



EMPLOYMENT PRACTICES LIABILITY COVERAGE

FREQUENTLY ASKED QUESTIONS – PRODUCERS

What is Employment Practices Liability Insurance?

- Employment Practices Liability (EPL) insurance protects an employer from employees' claims alleging discrimination, wrongful termination, or harassment, including sexual harassment.
- EPL insurance pays for liability damages and defense costs within the limits due to these charges brought by full-time, part-time, temporary or seasonal employees, as well as claims of discrimination or sexual harassment brought by non-employee third parties such as customers, clients, and vendors.

Why do all businesses need EPL coverage?

- Most EPL charges are filed against businesses. Employment laws that employees may use as a basis for action against their employer apply to the majority of businesses.
- Even groundless employment charges may require legal defense and defense costs can be significant – often \$10,000 or more. Insureds need EPL coverage to have those defense costs covered and to have access to attorneys experienced in defending employers from employment-related charges.
- Small businesses often don't have human resources professionals to develop the formal personnel policies and procedures that can help prevent employment related charges. And they don't have deep pockets so just the cost to defend them from EPL claims or charges can have a large financial impact on a small business.

Why would a reputable, well-run business need EPL insurance?

- No matter how well a business is run, an employee can allege anything at anytime.
- Employers need to defend themselves from employment-related charges, even if the charges are without merit. Burden of proof lies with the employer.
- EPL coverage pays for defense costs within the limits even when the charges are found to be groundless. Defense costs can be significant, well beyond what many small businesses can afford to pay.

What's changed that now makes EPL insurance important for business owners?

- Trends such as social media usage, job sharing, work-at-home, marijuana liberalization, and the like are expanding the vulnerability of charges being brought against employers.
- Today's business and legal climate is different today than it was years ago. Employees are more aware of employment laws, their rights, and how to exercise their rights by taking action against employers.
- Federal and state employment-related laws and regulations have been broadened, most notably with amendments to the Americans with Disabilities Act and Title VII.
- Employees see extensive news coverage and publicity about employment cases and awards against employers, which encourages them to file their own claim.
- The workforce is more diverse with women, older workers, and minorities representing a significant percentage of employees.

What advantages does our EPL insurance have to others in the market?

- Our EPL coverage was designed for the needs of our insureds.
- It's affordable and costs only a small fraction of EPL insurance premiums when sold as a separate monoline policy.
- It's easy to handle; there's no need to complete a separate EPL application for our standard offerings.
- EPL coverage is conveniently endorsed to the package policy so there's no additional policy to handle.
- Coverage is on par with many of the EPL coverages offered to large businesses only. We offer Full Prior Acts, Punitive Damages (where insurable by law), and coverage for third-party claims.
- Claim service is provided by EPL claim specialists.
- Insureds needing legal defense are represented by experienced employment law firms whose services would normally be cost prohibitive to many small business owners.
- The program includes a loss prevention website where agents and insureds can access information and tools to help minimize exposure to employment claims.
- The program offers access to a toll-free legal advice line, which does not erode the limit of coverage.

What loss prevention services does our EPL program website include?

- The EPL loss prevention website provides employers with tools and information to help them avoid situations that can lead to an employment claim.
- When facing an EPL charge, it is critical for an employer's defense to present evidence of efforts to "prevent or correct" unlawful employment practices. The tools on our EPL loss prevention website can help our Insureds document those steps.
- The website also helps educate employers about unlawful employment practices and inappropriate behaviors.
- It helps familiarize employers with proper risk management techniques and to prepare them to defend their business practices in the event of a claim.
- It provides insured employers access to important information such as:
 - EPL risks and loss examples
 - Applicable employment laws
 - Model employment policies and procedures
 - Library of recent developments in employment law and
 - Library of EPL frequently asked questions (FAQ's)

How much does Employment Practices Liability insurance cost?

- Your EPL coverage is included in your package policy premium.
- By including coverage in your package policy, our program costs a small fraction of what stand alone EPL insurance policies cost, which are often \$2,000 or more.

What does an Employment Practices Liability claim typically cost an employer?

- 81% of EPL claims are resolved for between \$27,000 and \$50,200. This includes defense costs and liability damage payments.
- This isn't an exposure that a small business should self-insure; given the risk, our EPL program is a tremendous value.

What laws and statutes create the necessity for EPL?

The need for Employment Practices Liability insurance arises from a number of federal and state laws under which employees may bring actions against their employers for such matters as sexual harassment, discrimination, and wrongful termination.

- Title VII — A federal law enacted in 1964 and amended by the Civil Rights Act of 1991. Title VII prohibits discrimination or harassment on the basis of race, color, religion, gender, or national origin. Title VII also created the Equal Employment Opportunity Commission (EEOC) as a venue for employment-related grievances.

In January 2009, the Ledbetter Fair Pay Act amended Title VII by broadening the timeframe in which pay discrimination claims may be brought.

