

# Commercial Insurance Update

Topics Affecting Buyers of Commercial Insurance

MSP C 02/2002 – “Controlling Employment Practices Liability Claims”

February, 2002

## Controlling Employment Practices Liability Claims

It is not uncommon to pick up a newspaper and read about a lawsuit generated by an employee against his or her employer. Usually, these lawsuits claim sexual harassment, discrimination, or wrongful termination. Collectively, these perils are known as “employment practices liability.”

Although every employer has this exposure, and even though insurance coverage is available to cover it, only a small portion of employers actually buy it.

Fortunately, this is an exposure that lends itself to management control. There are certain steps employers can take to reduce their exposures to loss. Note, however, that even if employers do everything right, they can still get sued.

The following recommendations will help your organization reduce its exposure to employment practices liability claims.

### I. General Recommendations

- **Hire Carefully.** Don't let yourself become lazy, desperate or infatuated with the hiring process.
- **Test for Skills.** Most jobs have a well-defined skill set that can be tested.
- **Test for Character.** A broad range of character



assessment tools are available in the market today.

- **Use Protective Legal Documents.** Employee agreements and applications should, among other things, include “at will” employment statements, sexual harassment statements, sexual harassment policies, and agreements in which employees agree to arbitrate rather than litigate employment-related claims.
- **Train Managers and Employees in Human Relations.** Provide them with the tools they need to build acceptable personnel relationships.
- **Be Proactive in Identifying Problems.** Once problems come to light, acknowledge them immediately.
- **Implement a Procedure for Providing References.** Make certain that this procedure is followed.
- **Maintain Employee Privacy.**

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- **Obtain Help when Needed.** There's plenty of inexpensive assistance that can be gathered from agencies, publishers, consultants or attorneys to help avoid these types of claims. In the event of a claim or a suspected claim, don't hesitate to contact an employment attorney.
- Use **only established agencies** when hiring leased or temporary employees.

## II. Discrimination Claims

- Adopt a **written anti-discrimination policy** that conforms to EEOC guidelines.
- Use **job application forms** and **job interview procedures** that comply with Federal and state anti-discrimination laws.
- Prepare **job descriptions** that comply with the Americans with Disabilities Act.
- Set up a **leave of absence policy** that complies with the Pregnancy Disability Act of 1978 and the Family and Medical Leave Act of 1993.
- Verify that your firm's policy on **office holidays** conforms to state and Federal laws.
- **Post employment-related notices** as required by law.
- **Comply with Federal and State** record-keeping requirements.
- Assure that your firm's policies provide for **nondiscriminatory staff reductions** when layoffs are necessary.

## III. Sexual Harassment Claims

- Develop a **written policy** against **sexual harassment**.
- **Communicate** the policy to employees and management.

- **Train** supervisors, managers, and employees on how to **implement** the policy.
- Develop a **complaint procedure** that protects the employee making the complaint.
- Promptly, thoroughly, and confidentially **investigate complaints**.
- **Carefully document** investigations.
- Take **appropriate actions** following investigations to resolve the complaint.
- Continuously **review** the program.

## IV. Wrongful Termination Claims

- Perform thorough **pre-employment interviews** and background checks.
- **Avoid statements** at the time of hire that could be construed as promises of permanent employment.
- Use **legal counsel** to review all employer-produced material.
- Include a **"management rights"** provision in written material.
- Perform periodic **performance evaluations**.
- Record **employee warnings** in personnel files.
- Write, review and distribute **termination procedures** to supervisors.
- Use **counseling, employee assistance, and out-placement** programs.

## V. Conclusion

Although employment practices liability claims cannot be eliminated, the exposure can be controlled. Taking the steps above is a good "first step" to managing this exposure. If you would like additional information on this subject, please contact us.\*

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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# On the Web...

*(from the May/June 2000 issue of the Surety Bond Networker)*

As the Internet continues to grow, and e-commerce continues to provide a new outlet for product sales and company promotion, laws regulating the use and freedom of material continue to be legislated. To protect your company, you must be sure to keep abreast of the laws of copyright, privacy, security, and discrimination regarding the Internet.

The following websites are taken from "The Wild, Wild Web: Protecting Insurers and Their Customers Lies in the Developers' Hands" (Technology Decisions, April, 2000).

These sites can help you protect original ideas and copyrighted information on your website, and avoid potential lawsuits and liability loss due to the inappropriate use and development of Web materials.

- **Association of Research Libraries** (<http://www.arl.org>) – Includes updates and analysis of laws regarding copyright and technology, including the Digital Millennium Copyright Act of 1998.
- **Computer Law Association** (<http://www.cla.org>) – A non-profit international association for IT professionals; includes links and articles on Internet and computer law.
- **TRUST-e** (<http://www.truste.org>) – Features privacy FAQs and a wizard for creating a privacy statement.
- **U. S. Copyright Office** (<http://lcweb.loc.gov/copyright>) – Includes everything from copyright basics to FAQs to the latest updates on copyright law.
- **VeriSign** (<http://www.verisign.com>) – Features security information for Web sites, networks, and digital certificates.
- **Internet Library of Law and Court Decisions** (<http://www.phillipsnizer.com> then click on "Internet Library" link on home page) – Summarizes court decisions shaping the law of the Web.\*

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