

What is Employment Practices Liability?

and

Why Would I Want To Insure it?

Employment practices liability insurance or "EPLI" is liability insurance that covers certain employment related claims made by employees. For example, if a manager harasses or discriminates against an employee (or is alleged to have done so), EPLI will provide a defense and possibly claim payment on behalf of the business.

In today's world this is critical coverage to have if you have employees or if you have employees working with the public or on site at other businesses. Such coverage can also protect the business owner from meritless claims brought by disgruntled employees. Even though as business owners we strive to be fair and non-discriminatory, old habits die hard, age and gender gaps lead to miscommunication, and EPLI coverage can serve as a last line of defense against employment claims.

EPLI policies and coverage is less standardized than other forms of coverage. Sometimes EPLI coverage is bundled in a business owner's policy or as a part of other liability insurance. It may also be a separate coverage or endorsement. For your business insurance plan you will want to discuss EPLI coverage with an insurance professional who understands your business. This article is only intended as an overview and cannot substitute for a thorough analysis of your business and business practices.

EPLI coverage generally covers:

- Workplace Harassment
- Workplace Discrimination
- Wrongful Discharge
- Emotional Distress
- Possibly Privacy-Based Claims
- Possibly Reputation Claims (Defamation)

This coverage is a bit complicated. It is a legal maxim that a company cannot insure against intentional injuries. Otherwise, the fear is that companies would disregard public safety (auto manufacturers would buy insurance instead of installing seat belts, for example).

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But, EPLI coverage does, in some respects, cover intentional injury. The idea is the coverage protects against intentional injuries done by employees without the business' consent or knowledge.

Therefore, EPLI does not cover "institutional" employee injuries or those injuries caused by the company as opposed to by individual managers or employees. In most EPLI policies the distinction is made by excluding coverage for violations of the law.

EPLI policies generally exclude coverage for:

- Occupational Safety and Health Act (OSHA) Violations
- Fair Labor Standards Act Violations
- State Employment Law Violations
- Consolidated Omnibus Budget Reconciliation Act (COBRA) Violations
- Employee Retirement Income Security Act (ERISA) Violations
- Certain Americans With Disabilities Act Claims
- Intentional Institutional Claims (such as retaliating against a whistle blower)
- Punitive Damages

The terms of EPLI coverage included in a packaged policy can be very different than the terms of the general liability policy. EPLI coverage will often be coverage where settlement costs and legal fees are both considered in the policy limits. That is, for every dollar spent defending a claim, less money is available to settle the claim. Some policies will possess a strong "hammer clause" where the business is forced to settle even meritless claims if the insurer decides to settle with the claimant. In the alternative, some policies give the business owner the right to hire their own counsel and require business owner permission to settle any claim.

EPLI coverage will need to be tailored to every state where the business has operations. The business may need additional endorsements to cover operations in some states that have very strong employee protection laws.

Finally, EPLI coverage should be a last line of defense. Proper risk management and business insurance planning for your business will include training. Diversity and sensitivity training must be part of that training. The [U. S. Equal Employment Opportunity Commission](#) is a phenomenal website with free training resources, guides, compliance information, and links to free training throughout the U.S. This is a risk that can be insured, but with a small time investment it can be substantially reduced.