Rockwood Programs, Inc.

4001 Miller Road, Wilmington, DE 19802-1999

What is Employment Practice Liability?

The need for Employment Practice Liability commonly known as EPL, EPI or EPLI arose with the incorporation of the ISO Employment Practice Liability Exclusion in most General Liability policies (CG 2147). EPLI gained popularity in the 90s with the Clarence Thomas Supreme Court Nomination and has been gaining momentum ever since.

What is Covered?

EPLI provides coverage for employer/employee related claims. These claims include sexual harassment, discrimination wrongful termination and retaliation. Claims for failure to hire, Wrongful Discipline and Deprivation of career opportunity are also covered. Claims are initially filed with the Equal Employment Opportunity Commission (EEOC) or other federal, state & local agencies. Civil litigation is often filed after these proceedings on all levels (federal, state and local). Coverage is provided for judgments, statutory attorney fees, settlements including: Punitive damages where insurable by law, Front pay, and Back pay.

Who is Covered?

The coverage is provided for past, present and future employees. Coverage is included for Full-Time, Part-Time, seasonal and temporary employees. The Directors, Officers and members of a Limited Liability Company are included as insureds. Interns, volunteers and leased employees are also included. Coverage can be extended to cover 3rd parties, such as customers.

Samples of Possible Scenarios

1. An employee is terminated due to bad performance. The employee files a complaint with the EEOC claiming he was terminated due to his race. If he was terminated during the policy period and filed the claim during the policy period, coverage could apply.
2. A person notices a now hiring sign in the window of a store. The position was filled however the manager forgot to take the sign out of the window. The person comes into the store and asks for an application. The manager informs the person that the position has been filed and refused to give the person an application. The person then files a complaint with the EEOC claiming the manager did not give him an application due to his race. If this incident happened during the policy period and filed the claim during the policy period, coverage could apply.
3. Jeremy was recently hired to manage the processing department. Kate was a well-known and hard working employee. She would often stay late and work on weekends. On one of those nights Kate was working late, Jeremy approached her from behind and started to massage her shoulders. Kate, startled by this action, immediately jumped up and started yelling at Jeremy. The next day she reported the confrontation to Darryl the head of the Human Resources department. Darryl called Jeremy into his office and reprimanded him. Jeremy started treating Kate differently. He made her employment unbearable. Kate finally quit. She went to her lawyer and filed a claim of retaliation. She stated in her claim that Jeremy made her employment unbearable after their confrontation.

ROCKWOOD PROGRAMS, INC. 4001 Miller Road, Wilmington, DE 19802-1999
Tel: (800) 558-8808 • Fax: (302) 764-5477 • www.rockwoodinsurance.com

TEN REASONS TO CONSIDER ROCKWOOD EPLI

1	***STREAMLINED SUBMISSION PROCESS SPECIFICALLY DESIGNED TO SUPPORT RETAIL AGENTS***	• 24 Hour turn-around on most quote indication requests • Short application • Paperless compliance • Financial data not a requirement
2	***PROVIDES CRITICAL RISK MANAGEMENT TOOLS FOR YOUR CLIENTS***	• Policyholder Human Resource tools to aid in compliance of Federal and State Laws • Examples of many key Human Resource-related documents available
3	***DEDICATED STAFF OF KNOWLEDGABLE PROFESSIONALS***	• A unit of trained underwriting specialists specifically designated to support the Rockwood EPLI initiative
4	***PREMIER CLAIMS RESPONSE***	• All Rockwood carriers provide expert legal counsel dedicated exclusively to employment cases
5	***VARIOUS LIMIT AND RETENTION OPTIONS TO MEET YOUR CLIENT'S UNIQUE NEEDS***	• Liability limits from $250,000 to $5,000,000 • Various retention limits available dependent on state
6	***COMPETITIVE POLICY FORM TO COVER KEY EMPLOYMENT PRACTICES-RELATED EXPOSURES***	• Protection against allegations of: – Harassment – Discrimination – Wrongful termination – Retaliation – Failure to hire – Failure to promote
7	***LEGAL SUPPORT FOR YOUR CLIENT***	• Policy provisions include a duty to defend—even if the suit is fraudulent or groundless
8	***CLAIMS PAYING ABILITY***	• All of Rockwood's EPLI carriers are "A" rated (Excellent) or better
9	***EXPANDED FINANCIAL PROTECTION***	• Coverage includes indemnity for judgments, back-pay, front-pay, appeals, and pre- and post-judgment interest
10	***ARRAY OF ENDORSEMENTS AVAILABLE TO TAILOR COVERAGE TO MEET YOUR CLIENT'S NEEDS***	• Available endorsements include: – Defense outside the limits – Independent Contractors – Third Party Liability – Prior Acts

A Lethal Combination…

A Company can be Financially Devastated when a Savvy Trial Lawyer Teams up with a Disgruntled Employee to File an Employment Practices Related Lawsuit.

