

# Employment liability

## How to defend against discrimination, wrongful termination and other claims

INTERVIEWED BY ROGER VOZAR

Lawsuits can pose a considerable threat to businesses, and actions related to employment practices should be a particular area of concern to business owners. According to researchers, about 60 percent of employers can expect to be sued by a prospective, current or former employee.

“It’s the increasingly litigious nature of our society,” says Derek M. Hoch, president of Leverity Insurance Group. “These lawsuits really started to trend upward when the market plummeted to its lowest point in combination with the state of the economy over the past four to five years. Desperate times can sometimes lead to desperate actions. When people couldn’t find employment, they filed suits against employers who let them go during that period of recession.”

*Smart Business* spoke with Hoch about how employment practices liability (EPL) insurance can help businesses manage risks associated with such lawsuits.

### What are the most widely recognized types of employment-related lawsuits?

- Wrongful termination — Discharging an employee for invalid reasons.
- Discrimination — Denial of equal treatment to employees of a protected class.
- Sexual harassment — Workers subject to unwelcome sexual advances, or obscene or offensive remarks.

Lawsuits can also be based on things such as wrongful failure to employ or promote, wrongful discipline and religious discrimination.

### How can EPL insurance protect employers?

More than half of all claims for employment-related liabilities are against

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businesses with fewer than 50 employees. Claims can be costly, especially if a case has the ability to go on for an extended period of time. The average cost of an employment lawsuit exceeds \$270,000. Even if the lawsuit is frivolous, it still takes time away from operating your business.

An EPL policy will help to pick up these defense costs and any judgments or claims assessed against your business. In some instances, these cases are settled before they even go to court; EPL will pay for settlement costs as well.

EPL also covers claims filed with the U.S. Equal Employment Opportunity Commission (EEOC). In 2012, the EEOC reported 99,947 charges for harassment, and costs of resolving these claims were \$364.6 million.

### Why is purchasing third-party EPL insurance so important?

Third-party EPL addresses the coverage gap that leaves employers vulnerable to discrimination and harassment lawsuits from customers, clients, vendors and suppliers. Standard EPL policies only cover actions related to employees or prospective employees, and most general liability policies specifically exclude harassment and discrimination.

More insurance carriers are including third-party coverage as part of EPL policies

because every company is at risk. It’s vital for any business that deals with customers on a daily basis.

### Other than insurance, what approaches can companies take to protect themselves?

Have a legal professional review your employee handbook to ensure it contains all the necessary information, including policies covering sexual harassment, discrimination, equal opportunity, grievances, discipline, termination, performance evaluations, Internet usage, pregnancy leave, hiring and employment at-will. Then make sure employees sign off that they’ve read it.

If you don’t have a handbook, you may not be able to secure EPL insurance because insurance carriers take this very seriously. They want to see that you’ve taken proper steps in terms of risk management and providing a safe workplace.

You can protect yourself even more by making sure you’re following proper procedures regarding hiring, firing, performance reviews and even interviewing prior to hiring someone.

Taking these steps also reduces risk, which will generally translate into lower insurance premiums. EPL insurance works hand-in-hand with your internal employment practices to provide necessary resources to defend your company against a lawsuit or claim. ●