



## TIP #5: WHY BUY EMPLOYMENT PRACTICES LIABILITY INSURANCE?

Murphy Austin Adams Schoenfeld LLP Labor & Employment Law Team

### Do you have the right type of insurance?

You open your mail. Your chest tightens. It's a court summons. You quickly scan it. The plaintiff is an ex-employee. You think, "Miserable SOB!"

Quickly you run through what happened when the employee was terminated. Clearly, the employee wasn't performing. Business has been a little off and you needed to cut expenses. It had nothing to do with discrimination (or sexual harassment or any of that other stuff your attorney and insurance agent told you to worry about). No big deal, right?

Your documentation is impeccable. Your employment manual is up to date. You follow a checklist for all terminations. You are in compliance with all the employment laws. Everything is in order, right? Right?

The truth is, your HR policies and practices probably aren't perfect and that might be a problem. Even if you are spot-on, you can be sued.

You happen to have a relationship with a great employment attorney. You give her a call. She asks, "Send over a copy of your Employment Practices Liability Insurance policy." What? You sort of remember she told you to buy it. Your insurance agent also keeps bugging you about it. "We don't need it", you thought at the time.



*Unless your company can "comfortably" part with \$50,000, \$100,000, or more, you should have an EPLI policy.*

### Here are some cold, hard facts.

The average cost to have a meritless claim dismissed is \$10,000 to \$15,000. If your company's HR practices aren't quite up to snuff? You might want to try a quick settlement to make it go away. Expect anywhere from

\$10,000 to \$50,000 more. What if the other party is determined and perhaps your case is not as strong? Expect \$150,000 to \$200,000 for cost of defense and settlement. One more thing, expect about two years from beginning to end.

For many businesses, this would be a severe financial blow. Unless your company can "comfortably" part with \$50,000, \$100,000, or more, you should have an Employment Practices Liability Insurance (EPLI) policy.

### What does an EPLI policy cover?

These policies provide defense costs and pay damages for events related to your workforce, including but not limited to wrongful termination, harassment, discrimination, defamation, and unfair hiring/firing.

Pricing is varied, but premiums start as low as \$1,500 for a defense cost-only policy. Deductibles or Self-Insured Retentions start at \$2,500.

### What else should you look for?

EPLI policies are NOT standardized. Typically, look for policies that don't have the following:

- **Intentional Acts Exclusion.** Discrimination and harassment are "intentional torts" and most terminations are the result of intentional conduct.
- **Does not provide Full Prior Acts Coverage.** EPL claims don't suddenly occur. The harassment or discrimination could have occurred over an extended period of time.



MURPHY AUSTIN  
ADAMS SCHOENFELD LLP

304 "S" Street  
Sacramento, CA 95811  
916/446-2300  
Facsimile: 916/503-4000  
murphyaustin.com

Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Because laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.

- **Unmodified Bodily Injury Exclusion.** Emotional distress, humiliation, mental injury or mental anguish are often included in the definition of Bodily Injury. Many suits include claims for these injuries.
- **Claims-made and Reported.** Virtually all EPLI policies are Claims-made, which means the policy is triggered when a claim is first made. By adding "and Reported", Insurers impose a stipulated period (usually 30 or 60 days) where the claim must be reported. This is a very limiting feature that can affect coverage.
- **Employee Prior Knowledge.** All EPLI policies that provide "Full Prior Acts" coverage will have "prior knowledge exclusions". The person having the prior knowledge can range from officers and

management, to any employee. This could eliminate coverage for most claims prior to the issuance of the policy.

In addition, look to see how wage/hour claims are handled. If you are subject to labor agreements or possibly labor organizing efforts, you will want to review how the policy might address these situations.

As with any of your risk management needs, Owen-Dunn Insurance Services is committed to assisting you in assessing your employment-related policies and helping you develop best-practice solutions. Contact us to learn more about our effective risk management services.

Matt Kovisto, CIC, CWCA



MURPHY AUSTIN  
ADAMS SCHOENFELD LLP

304 "S" Street  
Sacramento, CA 95811  
916/446-2300  
Facsimile: 916/503-4000  
murphyaustin.com

Please be assured that we make every effort to make certain that the information contained in this article is current at the time the article was prepared. Because laws and legislation are constantly changing, please contact us if you are unsure whether this material is still current. Nothing contained herein is meant to be legal advice. Please contact us to answer any questions you may have.