



FINANCIAL AND PROFESSIONAL SERVICES MANAGEMENT LIABILITY

Wrap+ EMPLOYMENT PRACTICES LIABILITY

IF YOU THINK YOUR CHANCES OF BEING SUED BY ANY OF YOUR EMPLOYEES ARE ONE IN A MILLION... THINK AGAIN!

Wrap⁺ *Employment Practices Liability*

The number of employment related lawsuits has been steadily increasing. Employment Practices Liability coverage is critical in protecting you from the potentially catastrophic costs of employment litigation. Most people would never consider dropping fire insurance, but today the chances of being sued by an employee are even greater than the chances of having a fire.

Even an organization with Human Resources policies and procedures in place can be sued. A company with solid employment practices is in an excellent position to defend itself in the event of employment litigation, but the cost of mounting a defence can be enormous. The costs of defending employment related litigation could amount to thousands and even hundreds of thousands of dollars. When you spend that much on legal fees, it is hard to feel like you have won.

Not all employment practices liability policies are the same, and policy comparisons can be misleading. Do your own analysis.

Check and see how their policy stacks up... there is a difference!

	Wrap ⁺	Their Policy	
Broad Definition of Insured – includes the Insured Organization, including Subsidiaries, members of the board of Directors and Officers, members of board of trustees, members of board of regents, members of board of governors, natural person partners, functional equivalents	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Definition of Employee – includes in-house general counsel, part-time, temporary and seasonal workers, volunteers, leased workers	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Broad Definition of Subsidiary – if Named Insured is a for-profit entity, definition of subsidiary includes majority owned corporations, partnerships, limited liability companies and 50 percent owned joint ventures under management control of Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Broad Definition of Claimants – includes applicant for employment, a governmental entity or agency when acting on behalf of a past, present or future employee or applicant for employment and any independent contractor	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Broad Definition of Wrongful Employment Practice – including but not limited to disparate treatment of, or failure or refusal to hire a claimant because they are or are alleged to be legally protected, wrongful failure to train, advance or grant bonuses or perquisites, and retaliation	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Outside Position Coverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Foreign Parent Corporation Coverage Extension	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Spousal and Domestic Partner Liability Coverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Third Party Wrongful Acts Coverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Definition of Loss includes Multiplied Damages and Punitive Damages – where insurable by law and most favourable venue wording	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
No Fraud or Intentional Acts Exclusion	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
No Exclusion for Strikes or Lockouts	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Defence Option – option to select Duty to Defend or Reimbursement coverage at policy inception	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Duty to Defend – 100 percent pre-determined allocation of Defence Expenses for Claims against any Insured consisting of Loss that is and is not covered by the policy	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Additional Defence Coverage: • Option to select additional defence Limit of Liability	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No



	Wrap+	Their Policy	
Flexible Limit Options: <ul style="list-style-type: none"> Choice of individual or shared Limits of Liability Option to select Annual Reinstatement of Limit of Liability 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No
Extended Reporting Period: <ul style="list-style-type: none"> Bi-lateral Extended Reporting Period option – available if Insurer or Named Insured cancels or fails to renew Run-Off Extended Reporting Period option – available for a pre-determined premium upon Change of Control of Named Insured Ability to report Potential Claims during Extended Reporting Period or Run-Off Extended Reporting Period 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No
Worldwide Coverage	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Settlement Provision – provides the Named Insured with coverage for 70 percent of Loss in excess of Settlement Offer rejected by Named Insured	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Retention – only one retention must be satisfied when one Claim triggers coverage under two or more Liability Coverages	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Acquisitions – automatic coverage for majority owned Subsidiaries formed or acquired during the Policy Period with assets that do not exceed 25 percent of the total assets of the Insured Organization	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Representations: <ul style="list-style-type: none"> Severability of Insured Persons with respect to the representations made in the Application Only knowledge and representations of signer of Application are imputed to the Insured Organization 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No
Non-Cancelable by Insurer – except for non-payment of premium	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes	<input type="checkbox"/> No
Exclusions Include Carvebacks for: <ul style="list-style-type: none"> Mental anguish, emotional distress, humiliation or loss of reputation regarding the Bodily Injury exclusion Retaliation claims regarding the pollution, fiduciary and benefits due exclusions 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No
Defence: <ul style="list-style-type: none"> For any claim seeking costs and expenses incurred to comply with an order, judgment or award of injunctive or other equitable relief For allegations of breach of employment contract For amounts owed under a written contract or agreement if the insured is not liable for such loss in the absence of the contract or agreement For claims for fringe benefits, deferred payments or breach of common or civil law or statutory right to compensation (including but not limited to salary due in lieu of notice of termination) For claims seeking compensation earned in the course of employment, but not paid by the Insured Organization, including any unpaid salary, wages or bonuses 	<input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes <input checked="" type="checkbox"/> Yes	<input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes <input type="checkbox"/> Yes	<input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No <input type="checkbox"/> No

EMPLOYMENT PRACTICES LIABILITY CLAIMS EXAMPLES

Mr. Smith, a longtime employee of Gooddeal Cars, was having a difficult time closing deals. Once a star salesperson, his performance tailed off considerably in the last few years. Ms. Robinson, Mr. Smith's boss, advised him that there were issues surrounding his declining sales and his increasingly antagonistic attitude with customers. Mr. Smith's declining sales coupled with his increasingly aggressive attitude towards customers led to his dismissal. Gooddeal Cars offered Mr. Smith a severance package of two months pay. Mr. Smith rejected the package and sued Ms. Robinson, Gooddeal Cars, and the Board of Directors of Gooddeal Cars, alleging wrongful dismissal and claiming a severance period of two years based on his age, position, and the difficulty of finding alternative employment in difficult market conditions.

The defence costs coverage afforded to the directors of Gooddeal Cars under its D & O policy protected them from significant expenses incurred in defending the lengthy litigation brought by Mr. Smith.

A complaint was filed by an ex-managing director before a provincial Human Rights Commission against the corporation and several individuals (directors and officers) for wrongful dismissal based on mental disability. The complainant sought reinstatement, loss of salary and benefits. Before the final hearing, a settlement was reached between the claimant and the corporation. The directors and officers did not participate in the settlement, as they were not liable at law for the dismissal. However, the individuals took comfort in the fact that their defence costs were paid under the policy.

Ms. Jones, the only female employee at Friendly Motors Dealership ("Friendly Motors"), experienced difficulties in her workplace. The other staff at Friendly Motors, ten men, often engaged in "locker room" talk, which Ms. Jones found offensive. In addition, Ms. Jones believed that less-qualified staff were promoted ahead of her, which she attributed to a policy of discrimination against women in the workplace. Ms. Jones' complaints to management went unanswered and the behaviour of the "locker room" boys continued. Ms. Jones felt that the atmosphere at Friendly Motors made it impossible for her to perform her job and that she would never be promoted ahead of a male colleague no matter how qualified she may be. Ms. Jones commenced a lawsuit against the directors of Friendly Motors, alleging wrongful failure to promote her and failure to address the workplace harassment at Friendly Motors.

The directors were of the view that Ms. Jones was treated fairly and that no harassment existed in the workplace and they decided to defend the action vigorously. Faced with the considerable expense of defending the action, the directors could take comfort in the coverage afforded by the EPL Claim Extension of their D & O policy.



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