Take steps to protect your client by purchasing
Employment Practices Liability Insurance
through **Rockwood Programs, Inc.**

Here are Examples of Expensive Employment-Law Myths . . .

Myth #1: Employees are "exempt" if they are paid a salary.

Payment of a "salary," however, is only one of many requirements to create an "exempt" employee. So, while state and federal rules regarding overtime, meal & rest periods, and similar wage/hour laws do not apply to "exempt" employees, don't assume that someone paid a "salary" is exempt. Mistakes are expensive—unpaid overtime, interest, penalties, and more!

Myth #2: Employees on "probation" can be terminated easier.

Many employment laws apply on the first day of employment. Since at-will employees are always on probation, having a defined "probationary" period actually hurts the employer and can limit its right to terminate a poor performer.

Myth #3: You don't have to pay an employee who works from home, after hours, without being asked to do so.

A non-exempt employee must be paid for all hours worked whether you authorize the time or not. Therefore, a non-exempt employee who works 40 hours per week and extra hours at home answering emails may have a legitimate overtime claim. Even if their work at home doesn't result in overtime, they would have an unpaid wage claim.

Myth #4: If I hire someone on a short term basis, I can "1099" them.

1099 refers to the IRS form used to document monies paid to an independent contractor. If you pay someone to fix your roof, they are an independent contractor. However, an employee is just that, an employee, and must be paid through payroll and issued a W-2 at year end. Misclassifying someone as an independent contract can result in substantial penalties, back taxes and benefit plan implications.

Myth #5: My employees are like family...They would never sue me.

Even if your employees feel a part of your family, family members sue each other all the time. Employers assume their employees (or former employees) would never file a lawsuit against them. This assumption is not based on fact. The fact is that small employers are vulnerable to employment claims. Recent statistical data shows that a plaintiff will win an employment lawsuit filed in state court about 67% of the time.

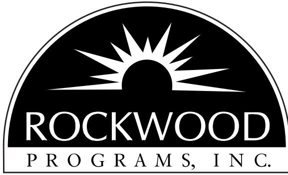
While verdicts exceed $1 million frequently, the most likely verdict will range from $41,250 to $197,500. This may cripple a small business.

Here are examples of the damage a lawsuit can have on a small business . . .

A small construction company paid $225,000 in a same-sex harassment case. The victims in this male-on-male harassment case claimed they were subjected to a hostile work environment when their employer failed to respond to complaints of unwanted physical contact and offensive comments.

An Illinois gas station paid $250,000 to settle sexual harassment claims against the husband of a former employee. The EEOC said that the women employees were subjected to fondling, sexual comments and sexual intimidation by their manager's husband, who performed odd jobs at the station.

A small family-owned business will pay $325,000 to settle a sexual harassment suit brought by the EEOC on behalf of several former employees. The suit contended that the employees were constructively discharged (forced to resign) due to the sexually charged, hostile work environment created by several co-workers.



4001 Miller Road, Wilmington, DE 19802 Tel: (302) 765-6000 Fax: (302) 764-5477

EPLI—Employment Practices Liability Insurance Claims Statistics and Recent Judgments

Is your client adequately protected against employment-related claims?

In today's litigious environment, the protection afforded by Employment Practices Liability Insurance (EPLI) coverage has become more valuable than ever. Recent studies underscore the need for firms to seriously consider the extent of their exposure:

- 27% of all winning plaintiffs in EPL cases are awarded punitive damages averaging just under $3 million;
- 10% of the federal court docket is now comprised of employment law cases;
- A recent telephone poll revealed that 31% of all female and 7% of all male workers claimed to have been sexually harassed; and
- The average EEOC complaint takes over one year to handle.

Recent Judgments The following scenarios are examples of claims brought by employees. Consider the devastating impact that these situations could have on your clients:

- ***$3.5 million jury verdict*** imposed on a national retail chain after denying a position to a paraplegic job applicant. The individual had been told that the store "had no openings for a person in a wheelchair".
- ***$900,000 awarded*** to a female employee in response to a claim that her supervisor sexually harassed her and others and that she was retaliated against when she complained.
- ***$1.9 million voluntary settlement*** agreed to by one of the largest agricultural firms in the United States. The case, brought by the EEOC on behalf of current and former employees, alleged sexual harassment and retaliatory acts by company management.
- ***$1 million awarded*** to a 49-year old former sales manager in an age discrimination case. The individual was terminated after 17 years with the company. Officials told him that "he looked his age" and that he did not fit into the young aggressive image the firm was trying to convey.
- ***$375,000 judgement*** awarded to an individual after his employer refused to grant a 12 week leave guaranteed under the Family Leave Act of 1993.

