



The Ultimate EPL Guidebook



Table of Contents

Part 1: Introduction

Part 2: Key Questions to Consider

Part 3: Seven Reasons Why You Need EPLI

Part 4: EPLI Checklist

Part 5: Keep an Eye on the Legislation

Part 6: Scenarios

Part 7: Overview and Conclusion

Introduction

"Employee suits aren't just a risk for large corporations."

Learn, prepare, and prevent

Hiring, firing, employee evaluations, compensation, family leave, and job descriptions—these and many more everyday human resource decisions have a huge impact on your employees and their welfare. They can also become a breeding ground for complaints and claims for wrongful employment practices.



50%

of discrimination claims filed with EEOC were against small and midsize companies.

Employee suits aren't just a risk for large corporations. Midsized businesses are just as likely to have an employment practices claim filed against them as their larger counterparts. In fact, the Equal Employment Opportunity Commission (EEOC) reported that 50% of the discrimination claims filed with the agency were against small and midsize companies.

In practice, many of these companies may be even more vulnerable to employment practices claims than larger companies because they lack the legal department or human resources to guide them through the maze of federal and state regulations that can put them at risk.

Key Questions to Consider

"Am I in Compliance?"

Even if a suit is groundless, you can spend thousands (or even millions) to defend an employment practices claim. Many companies wind up settling the claim simply to put an end to the expense and disruption to their businesses.

Planning and preparation is key. Begin by asking some very important questions:

? Am I in compliance?

With extensive federal and state regulations, including the Fair Labor Standards Act (FLSA), the Americans with Disabilities Act (ADA), the Fair Credit Reporting Act (FCRA), and other various regulations, your company is vulnerable to a vast variety of unforeseen employment liability.

Take the following steps to ensure you are in compliance:

1. Ask your HR department (or a proven HR consultant) to formalize your employment policies and practices.
2. Engage legal experts to ensure you're in full compliance.

? Is my staff aware?

Companies that provide training see a dramatic drop in EPL claims. Take the following steps to help your staff:

1. Be proactive in educating your staff on hot button issues like harassment and discrimination.
2. Ensure that your supervisors and managers receive regular training on how to handle potential issues in the field.

In addition to reducing your exposure to lawsuits, a thorough training regimen also demonstrates your company's commitment to workplace fairness should a claim occur.

? Am I covered?

A strong employment practices liability insurance (EPLI) policy can be a great asset for your organization.

Here's why:

1. You may receive an unfavorable judgment.
2. The cost of going to court can spiral out of control.
3. It's designed to ensure that your business is shielded from outstanding costs no matter the outcome of the verdict.
4. EPLI provides a powerful layer of protection for employers against claims resulting from a broad range of lawsuits, reimbursing the insured for legal defense costs, judgments, and settlements.
5. It covers your directors, officers, and management, so they can handle their high-level responsibilities with confidence in an increasingly litigious world.

? Which COVID exclusions do I need to look out for?

The onset of COVID-19 has served as the largest destabilizing event in the history of the golf industry. In an era of layoffs, furloughs, and reduced staffing, many businesses have faced an additional rude awakening in learning that their insurance policy does not cover certain employment risks.

Here are three common exclusions to watch out for:

- 1. Reduction of force exclusions:** Some policies will have exclusions if you lay off a certain percentage of your workforce. For example, if you lay off more than 10% of your workforce, claims from that layoff will not be covered.
- 2. Wage and hour:** Make sure your EPLI policy has wage and hour coverage, sometimes called FLSA, to protect you against wage and hour claims, including failing to pay for overtime.
- 3. Third-party exclusions:** EPLI policies should have third-party liability, an essential component that will shift the risk away from your business.

Tips: Seven Reasons Why You Need EPLI

"53% of small businesses are involved in at least one lawsuit."

According to the Small Business Administration, 53% of small businesses are involved in at least one lawsuit at any given time and all industries are susceptible. Businesses with 100 or fewer employees are more likely to be sued than larger companies. If you're still on the fence about whether or not you should get EPLI for your golf business or country club, below are seven reasons why you should seriously consider getting the coverage.



53%

of small businesses are involved in at least one lawsuit.

