

## You could be a target of employment lawsuits

Wrongful termination... Sexual harassment... Discrimination...

In today's litigious society, employers need to be prepared to protect themselves from employment-related claims and lawsuits. Recent years have seen an increase in charges brought against companies by current or former full-time, part-time, and seasonal employees.

A simple accusation by an employee can start the clock ticking on the expensive task of defending an employment-related wrongful act allegation. And, the 81 percent of claims that are settled in arbitration or in administrative hearings cost employers \$22,000 to \$40,000 on average. Even those claims that are settled immediately cost a Company an average of \$7,500.

That's a hard nut to swallow for any commercial operation. Enter Employment Practices Liability Insurance (EPLI). EPLI helps protect small companies against the liability damages and defense costs brought by employees who allege employment-related wrongful acts.

As part of our EPLI coverage, we offer Employer Protection as an online resource to help you manage your employment risks by taking steps to avoid situations that may lead to litigation. We understand that small businesses don't have the resources to protect themselves from employment practices lawsuits.

The links above offer important information regarding employment liability risks and laws. Key tools include:

- o Employment FAQs, for tips on managing your employment exposure.
- o Policies and Procedures that you can use as a starting point.
- o EPL News to keep you current on the evolving nature of employment law.

## Employment laws that apply to your business

Just because your business is small, it is not safe from employment practices lawsuits. Although the very smallest employers may be exempt from certain federal employment laws, they may still be vulnerable to an employment action. Former and current employees can allege anything at any time and are not limited to filing a claim under a federal law. In fact, many states have expanded employment laws, putting employers at further risk. The links below offer some general guidelines to the employment laws and how they may affect your business. Of course, laws differ from state to state, so it's best to get local legal advice on how employment practices laws apply to you.

## General Statutes and Common Law

A number of laws govern employment practices. What follows is a brief outline of some pertinent federal laws. State legislatures in the majority of states have adopted laws that closely reflect the federal statutes, and that expand protection to employees of smaller businesses. Furthermore, many states have expanded their laws to protect additional classes of employees beyond what federal laws protect. It's important to consult an attorney or contact your state anti-discrimination agency to determine just how both state and federal laws affect you as a small employer.

## Federal Statutes

- **Title VII of the Civil Rights Act of 1964 (Title VII)** prohibits discrimination and harassment on the basis of race, color, religion, sex, and national origin.
- **Age Discrimination in Employment Act of 1967 (ADEA)** prohibits age discrimination against individuals who are forty (40) years of age or older.
- **Title I of the Americans with Disabilities Act of 1990 (ADA)** prohibits employment discrimination against qualified individuals with disabilities.
- **Equal Pay Act of 1963 (EPA)** prohibits wage discrimination between men and women in substantially equal jobs within the same establishment.
- **Pregnancy Discrimination Act (PDA)** (part of Title VII, as amended) prohibits employment discrimination based upon pregnancy.
- **Family and Medical Leave Act of 1993 (FMLA)** provides unpaid leave from work, up to 12 weeks, for childbirth, adoption or foster care, to care for a family member with a serious health condition, or because the employee has a serious health condition.

**Caveat:** State legislatures in the majority of states have adopted statutes that closely reflect the federal statutes. In fact, many states have not only expanded the protected classes of employees (i.e. sexual orientation, transgender, obesity, etc.), but they have also expanded these protections to apply to smaller employers than the current federal statutes apply. Therefore, smaller businesses must be aware that even if they are not subject to the above federal statutes they still may be subject to similar state laws and common laws with similar penalties.

### Common Law

- **Breach of contract** - failing to perform any term of a contract, written or oral, without a legitimate legal excuse.
- **Wrongful termination** - discharge of an employee without cause.
- **Negligent and intentional infliction of emotional distress** - emotional distress brought on by the intentional acts of another.
- **Defamation** - untrue statements made about an individual that damages the individual's reputation.
- **Invasion of privacy** - intrusion into the personal life of another, without just cause.
- **Negligent hiring/supervision** - failure to exercise reasonable care in the hiring or supervising of an employee.
- **Misrepresentation** - misstating facts to obtain the benefits of another to which you are not entitled.
- **What are some common employer mistakes that lead to EPL claims?**
  - 1 Lack of employee handbook/harassment policy
  - 2 Insufficient applicant evaluation
  - 3 Inadequate or erroneous documentation of personnel decisions
  - 4 Incomplete or inaccurate employment evaluations
  - 5 Not having appropriate procedures in place to investigate complaints
  - 6 Failure to follow severance procedures for:
  - 7 Negotiating releases and waivers of claims
  - 8 Providing COBRA and other required benefits information

*Courtesy of One Beacon Insurance: <http://www.onebeacon.com/>*