American As Apple Pie ... Trial By Jury

Juries continue to create a disturbing trend in deciding damage awards. These awards remain a serious financial burden for American business, and our nation's regulatory and legal systems in general.

The cases listed are representative of the hundreds received each month from small and middle-sized companies. They stress the many ways the business owner is charged with violating city, state and federal employment law and why Employment Practices Liability Insurance is an essential purchase for business owners/managers.

The names have been changed to protect the privacy of the business and the claimant.

Allegation:

Sex Discrimination and Wrongful Termination –

The original demand filed with the state human rights commission and the EEOC from Carla Berry was for $28,000. **A settlement was negotiated for $23,235.81** with her plastics company employer.

Allegation:

Wrongful Termination –

The claimant Lucille Albertson alleged that she was discharged based on her pregnancy-related disability. She and her hair salon employer settled the case for $55,000. Defense costs totaled $3,165.19.

Final cost: $58,165.19

Allegation:

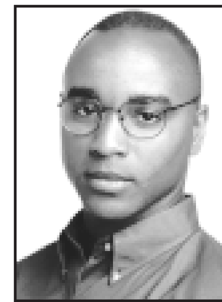
Sex Discrimination & Violation of the Equal Pay Act –

Mary Gross initially filed her suit with the EEOC and later refiled it with a U.S. District Court. Ms. Gross settled with her printing company employer for $75,000. Defense costs totaled $38,801.18.

Final cost: $113,801.18

Allegation:

Disability Discrimination, Wrongful Termination and Related Tort Counts –



The claimant, Cody Beasley filed the charge with the county superior court. The company rehired Beasley prior to him filing the suit. Mr. Beasley settled with his promotion company for $31,000. The defense expenses totaled $18,198.04.

Final cost: $49,198.04

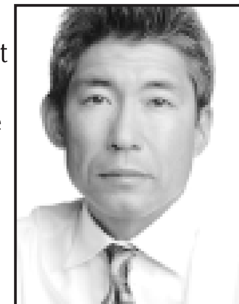
Allegation:

Sexual Harassment, Discrimination and Retaliation –

Ruth Baker sent her letter to the insured seeking loss based on her allegations. She settled with her restaurant employer for $57,500. Defense costs, fees and payment to the mediator ran $18,957.14. **Final cost: $76,457.14**

Allegation:

Wrongful Termination, Breach of Implied Contract, Promissory Estoppel, Defamation and Outrageous Conduct –

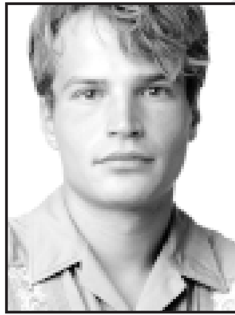


Richard Butler filed the complaint with the state district court. After three years of mediation, the claimant settled with his cleaning supplies employer.

Final cost: $903,000 including defense and settlement.

Allegation:

Workers' Compensation Retaliation –



Shawn McPherson filed the complaint with the county circuit court. The claimant and his photo lab employer settled for $500. Defense fees and costs $5,603.71.
Final cost: $6,103.71

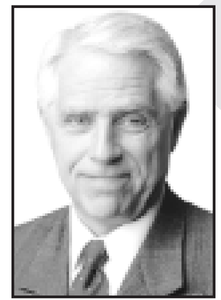
Allegation:

National Origin Discrimination, Breach of Implied Contract, Promissory Estoppel, Infliction of Emotional Distress, and Related Claims –

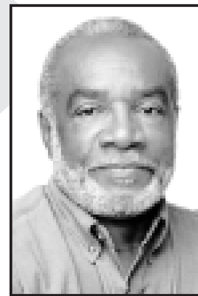
A complaint was filed in a state superior court where the parties Ethelle Bijornick and her manufacturer employer settled for $7,000. Defense costs were $6,649.62.
Final cost: $13,649.62

Allegation:

Age Discrimination, Intentional Infliction of Emotional Distress and Disability Discrimination –



Claimants James Brogran and Alfred Wiggins filed a complaint in the judicial district of the state. They settled with their healthcare employer for $63,300 ($18,300 to Brogran and $45,000 to Wiggins) at mediation. Arbitration costs totaled $2,562.50. Defense fees and costs: $25,031.67.
Final Costs: $90,894.17



Allegation:

Wrongful Termination, Race Discrimination & Defamation –

Claimant Bernard Alexander filed suit alleging racial discrimination, wrongful termination and defamation by his furniture store employer. The case settled at mediation for $25,000. Defense fees and costs: $34,234.31
Final Costs: $59,234.31

If You Get A Bad Jury …You Can Get Clobbered!

