



FREQUENTLY ASKED QUESTIONS – AGENTS/BROKERS

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 due to these charges brought by full-time, part-time, temporary or seasonal employees. Optional coverage for claims brought by non-employee third parties such as customers, clients and vendors, is available for an additional premium.

Why do small businesses need EPL coverage?

Many EPL charges are filed against small businesses. Employment laws that employees may use as a basis for action against their employer apply to the majority of businesses, including small firms. 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 get 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 hurt 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. EPL coverage pays for defense costs 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 small businesses?

Discrimination claims have been growing 32 percent in the past 5 years and have reached the highest level since the EEOC began in 1965. 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, amendments to the ADA and Title VII.

Employees see extensive news coverage and publicity about employment cases and awards against employers. 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 small businesses. It's affordable and costs only a small fraction of EPL insurance premiums when sold as a separate policy.
- It's easy to handle, there's no need to complete a separate EPL application. EPL coverage is conveniently endorsed to the package policy, there's no additional policy to handle.
- Coverage is on a par with many of the EPL coverages offered to large businesses. We offer Full Prior Acts, Punitive Damages (where insurable by law), and optional 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 for a small business owner.
- The program includes a loss prevention website where agents and insureds can access information and tools to help minimize exposure to employment claims as well as access to a toll-free legal advice line.

What loss prevention services does our EPL program include?

Our program includes an EPL loss prevention website that 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 in our EPL loss prevention website can help them 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:

1. EPL Risks and Loss Examples
2. Applicable employment laws
3. Model employment policies and procedures
4. Library of recent developments in employment law and
5. Library of EPL frequently asked questions (FAQ's)

How much does Employment Practices Liability insurance cost?

Our program costs a small fraction of what separate 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.
- 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?

Optional coverage for claims brought by non-employee customers, clients and vendors may be available for an additional premium.

What limit and deductible is available?

We provide an Annual Aggregate Limit of Liability of \$100,000 for all losses combined for eligible insureds, subject to a \$5,000 per claim deductible.

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.

How do you define “small business” - is there a maximum employee count?

Yes. The maximum is up to 100 employees per policy and no more than 5 employee staffed locations, whether under one policy or separate policies. Policies with more than 100 employees are not eligible.

How is employee count calculated?

Employee count equals all full-time, equivalent employees. Employees other than full time should be counted as half an employee. As an example, five full-time and four part-time employees would equal seven full-time employees.

Are there any States where the insured has its headquarters that are ineligible for the program?

Yes, accounts where the account headquarters are domiciled in Arkansas, Louisiana, New Mexico or Montana are not eligible for the program.

Can we (the agent) or our insureds opt-out of EPL coverage?

Yes, while we would advise our clients to retain the coverage so they are not at risk, you or your insureds may request that EPL coverage be removed from their policy.

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?

The insured is responsible for the first \$5,000 of covered loss. Above the deductible amount, EPL insurance would pay additional covered loss within the limit of liability.

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 the insured.

How will this protect our agency 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. If an insured suffers a loss and this coverage was not offered, your agency may have an increased exposure to an E&O claim.