1. You are three times more likely to be sued by an employee than to have your business destroyed by a fire.
2. Even though most lawsuits settle, employees win 70% of the cases that go to trial.
3. Small businesses account for 40% of employee lawsuits and administrative charges; this is more than for mega-corporations.
4. If you have one employee, some employment laws will apply to your gym or fitness center. Once you have at least 15 employees, all the employment laws will apply to your gym or fitness center.
5. The average EPL claim is \$70,000; this is 26% higher than it was three years ago!
6. The EEOC manages more than 90,000 claims per year. It secured \$505 million for victims working in both private sectors and governments in 2019.
7. General liability and business owners' insurance do not protect you from employee lawsuits! Your fitness center or gym is liable if an employee sues.

Sources:

colinsgrp.com/site/epli
eeoc.gov



EPLI Checklist

"EPLI protects employers against various employee claims."

EPLI protects employers against various employee claims from sexual harassment to wrongful termination and retaliation. The average cost for an EPL claim is about \$70,000 if it settles and around \$217,000 if it goes to court. Don't put your company in a vulnerable position. An EPLI policy can protect your organization from large and potentially nuclear claims.

Below is a checklist of claims that EPLI covers and brief descriptions of the types of scenarios that would qualify:

- ☒ **Sexual harassment:** An employee sues their employer for dismissing repeated complaints of sexual harassment.
- ☒ **Discrimination (based on gender, race, age, or disability):** A manager doesn't promote an employee because she is 60 and promotes a 35-year-old employee instead.
- ☒ **Deprivation of career opportunity:** An employer doesn't allow one of its supervisor employees to enroll in a course that gives helpful advice and tips to managers.

- ✓ **Retaliation:** An employee gets a demotion after reporting a beloved manager's racist comments.
- ✓ **Wrongful discipline:** An employee is put on probation because of rumors of alleged misconduct that were not actually true.
- ✓ **Failure to employ or promote:** An employer doesn't hire a candidate after learning she has a disability.
- ✓ **Wrongful termination:** An employer fires an employee after writing a sexual harassment complaint against her co-worker to HR.
- ✓ **Breach of employment contract:** An employee sues his employer for breaching his contract and not giving him his due pay.
- ✓ **Negligent evaluation:** An employee sues an employer for an employee evaluation that was excessively negative, incorrect, and didn't accurately reflect his higher level of performance.
- ✓ **Unfair hiring practices:** A large tech company doesn't hire employees that are of a certain faith.
- ✓ **Mismanagement of employee benefit plans:** A top financial firm gets sued for breaching their fiduciary duty in managing employee 401K plans.
- ✓ **Defamation among other wrongful employment-related issues:** An employee doesn't get a bonus because of several false rumors her co-workers spread.
- ✓ **Wage and hour (Fair Labor Standards Act) violations:** A manager required employees to "work off the clock" in order to avoid paying overtime.
- ✓ **Wrongful infliction of emotional distress:** A supervisor continually physically threatens an employee because of their different religious beliefs.

Keep an Eye on the Legislation

"The EEOC has the right to ... file lawsuits to protect employees and the public."

The Department of Labor (DOL) and the EEOC manage and enforce several laws relating to workplace practices. The DOL's role is to promote prosperity and well-being for employees, job seekers, and retired individuals. The EEOC's role is to enforce all federal laws that make it illegal to discriminate against employees or job applicants because of their race, religion, gender, pregnancy status, transgender status, sexual orientation, national origin, age, disability, and genetic information. The EEOC has the right to investigate claims and charges, conduct investigations, and file lawsuits to protect employees and the public.

Below are some of the federal regulations that establish a baseline for workplace practices:

- Title VII of the Civil Rights Act of 1964
- Section 1981 of the Civil Rights Act of 1866
- Age Discrimination in Employment Act (ADEA)
- Equal Pay Act (EPA)
- Executive Order 11246 (Affirmative Action Plans and the Office of Federal Contract Compliance Programs [OFCCPI])
- The Americans with Disabilities Act (ADA), Americans with Disabilities Act Amendments Act (ADAAA) and the Rehabilitation Act of 1973
- Lilly Ledbetter Fair Pay Act of 2009 (LLFPA)
- The Family and Medical Leave Act (FMLA)
- Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Vietnam Era Veterans' Readjustment Assistance Act of 1974
- Labor Laws and Union Representation
- Wage and Hour Laws
- Employee Benefit Laws
- Genetic Information Nondiscrimination Act (GINA)
- State laws may also apply additional employment protections. For example, smaller employers exempt under federal regulation may be required to comply with state requirements.