These actual settlements and defense costs prove how employment law is the most universal business exposure today. The liability system, supported by plaintiffs' lawyers, gives your employees a powerful incentive to file suit.

Cut your potential losses! Call your insurance agent or broker and get the protection you need.

© 2003 Rockwood Programs, Inc. Wilmington, DE

Virginian Pilot
Sunday. January 30, 2011

IN THE WORKPLACE

Discrimination complaints rise in 2010

The bad economy is blamed for large increase locally

By Philip Walzer
The Virginian-Pilot

NORFOLK

More people are claiming they lost their jobs because of discrimination.

The U.S. Equal Employment Opportunity Commission received nearly 100,000 discrimination complaints – a record high – last year.

The agency's Norfolk office reported 1,041 complaints, a 10.7 percent increase from 2009.

The EEOC recently reported the data, which cover the federal fiscal year from Oct. 1, 2009, to Sept. 30.

Lawyers for both employers and workers say the primary impetus is the gimpy economy.

"They might not have filed if they

THE NORFOLK OFFICE of the U.S. Equal Employment Opportunity Commission reported a 10.7 percent increase in discrimination complaints last year. That was higher than the 7.1 percent increase nationally.

TYPE OF DISCRIMINATION	2004	2005	2006	2007	2008	2009	2010	PERCENTAGE INCREASE FROM 2009 TO 2010
Race	312	376	330	370	398	401	435	8.5%
Sex	207	195	207	249	277	254	296	16.5%
Retaliation	199	200	192	244	274	273	286	4.8%
Disability	120	142	126	177	160	167	172	3.0%
Age	108	111	106	118	133	154	165	7.1%
National origin	36	33	22	35	46	40	58	45.0%
Religion	17	20	17	27	36	28	29	3.6%
Equal Pay Act	7	7	3	10	5	5	5	No change
TOTAL	764	778	734	818	879	940	1,041	10.7%

NOTES: 2010 covered the period from Oct. 1, 2009, to Sept. 30. A complaint could list multiple categories.

THE VIRGINIAN-PILOT

"I don't think they're intentionally looking to wrongfully sue their employer. They're desperate to say, 'What do I have here?'"

Lisa Bertini, who often represents workers and is the principal attorney with Bertini O'Donnell & Hammer

DISCRIMINATION

RETALIATION CITED IN MOST COMPLAINTS

Continued from Page 1

had been able to pop into another job right away," said William E. Rachels Jr., a lawyer with Willcox & Savage in Norfolk who represents employers. "They have time on their hands, and it doesn't cost a nickel to go to the EEOC."

Locally, the discrimination category that experienced the largest percentage increase in complaints last year was "national origin," up 45 percent. But the total number of complaints in that category – 58 – was still among the lowest.

Across the country, "retaliation" dislodged "race" as the category with the most complaints. In a retaliation complaint, a worker alleges that participation in a "protected activity," such as an internal human resources complaint or testimony in a lawsuit, led to the firing.

In Hampton Roads, race remained the category with the most complaints in 2010, with 435, followed by sex (296) and retaliation (286).

Even so, Rachels and Lisa Bertini, a Norfolk attorney who represents workers, said they've seen a spike in retaliation complaints.

Both said that's partly due to the lower standard of proof required in such cases. Plaintiffs must prove that their initial action was one of the causes of their firing but not necessarily the main reason.

Countering such claims can be tough, Rachels said.

"It's like they came in on a white horse," he said. "They did something to carry out the law and protect humanity, and the big, bad employer took action against that activity."

Bertini, principal attorney with Bertini O'Donnell & Hammer, said most people who approach her with potential EEOC complaints don't have a strong case.

"I don't think they're intentionally looking to wrongfully sue their employer," she said. "They're desperate to say, 'What do I have here?'"

She tells them "to move on with their lives. I don't think they need to clog up the system and waste their time."

They don't always listen.

Rachels said he has seen more "pro se" cases, in which litigants represent themselves, without a lawyer. Those claims, he said, tend to be weaker – but not necessarily easier for him.

Across the country, "retaliation" dislodged "race" as the category with the most complaints.

"It's typically much more difficult for defense counsel to deal with pro se plaintiffs," he said. "Attorneys know what's going on and have a certain code they live by. It can be a risky business to engage in conversation with a pro se plaintiff."

Philip Walzer, (757) 222-3864, phil.walzer@pilotonline.com