Employment Practices Liability

A popular insurance text starts with, “The growth of federal and state legislation dealing with employment discrimination and sexual harassment, the changing legal views on wrongful termination, and the increasing tendency of aggrieved parties to turn to the courts for settlement of such disputes have caused insurers to specifically exclude coverage for such employment-related claims in the commercial general liability policy.”

To fill this gap, a number of insurers are offering employment practices liability (EPL) coverage as an endorsement to the commercial general liability policy or as a stand-alone policy. Independently developed by each company, the EPL coverage forms vary by company, however, most policies are similar in terms and conditions.

EPL policies are usually written on a claims-made basis, which means that for a claim to be covered, it must occur during the policy term. Extended reporting periods from one to three years can be added for an additional premium.

In addition to damages paid for judgments or settlements, the cost of defense is covered. However, it is usually paid from the limit of liability, not in addition to the limit of liability. Most EPL policies specifically cover back pay. Back pay is commonly awarded to successful claimants in discrimination and wrongful termination actions.

Typically, the definition of “insured” in an EPL policy includes the corporation, its directors and officers, its employees, and, in most policies, its former employees. Some policies limit the definition of “insured” to include only managerial employees.

The deductible for this coverage ranges from $1,000 to $250,000, depending on underwriting factors. One difference from other types of policies is that the EPL policy usually requires the insured to participate in losses exceeding the deductible. The amount that the insured contributes after the deductible has been satisfied is based on the “participation rate.” Participation rates are usually 5 to 10 percent, but can reach as high as 25 percent depending on underwriting factors.

Telephone Marketing Scams

If you are a business owner or work at a small business you may believe that you are protected from unwanted telemarketing phone calls by the "Do Not Call" list. The federal law implementing the national "Do Not Call" list, however, does not include businesses. As the personal phone numbers on the "Do Not Call" list are increasing, telemarketers are left with fewer prospective numbers and are now targeting businesses.


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An investigation by *Barron's* magazine found that most of these calls businesses are getting are scams. These scam callers are promising unusually high returns on a myriad of investments. The person who answers the phone at your business should be warned about these scams. It doesn't stand to reason that, when CDs are paying one percent, you can count on returns of 10-20 percent. If it sounds too good to be true, it probably is. If you receive one of these scam calls, you can control the situation by just hanging up.

Mechanical Breakdown Coverage

Mechanical breakdown coverage has become more popular in recent years. Twenty years ago only the most die-hard businesses carried this coverage. In the last 10 years, it has become much more common for businesses to carry this valuable coverage. It has even become fairly common to find this coverage added to small business policies. However, it is rarely automatic.

Due to the technical nature of many of the mechanical breakdown losses, it often requires specialists in various types of equipment, whether mechanical or electrical, to settle mechanical breakdown claims. As your insurance advisor, we can explain what is and is not covered by your policy, but we cannot make an accurate assessment of a damaged circuit board in your processing equipment. This takes a specialist.

The mechanical breakdown coverage not only provides coverage for damage caused by an "accident," but also provides "service interruption coverage." Let's start by defining an accident. For a loss to be covered, it must be sudden and accidental and not expected by the policyholder.

In a mechanical breakdown claim, the company representative will first determine if the claim was accidental. A good example of this would be a power outage. Some power outages that cause damage are covered, but again, the requirement that the loss be accidental must exist. The policy will even consider whether the damage first occurred with your utility provider, and what caused their problem. Was the cause of the outage at the power station due to a covered accident defined in your policy? If a cause of loss at your power facility was not within the scope of your policy's coverage, then the claim was caused by your supplier's professional actions and there would be no coverage. We would then look for a coverage trigger occurring on your premises, such as a power surge or arching in your on-premises electrical service or equipment.


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An optional coverage that you can select is service interruption coverage. This coverage extension will pay for lost income and extra expenses when operations are curtailed following a covered loss.