

discrimination is usually viewed as an intentional act and insurance cannot be purchased for intentional acts. In reality, this form of insurance simply reflects the fact that any employer is at risk for claims by employees in our legal system. Furthermore, these risks can be quantified and underwritten in such a way as to protect small companies from catastrophic claims.

It's important to note, however, that EPLI does not cover all employment claims. It typically excludes claims under Social Security, unemployment insurance laws, workers' compensation laws, disability insurance laws, the Occupational Safety and Health Act, the National Labor Relations Act, and the Fair Labor Standards Act. Certain claims other than retaliation under the Employee Retirement Income Security Act may also not be covered.

EPLI benefits

There are many benefits to EPLI:

- **Protection**

A large jury verdict could be a serious setback, if not put you out of business altogether. EPLI protects against such an outcome. Some small business owners still say, "If the deductible is \$25,000, then the insurance is never really going to help me." Not true. Employment claims can easily exceed \$50,000 or \$100,000 in attorneys' fees alone.

- **Expert representation**

Most EPLI policies require the insured to be defended by a pre-approved law firm selected from a limited panel, sometimes



known as "panel counsel." These panel counsel law firms are chosen based on their expertise and experience in defending employment-law claims. As a result, you're assured quality representation.

- **Reduced attorney rates**

Insurance companies usually have negotiated reduced hourly rates with panel counsel and your organization can benefit from those lower rates.

- **Qualified claims examiners**

Insurance companies usually have claims examiners who also have established expertise and experience in defending employment-law claims. Thus, you will have two sets of eyes (the attorney and the claims examiner) helping to protect your organization.

ADP® can help

While you may not be an HR expert, ADP is. Whether you want to know about EPLI or numerous other options to manage your risk, ADP provides guidance to help protect your business.