Sources:

[Employment Practices Loss Prevention Guidelines: A Practical Guide from Chubb](#)
[dol.gov](https://www.dol.gov)
[eeoc.gov](https://www.eeoc.gov)

Costly Scenarios

"EPL claims can be both onerous and costly."

No company flies under the radar when it comes to employment practices liability. Whether you're a small local business or a large multinational corporation, EPL claims can be both onerous and costly. Here are some real-life examples of just how costly they can be.

Scenario 1:

A former worker at a 150-employee manufacturing plant alleged discrimination during his four-year tenure with the company, though he never reported his concerns to the company.



An investigation revealed that some of the allegations were valid.



After six mediation attempts, the claim settled for \$500,000 and incurred \$70,000 in defense costs.

Scenario 2:

An employer terminated an employee from his job at a 400-employee retail company a few days after his spouse made an inquiry about medical benefits. Her husband had suffered severe injuries after being involved in a fight at work.



The company maintained the termination was because of his role in the fight rather than the request for information about medical and workers' compensation benefits.



The employee filed charges for wrongful termination in violation of the ADA and FMLA, disability discrimination, and retaliation. After arbitration, the plaintiff received \$4 million.

Source:

Great American Insurance Group

Scenario 3:

A 45-year-old boss terminated a 65-year-old human resources executive after an independent consultant found that the individual had created a threatening work environment.



The employee filed a lawsuit alleging age discrimination and retaliatory termination.



After the case settled, the employee received \$1.15 million. Defense fees exceeded \$220,000.

Scenario 4:

A former nurse alleged that her employer retaliated against, suspended, and ultimately terminated her because she had complained to management about wage and hour issues.



According to the hospital, they suspended the nurse for abandoning a patient and terminated her because she allegedly took a broken piece of medical equipment without authorization.



The plaintiff received \$750,000 for defamation. Defense expenses were more than \$1 million.

Source:

The Travelers Indemnity Company



Overview and Conclusion

"It takes an industry expert to craft the ideal coverage."

- ▶ **Key Questions to Consider:** Be prepared for EPL claims and ask yourself, "Am I in compliance?" and "What COVID exclusions do I need to look out for?"
- ▶ **Seven Reasons to Get EPLI:** You are three times more likely to be sued by an employee than to have your business destroyed by a fire.
- ▶ **EPLI Checklist:** EPLI covers claims, including harassment, retaliation, wrongful termination, and more.
- ▶ **Keep an Eye on the Legislation:** The DOL and the EEOC manage and enforce several laws relating to workplace practices.
- ▶ **Scenarios:** Whether you're a small local business or a large multinational corporation, EPL claims can be both onerous and costly.

It takes an experienced insurance partner and industry expert to craft the ideal coverage. A qualified partner will help to minimize the impact of deductibles and exclusions and maximize coverage provisions. EPL claims are costly and common, but they don't need to hamper your operations. You need the right plan and the right coverage.

About Buck & Affiliates

Founded in 1982, Buck & Affiliates provides a diverse suite of insurance solutions with a strong regional focus and customized approach. The firm also provides extensive risk management services to augment its insurance offerings. Buck & Affiliates is part of Alliant Insurance Services. Learn more about Buck & Affiliates' innovative insurance solutions at buckaffiliates.com.

About Alliant Insurance Services

Alliant Insurance Services is one of the nation's leading and fastest growing distributors of diversified insurance products and services. In the face of increasing complexity, our approach is simple: bring on the best people and invest more deeply in the industries and clients we serve. We operate through a network of specialized national platforms and regional offices to offer a comprehensive portfolio of services to our clients. Our goal is to ensure that they get the most innovative products—and innovative thinking—in the industry.

alliant.com

CONTACT

Erick Swanson
Producer

(509) 720-1595

ErickS@buckaffiliates.com

