

## **EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI)**

### **WHY BUY EPLI?**

- MOST COMMERCIAL GENERAL LIABILITY FORMS EXCLUDE COVERAGE FOR ACTUAL OR ALLEGED EMPLOYMENT PRACTICES VIOLATIONS.
- THERE HAS BEEN A RECENT PROLIFERATION IN THE NUMBER OF HARASSMENT AND WRONGFUL TERMINATION CLAIMS (EEOC CHARGES FILED GREW 26% BETWEEN 1991 AND 1997. NEW EMPLOYEE CAUSES OF ACTION HAVE BEEN CREATED BY THE PASSAGE OF THE AMERICANS WITH DISABILITIES ACT OF 1990 AND THE FAMILY AND MEDICAL LEAVE ACT OF 1993. MANY EPL CLAIMS CAN INVOLVE CATASTROPHICALLY EXPENSIVE CLASS ACTION LAWSUITS.
- THE CIVIL RIGHTS ACT OF 1991 PROVIDES EMPLOYEES THE OPTION OF A JURY TRIAL. PRIOR TO THIS DEVELOPMENT, THE ADJUDICATION OF THESE CLAIMS RESTED WITH AN UNBIASED, UNEMOTIONAL JUDGE. BECAUSE JURIES TEND TO BE MORE PLAINTIFF-ORIENTED THAN JUDGES, WE ARE SEEING A GENERAL INCREASE IN THE NUMBER AND AMOUNT OF AWARDS.
- WITH THE RECENT U.S. SUPREME COURT DECISIONS IN BURLINGTON INDUSTRIES AND FARAGHER, EMPLOYERS NOW FACE STRICT LIABILITY (WITHOUT CONSIDERATION OF FAULT) FOR THE ACTIONS OF SUPERVISORS WHERE HARASSMENT IS ACCOMPANIED BY A NEGATIVE EMPLOYMENT ACTION.
- STRICT ADHERENCE TO EPL RISK CONTROL MEASURES DOES NOT GUARANTEE AN EMPLOYER WILL AVOID COSTLY LITIGATION EXPENSES NEEDED TO DEFEND AGAINST A CLAIM. MOST EPLI INSURERS USE SPECIALIZED DEFENSE COUNSEL WHO ARE IN THE BEST POSITION TO AGGRESSIVELY DEFEND AGAINST THESE ACTIONS.

### **EPLI COVERAGE**

- WRONGFUL DISMISSAL, DISCHARGE OR TERMINATION (ACTUAL OR CONSTRUCTIVE) OF EMPLOYMENT, INCLUDING BREACH OF AN IMPLIED CONTRACT;
- HARASSMENT (INCLUDING SEXUAL HARASSMENT WHETHER "QUID PRO QUO", HOSTILE WORK ENVIRONMENT OR OTHERWISE);
- DISCRIMINATION, (INCLUDING BUT NOT LIMITED TO DISCRIMINATION BASED ON AGE, GENDER, RACE, COLOR, NATIONAL ORIGIN, RELIGION, SEXUAL ORIENTATION OR PREFERENCE, PREGNANCY OR DISABILITY);
- RETALIATION (INCLUDING LOCKOUTS);
- EMPLOYMENT-RELATED MISREPRESENTATION (S) TO AN EMPLOYEE OR APPLICANT FOR EMPLOYMENT WITH YOUR COMPANY OR AN OUTSIDE ENTITY;
- EMPLOYMENT-RELATED LIBEL SLANDER, HUMILIATION, DEFAMATION OR INVASION OF PRIVACY;
- WRONGFUL FAILURE TO EMPLOY OR PROMOTE;
- WRONGFUL DEPRIVATION OF CAREER OPPORTUNITY, WRONGFUL DEMOTION OR NEGLIGENT EMPLOYEE EVALUATION, INCLUDING THE GIVING OF NEGATIVE OR DEFAMATORY STATEMENTS IN CONNECTION WITH AN EMPLOYEE REFERENCE;

- WRONGFUL DISCIPLINE;
- FAILURE TO GRANT TENURE;
- FAILURE TO PROVIDE OR ENFORCE ADEQUATE OR CONSISTENT CORPORATE POLICIES AND PROCEDURES RELATING TO ANY EMPLOYMENT PRACTICES VIOLATION;
- VIOLATION OF AN INDIVIDUAL'S CIVIL RIGHTS RELATING TO ANY OF THE ABOVE.

OTHER FEATURES: COVERAGE FOR FRONT & BACK PAY COVERS DISCRIMINATION & SEXUAL HARASSMENT CLAIMS BROUGHT BY THIRD PARTIES INSURED INCLUDES LEASED EMPLOYEES, SCHEDULED INDEPENDENT CONTRACTORS, THE COMPANY, DIRECTORS, OFFICERS, EMPLOYEES; PUNITIVE DAMAGE COVERAGE AVAILABLE VIA ENDORSEMENT; BROAD RETENTION WAIVERS (10% UPON ACCEPTANCE OF FIRST SETTLEMENT; 100% UPON A FINDING OF NO LIABILITY BY SUMMARY JUDGMENT, MOTION TO DISMISS, OR FINAL ADJUDICATION POLICY NON-CANCELLABLE (BY INSURER-EXCEPT NONPAYMENT); EMOTIONAL DISTRESS/MENTAL ANGUISH COVERAGE.

### **WHY BUY SEPARATE EPLI COVERAGE?**

WRITTEN AS AN ENDORSEMENT TO AN EPLI POLICY, A D&O POLICY MAY LACK COVERAGE FOR THE ENTITY ITSELF. THE CORPORATION AND EMPLOYEES WHO ARE NOT DIRECTORS OR OFFICERS NEED EPLI PROTECTION BY HAVING A SEPARATE EPLI POLICY SO THERE IS NO DILUTION OF LIMITS.