

Litigation Lessons for the Mold Shop Owner

Employment practices liability insurance is a necessary cost of doing business.

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Expose'd is the name of a company. It's not their real name. It is, however, an accurate description of their employment practices liability.

As with many companies, coverages suggested by their agent that Expose'd was unfamiliar with were quickly declined. Maybe there is an inherent distrust for any salesperson suggesting a product or service for the first time. Perhaps it is the fact that Expose'd doesn't have the coverage, doesn't feel like they need the coverage, or cannot see the value in paying the additional premium.

Now, I'm sure you are asking, "What is employment practices liability insurance (EPLI)?" EPLI provides protection for an employer against claims primarily made by employees, former employees or potential employees. It covers discrimination, wrongful termination of employment, sexual harassment and other employment-related allegations. It also provides coverage for the cost associated with defending these types of claims and the awarded damages.

Hopefully, it is becoming a little clearer, but you may be wondering: what does it mean to you?

EPLI Trends

Employment liability lawsuits are on the rise. According to

a leading provider of EPLI coverage, these types of lawsuits constitute the most common type of liability lawsuit today.

Every employer must face the reality that they may be the target of legal action from past, present and prospective employees. Even if the claim is groundless or fraudulent, the cost to defend a suit can be very high—not only because of the monetary expenses involved—but also due to the drain on time and other company resources. For example, the legal fees can be more than \$300 per hour because employment practices suits are tried in federal court and often require legal representation by an attorney with experience in the federal court system. Your business might suffer because you are not there, morale can decrease and, as a result, production can dwindle. See **Could This Happen to You? sidebar**, which lists potential scenarios for employment-related claims.

Without EPLI coverage, the awards, settlements and legal fees exemplified in the "Could This Happen To You?" sidebar would be the responsibility of the defendant company. Data collected for 2003 by Jury Verdict Research of Horsham, PA, shows a compensatory median of \$250,000 for all EPLI-related verdicts and \$65,000 as a median settlement. Consider the serious financial impact one of these claims could have on your company's bottom line. The defense costs alone can be staggering.

Having the right EPLI policy can spare you the worry of selecting qualified legal assistance, paying defense costs, including a generous settlement provision, and providing coverage for punitive or exemplary damages.

EPLI Coverage and Loss Prevention Techniques

EPLI coverage is usually excluded in a basic property and liability business insurance policy and must be purchased separately.

As coverages may vary by the company and policy offered, you should work closely with your agent to find the one that best suits your needs. Some policies will provide coverage that dates back to the very first day a business began, while others provide coverage from the policy inception date. Some may cover all compensatory damages whereas others won't cover punitive damages. It is your agent's responsibility to know what is covered and offer the broadest coverage available at an affordable price.

If you are anything like Expose'd, you may be thinking, "This doesn't apply to me because it will never happen. We are like a family here. None of my employees would ever be that unhappy." Think again.

Spurred by federal legislation and monetary awards, employ-

How to Choose Your Agent

There are three critical risk management advisory roles your agent or broker should provide:

1. Understand Your Industry

It is essential that your insurance advisor have knowledge of your industry and experience with the exposures inherent to your business processes.

2. Proper Representation of the Marketplace

A key role of your insurance advisor is to understand the marketplace, maintain access to quality insurance carriers and assist you in properly designing an effective and affordable risk management program.

3. Provide and Coordinate Value-Added Services

A complete risk management program includes claims management and loss prevention to reduce and control losses. Since services from insurance carriers differ significantly, it is important that your advisor have detailed knowledge with respect to their capabilities as well as the needs of your company.

If your agent or broker is not providing you with these services, you may want to consider a professional risk management advisor who has the needed experience.

ment-related claims are steadily rising, with no end in sight. Any company that has employees should have EPLI coverage—period! In fact, EPLI has become a necessary cost of doing business in today's litigious society. It ensures your protection if you become a target of one of these types of lawsuits.

