

### Management Liability

Directors and Officers

### Employment Practices

Fiduciary

### Professional Liability

Media

Miscellaneous

Network Security and Privacy Injury

Technology and Telecommunications

### Crime

#### Employment related lawsuits pose significant business risks.

- The incidence of Employment Practices Liability claims is widespread.
  - Studies show an employer is more likely to have an EPL claim than a GL or Property loss.<sup>1</sup>
  - Almost 75% of all litigation against corporations today involves employment disputes.<sup>2</sup>
  - There were more than 93,000 private sector charges filed against employers under statutes enforced by the Equal Employment Opportunity Commission in 2009, the second highest total in over 20 years.<sup>2</sup>
  - Over 40% of all Employment Practices claims are filed against private employers who have between 15 and 100 employees.<sup>3</sup>
- Employment related lawsuits are the fastest-growing type of civil case in the U.S.; nearly 25% of all litigation in federal court involves employment disputes, and an even higher percentage in state courts.<sup>4</sup>
- The cost associated with an Employment Practices claim can be significant.
  - According to a recent study from Jury Verdict Research, employment verdicts continue to rise, with the median award for all types of employment claims rising 60% in the past year, from \$204,000 to \$326,640.
  - In 2009, the EEOC recovered \$290 million as a result of private sector claims.<sup>2</sup>
  - These amounts do not include defense costs, which can exceed \$100,000 per claim.
  - The three most frequent types of claim were race and gender discrimination and retaliation.
- Even an employer with internal controls and procedures can be sued.
  - An employee handbook is a good risk management tool, but it may not be enough to prevent a lawsuit.
  - It doesn't matter what industry, exposures exist for all corporations.

#### CNA Employment Practices Liability Insurance provides coverage for a wide range of potential exposures.

- Discrimination based on gender, race, national origin, religion, disability or sexual orientation
- Sexual harassment or other unlawful harassment
- Wrongful dismissal, discharge or termination of employment
- Failure to employ, promote or train
- Retaliation
- Employment-related misrepresentation
- Failure to adopt adequate workplace or employment policies and procedures
- Employment-related libel, slander, or defamation, humiliation or invasion of privacy
- Negligent evaluation of an employee, negligent hiring, supervision and training
- Wrongful discipline of employee
- Employment-related wrongful infliction of emotional distress
- Wrongful deprivation of career opportunity or demotion
- Failure to grant tenure
- Discrimination, sexual harassment or violation of civil rights brought by non-employees

**Broad coverage for Employment Practices Liability is provided as one part of the Epac Extra<sup>SM</sup> policy. Epac Extra<sup>SM</sup> allows insureds to package multiple coverages on one policy form.**

Management and Professional Liability



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### Coverage Scenarios

#### Pregnancy Discrimination

**The Facts:** ABC Corporation is a technology company located in California. Mary was hired by ABC as an account representative and worked for approximately three years. She told her boss that she was pregnant and would be taking a four-month maternity leave. Several months later, ABC lost a few major accounts and decided that they needed a reduction-in-force. Since Mary worked on one of the lost accounts, she was one of three employees that were let go. However, she was terminated one month prior to her scheduled maternity leave. Mary filed a lawsuit alleging wrongful termination and pregnancy discrimination and sought lost wages and compensation for emotional distress.

**Risk Factors:** During discovery, ABC learned that Mary's supervisor had told her the company had a previous bad experience with a pregnant employee. This employee said that she was coming back after her leave but did not and left them with an empty position. The case went to trial and the jury sympathized with Mary who became emotional on the stand, describing how much she loved her job.

**The Bottom Line:** Due to the supervisor's statement and the close proximity in the timing of the termination to Mary's scheduled leave, the jury rendered an award in the amount of \$500,000. In addition, under California state law, ABC had to pay an additional \$175,000 to cover Mary's attorney fees. On top of that, ABC paid \$200,000 to its own defense. In the end, ABC was out-of-pocket \$875,000.

#### Sexual Harassment

**The Facts:** XYZ Inc. is a construction company in Detroit, Michigan. Jane was hired six months ago as a laborer and worked on a road crew in Minnesota. She was one of only two women on the road crew. When she failed to show up for work for two days, she was sent a termination letter. Two weeks later, Jane's attorney sent a letter to XYZ alleging sexual harassment by Jane's supervisor and a co-worker. Jane alleged that her supervisor, Mr. Smith, and one of her co-workers, Mr. Jones, made sexually explicit comments to her. In addition, she alleged that Mr. Jones asked her if she wanted to have sex with him and often bragged about his sexual conquests at work. Jane said that she told Mr. Smith that Mr. Jones made her uncomfortable at work, but Mr. Smith told her "she was being a baby" and would need to deal with it if she was going to be part of a road crew. As a result, Jane alleged that she could no longer return to work as a result of a hostile work environment.

**Risk Factors:** XYZ had a written sexual harassment policy which was reviewed by its attorney. In addition, the policy had a good reporting procedure which instructed all employees to report any discrimination or harassment to the HR department in Detroit. Jane did not take advantage of these complaint procedures which would have provided XYZ with a good defense. However, XYZ Inc. did not distribute the policy to many of its new employees on the road crew, including Jane. Only the employees in the main office received a copy of the policy and signed it. As a result, Jane reported the matter to Mr. Smith who did not handle the complaint appropriately.

**The Bottom Line:** XYZ Inc. settled the matter for \$100,000.

#### Retaliation

**The Facts:** RST, LLC is a medical clinic specializing in internal medicine and diagnosis. John was employed as a medical lab technician for two years. He made internal complaints as well as a state complaint alleging that RST was improperly billing Medicare/Medicaid. Shortly thereafter, RST decided to fire John since he received a negative rating in his second performance review and co-workers found him difficult to get along with. The state issued a determination with regard to the improper billing and found no merit to John's allegations.

**Risk Factors:** John was terminated while the state was conducting its investigation of RST. Thus, even though RST was found innocent of any improper billing, it still faced a retaliation claim from John for making such complaints and then being fired.

**The Bottom Line:** RST, LLC incurred defense costs of \$150,000 in defending John's retaliation claim and then settled the matter prior to trial for \$30,000. Defense costs in this matter were high due to the need to review voluminous billing records during discovery.

**To learn more about CNA's Management and Professional Liability offerings, contact your local agent or broker.**