- The Equal Pay Act of 1963 — Prohibits unequal pay for men and women serving in substantially the same position.
- The Age Discrimination in Employment Act of 1967 — Prohibits discrimination against persons who are 40 years of age or older.
- The Americans with Disabilities Act (ADA) of 1990 — Prohibits discrimination against people with physical or mental disabilities. Employers also must make any “reasonable accommodations” for their disabled employees to conduct their duties as long as such an accommodation does not pose an undue hardship on the employer.

In late 2008, the Americans with Disabilities Act Amendment Act (ADAAA) expanded the protections under the ADA to include treatable conditions like carpal tunnel and diabetes.

- The Family and Medical Leave Act of 1993 — provides that an employee can take up to 12 weeks of unpaid leave to care for a new child or a seriously ill family member, including themselves.
- Fair Employment Practices statutes — Individual state statutes that expand many of the protections provided under federal laws. These laws increase the protected classes to include such classifications as sexual orientation, transgender, medical conditions, obesity, and others. These laws also extend their reach so that they apply to even the smallest employers and also lengthen the statutes of limitations. Additionally, the states have created Fair Employment Practices Agencies (or FEPAs) as the state equivalents to the EEOC.
- Common Law — Employees can also allege such tortious acts as violation of their civil rights, infliction of emotional distress, invasion of privacy, and others under common law.
- Genetic Information Non-Discrimination Act — Enacted in November of 2009, this law prohibits discrimination based on an employee’s genetic information and prohibits the release of such information.

Does the EPL endorsement provide coverage for claims brought by customers and other non-employees?

- Coverage for claims brought by non-employee customers, clients, and vendors is included in your EPL premium as Third Party coverage and provides protection for charges of discrimination and sexual harassment.

What limits and deductibles are available?

- We provide \$100,000 in EPL limits subject to a \$5,000 deductible for all eligible insureds automatically. Other limits available without pre-approval* are as follows:

Limit	Deductible
\$100,000	\$10,000
\$250,000	\$5,000
\$250,000	\$10,000
\$250,000	\$25,000

* Our pre-approval eligibility is limited to businesses with 100 or less employees across all locations. Certain state restrictions also apply, as defined in subsequent questions. More available options are available with an additional application and underwriter review. For more information, contact your PLM Business Development Representative or Underwriter.

Does the EPL limit include defense costs?

- Yes. Defense costs are included within the limit of liability. That means that the limit is reached by a total of both defense costs and indemnity payments.

What is the eligibility for EPL coverage without an additional application and underwriter review?

- Up to 100 full-time equivalent employees
- Seeking annual aggregate limits \$100,000 or \$250,000 for all liability damages plus defense costs.
- Domiciled in any state of the United States except Arkansas, Louisiana, Montana, and New Mexico (Note: Due to regulatory restrictions, we are not able to provide EPL coverage for businesses domiciled in Louisiana)
- Five or fewer locations with active employees

What is the criterion for EPL coverage that requires an additional application and underwriter review?

- Up to 100 full-time equivalent employees seeking annual aggregate limits of \$500,000 or \$1,000,000 for liability damages plus defense costs.
- 101-250 full-time equivalent employees seeking annual aggregate limits of \$100,000, \$250,000, \$500,000, or \$1,000,000 for liability damages plus defense costs.
- Any business domiciled in Arkansas, Montana, and New Mexico seeking EPL coverage
- Any business domiciled in any state of the United States except Louisiana if any of the above criterion apply (Note: Due to regulatory restrictions, we are not able to provide EPL coverage for businesses domiciled in Louisiana)

Is the EPL coverage written on a claims-made or occurrence basis?

- EPL coverage is written on claims-made and reported basis, meaning that a claim must be made against the insured and reported to the primary carrier within the policy period (or within a subsequent renewal period assuming there has been continuous coverage).

Does the endorsement provide coverage for prior acts?

- Yes, the endorsement provides coverage for full prior acts as long as the insured did not have knowledge of the circumstances which gave rise to the claim prior to the Original Inception Date.

When is the insured obligated to pay the deductible?

- Assuming a \$5,000 deductible, the insured is responsible for the first \$5,000 of a covered loss. Above the deductible amount, EPL insurance would pay additional covered loss within the limit of liability for liability damages and defense costs.

What type of legal representation is provided with the coverage?

- Our EPL coverage includes legal representation by law firms specializing in employment law. In the event that a claim warrants defense, we will choose and retain one of these law firms to represent our insured.

How will this protect our agency or brokerage from an E&O claim?

- Our EPL program allows you to provide your insureds with meaningful coverage at an affordable premium in a very easy to administer manner. Coverage not only protects insureds, it also protects your agency or brokerage. If an insured suffers a loss and this coverage was not offered, your agency or brokerage may have an increased exposure to an E&O claim.