Not only is your coverage essential, it also is necessary to be proactive and limit your exposure. As with any comprehensive risk management program, incorporating a loss prevention program is highly recommended. There are many techniques you can integrate into your business practices to minimize your exposure. For example, establish or update the following: hiring processes, employee and applicant testing, the prohibition of workplace harassment, personnel policies and employee handbooks, employee evaluations, discipline and corrective action plans, and terminating employment policies. Many insurance carriers provide online training, documents and handbooks along with your coverage at no additional charge.

End at the Beginning

Expose'd, with the help of their agent (see **How to Choose Your Agent sidebar**) and a review of many lawsuit statistics, ultimately came to the conclusion that EPLI coverage was in their best interest. They realized that just one lawsuit decided in an employee's favor could seriously jeopardize the future of the company.

Expose'd would still like to think it will never happen to them and their "like-family" business will never have to face an employment practice suit. However, they aren't so naïve as to think that in today's litigious climate, a company—especially a small or medium-size company—can afford to be unprotected.

With that change of mind came a change to their name: Expose'd became Covere'd.

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For more information contact **Ryan Colvin**, account executive at Gibson Insurance Group (South Bend, IN) at (800) 814-2122, ext. 3509 or via e-mail atrcolvin@gibsonins.com.

The following are based on claim scenarios from St. Paul Travelers Bond.¹

- **\$2,000,000:** A company settled a class action suit brought by job applicants who charged that certain questions asked in a pre-employment psychological exam violated their constitutional right to privacy as well as various state labor laws.
- **\$7,100,000:** A Midwestern electronics company settled a class action lawsuit alleging a violation of the Age Discrimination in Employment Act (ADEA) for \$7.1 million. The suit was brought by approximately 800 former employees whose jobs were moved to Mexico after a downsizing at the company's U.S. facilities.
- **\$5,800,000:** Two female employees sued their former employer for sexual harassment and a variety of state law torts, including intentional infliction of emotional distress and battery. One woman was awarded \$4.85 million in damages, including \$3.4 million in punitive damages. The jury awarded the other plaintiff nearly \$1 million, including \$925,000 in punitive damages.
- **\$5,500,000:** A jury awarded \$5.5 million to a former truck driver with epilepsy. The Equal Employment Opportunity Commission (EEOC) said the trucker unfairly lost his job and was denied comparable work after suffering a seizure. The jury awarded \$192,000 in back pay, \$960,000 in compensatory damages and \$4.4 million in punitive damages.
- **\$2,600,000:** A northeastern liquor importer agreed to pay \$2.6 million to more than 100 female employees who alleged that they were subjected to acts of sexual harassment by the president of the company, as well as by other management employees and customers. The company also agreed to take steps to prevent sexual harassment, including implementation of a 24-hour toll-free complaint line, training for all supervisors, and a comprehensive policy against discrimination and sexual harassment.
- **\$2,500,000:** After reporting multiple incidents of repeated sexual harassment by a supervisor, an employee alleged that the supervisor began a systematic campaign to force the employee to resign. A jury awarded in this retaliation/wrongful termination complaint: \$210,000 for mental anguish; \$330,600 in lost income and \$1,956,240 attorney's fees.
- **\$460,000:** An employee alleged that his employer failed to reasonably accommodate his hearing disability, unfairly suspended him for violation of the company's sexual harassment policy, which he further alleged the company did not keep confidential. The jury found the defendant employer liable in this ADA/discrimination/retaliation complaint and awarded \$10,000 for invasion of privacy, \$100,000 for slander, \$250,000 for breach of covenants of employment, \$75,000 for intentional infliction of emotional distress and \$25,000 for attorney's fees.
- **\$456,000:** An employee who voluntarily admitted having a substance abuse problem won his wrongful termination. Finding that the termination was a violation of the Americans with Disabilities Act, the jury awarded \$105,225 in past earnings, \$100,338 in front pay, as well as \$250,000 for mental anguish.
- **\$265,000:** A plaintiff sued a northeastern water treatment company, alleging national origin discrimination in violation of Title VII. The plaintiff was awarded a total of \$265,000 in damages, comprised of \$150,000 in compensatory damages and \$115,000 in back pay. In addition, the court awarded attorneys' fees and interest in the amount of \$232,711. The company had only 15 employees.

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