

A Summary of New Employment Practices Laws

Over the last year, Congress has taken aggressive steps to increase the rights of workers under several pieces of passed and proposed legislation. The federal government's increased attention to these matters should send a warning signal to employers of all sizes that regulation of employment law is growing.

Examples of legislation passed since early 2009 include:

Americans with Disabilities Act Revision

ADA was broadened to include conditions that can be treated, thus expanding the pool of workers who can file a claim under ADA.

Ledbetter Fair Pay Act

Resets the statute of limitations for workers

to sue for pay discrimination each time they receive a paycheck.

Family and Medical Leave Act

Lawmakers have also proposed legislation that would expand the Family and Medical Leave Act to include companies with fewer than 50 employees.

Other proposals include eliminating caps on discrimination awards, establishing a new federally protected class based on sexual orientation, and making it easier to establish labor unions and

increase penalties for unfair labor practices.

Take the time to know and understand employment practices law and implement measures to prevent claims at your firm. ■



The Advice of an Unlicensed Professional

In many firms, unlicensed professionals give advice to clients that is not "official business." Unfortunately, these well intentioned aides may be putting your firm at risk.

For example, your firm's E&O may only cover decisions made or advice rendered by employees holding a specific professional license. Coverage under the same policy may not be afforded to unlicensed employees who make the same decision or offer the same advice that leads to a claim. Such situations are common in offices where licensed employees work closely

with unlicensed service staff, such as financial advisors, law firms, medical offices, architectural and construction firms and other service organizations.

Make certain to review your E&O policy with employees so they understand which actions are and are not covered. Institute written procedures for the performance of duties so there's a record of your diligence in preventing professional errors. Such measures can assist you in avoiding costly litigation that may not be covered by insurance. ■

Professional Liability Umbrella



Does your firm have a commercial umbrella policy that offers coverage and limits of insurance that extend well beyond those available in your property, auto and/or liability insurance policies? If so, does the umbrella also provide additional coverage and limits to your firm's professional liability insurance?

Professional liability insurance is a comprehensive term used to describe several different forms of liability insurance designed to cover losses that are not addressed by typical commercial liability insurance. Professional liability insurance may include errors and omissions, directors and officers, fiduciary liability and other risks.

The reason your firm purchased an umbrella policy was to increase the limits of payment under a covered claim. The same should be true for your professional liability insurance. It may be possible to extend your current umbrella to cover this exposure. If not, an additional umbrella policy might be available. For more information, give our service team a call. ■

Employment Practices Insurance — Why Now?

When deciding if employment practices liability insurance is right for your firm, here are a few items to consider:

EPL protects business assets against damages suffered by employers for work-related claims. But what constitutes a work-related claim? Such claims include, but are not limited to, wrongful termination, harassment, discrimination, defamation and unfair hiring and termination practices.

EEOC violations are up. According to the EEOC (Equal Employment Opportunity Commission), 95,402 charges were filed in 2008—the highest number

ever reported. The EEOC tracks claims filed from specific categories. These categories include race, sex, religion, national origin, retaliation, age, disability and the equal pay act.

Employment is down, cost of claims is up. There is a direct relationship between rising unemployment across the U.S. and the spike in claims filed with the EEOC and against employers. The cost of these claims is also rising, and damage awards can add to the price.

We can help you with your firm's insurance needs and answer questions you may have about employment practices liability. Call today. ■

Face the Facebook Risk

The social networking site Facebook had more than 300 million accounts in 2009, according to *USA Today*. If the population of Facebook were a country, it would be the sixth most populous in the world!

A search of Facebook shows that a growing number of accounts are operated by businesses hoping to reach employees and customers. The typical Facebook account contains written posts, videos, photos, links, announcements and other information. Firms using Facebook often do so to provide an open forum for employees and customers to share information. This information may be accessible to very few or to thousands.

When utilizing a social network site like Facebook, employers must proceed with caution. Numerous cases



have been publicized in the national media of individuals and businesses being sued for information posted to a social networking site. Lawsuits range from violation of privacy to slander to wrongful hiring or termination.

If you currently use, or plan to use, a social networking site in connection with your business operations, consider the risk and the need for insurance to cover it, and call us if you would like to explore policies that insure your Web presence. ■

Covering a Predecessor Firm

Mergers and acquisitions present complex problems at many levels, including insuring the actions of “acquired” staff—actions taken while they worked for the purchased firm, otherwise known as the “predecessor.” Those professional activities represent a liability exposure to the new owner, and it is imperative that the purchaser’s errors and omissions insurance cover that risk.

An acquiring company’s professional liability policy may very well insure the actions of staff coming from a predecessor firm. Nearly all of these policies qualify predecessor firms as insureds if the majority of their assets

were acquired by the named insured. If a minority share of the business was bought, the purchaser’s policy will likely exclude coverage for acts prior to the acquisition since there is a failure to reach the “majority of assets” threshold.

Complicating matters, it depends on the type of profession in which your firm engages. For example, the vast majority of policies for lawyers and accountants cover predecessor firms, but hardly any forms that cover medical professionals do. Then there’s a smattering of other professionals for whom policies mostly offer predecessor coverage but sometimes don’t.

The only way to know is to review your coverage carefully. In addition, you must present the merger or acquisition to your insurer, which will typically want detailed information on the predecessor’s operations and claims history. Be aware that situations at the predecessor that have the potential to generate claims in the future could be excluded from coverage even if predecessor firm coverage is approved.

Undertaking a merger or acquisition is highly complex. Include our professionals in the planning and implementation phases to assist you with the specialized insurance needs you will encounter. ■

Keeping Records of Understanding

Suppose a financial advisor has a meeting with one of his customers. At the conclusion of the meeting, the advisor furnishes his customer with a piece of paper stating that the advisor is “not responsible for losses that occur as a result of the customer’s failure to adhere to this advice” (in other words: “Don’t say I didn’t tell you so!”) and asks for the customer’s signature.

To assist with the defense of a possible errors and omissions (E&O) claim, professional organizations often incorporate the customer’s signature on a waiver or agreement in relationship to services performed.

In some cases, the practice may be required by law. In

other cases, it’s a voluntary practice intended to assist with defense if a misunderstanding occurs during services rendered and results in litigation.

While a signature of a waiver,



agreement or other form may prove a valuable piece of evidence, the paper alone may not be effective. In many states, the customer’s signature serves as

proof that the customer saw the form but falls short of proof they understood its meaning. For this reason, businesses that require customers to sign such forms should go a step further.

Keep detailed notes in the customer’s file indicating why it was used in that particular situation. Also record that the form was explained in detail and understood by the customer prior to signing. This additional step will assist your firm’s E&O insurance company in preparing your defense should a claim be filed.

For more information on steps that will help your E&O insurance company best defend your firm against a claim, call our service team today. ■

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your referrals.**

If you're pleased with
us, spread the word!
We'll be happy to give
the same great service
to all of your friends
and business associates.

When Is a Claim a Claim?

The first step in preparing your business for the possibility of a claim alleging errors or omissions is to obtain a professional liability insurance policy that will help pay the cost to defend against it.

The second step is to understand what the policy defines as a claim. Some professionals assume that a claim is formal notice of suit. In many professional liability insurance policies, this is not the case.

Some professional liability policies may include a request for a recorded statement, service of a subpoena or any other notice of legal process in its definition of claim. It is not unlikely for such elements to take place months before a suit is filed.

There are many forms of professional liability insurance. Some contain a broad interpretation of a claim and due process, while others are more restrictive. If you have any questions concerning your firm's professional liability insurance, we can help. Call our service team today. ■
