

Coronavirus Concerns: Employment Practices Related Lawsuits

March 2020

With the continued spread of COVID-19, many companies are looking to furlough or lay-off employees in record numbers. With organizational changes such as these come the risk of potential employment practices-related lawsuits.

According to researchers, under normal conditions, roughly one out of ten employers will be sued by a prospective, current or former employee while they are in business.¹ While many lawsuits lack merit, defending against them is nevertheless costly and time-consuming.

Example – FMLA claims – In general, the Family and Medical Leave Act (FMLA) provides employees with up to 12 weeks of unpaid, job-protected leave per year. It also requires that their group health benefits be maintained during the leave. If an employee is laid off during these 12 weeks, he/she could claim that his/her rights under FMLA were violated.

Example – An employer terminates an employee with coronavirus. The employee could bring a lawsuit alleging discrimination due to a medical condition or illegal termination as the virus should be considered a “disability.”

Example – Invasion of Privacy Claims – In the course of assessing whether its work environments are safe, an organization asks its employees about their health status, including if they have coronavirus. An employee could allege invasion of privacy based on the company asking about his/her medical condition.

¹ <https://www.hiscox.com/documents/2017-Hiscox-Guide-to-Employee-Lawsuits.pdf>

Employment practices liability (EPL) insurance can help provide protection against many kinds of employee lawsuits, including claims of:

- Wrongful termination
- Discrimination
- Negligent evaluation
- Failure to employ or promote
- Wrongful discipline
- Deprivation of career opportunity
- Wrongful infliction of emotional distress
- Mismanagement of employee benefit plans
- Sexual harassment

Coverage for alleged acts—EPL insurance can not only protect organizations from actual wrongful acts, but alleged acts as well. Specifically, EPL insurance can safeguard an organization from claims related to alleged discrimination, harassment, retaliation and wrongful termination.

Timely responses to lawsuits—Employees suing their employers is not an uncommon occurrence, so organizations are prudent to be as prepared as possible for this risk. This is especially important considering that there may not be a cap on the damages that a jury can award an employee and settlements in employment practices-related cases often reach six figures.

Access to legal help—EPL insurance policies provide insureds with access to legal representation and other resources. This coverage can prove invaluable if an organization needs advice quickly.

Risk management strategies—While employment practices-related claims can arise at any time, organizations that take the time to implement basic risk management controls are often better equipped to avoid claims altogether. Many insurance companies offering EPL insurance provide access to risk management training and human

resources consulting that can assist in these areas. These services can help reduce the likelihood that an organization will be sued.

The scenarios described herein are offered only as examples. Coverage depends on the actual facts of each case and the terms, conditions and exclusions of each individual policy. Anyone interested in the above product(s) should request a copy of the policy itself for a description of the scope and limitations of coverage.

Acrisure is the marketing name of the national group of agencies offering insurance and risk management expertise through Acrisure, LLC and its affiliates. For additional information, please visit our website at <https://acrisure.com>. Products or services identified herein may not be available in all jurisdictions. The information and descriptions contained herein (a) are not necessarily intended to be complete descriptions of all applicable terms, conditions, and exclusions of the policies referenced, (b) are provided solely for general informational purposes, and (c) should not be viewed as a substitute for legal, regulatory, or other advice on any particular issue or for any particular reason. The advice of a professional should always be obtained before purchasing any insurance product or service, and you should not rely on the information provided herein for the prevention or mitigation of risks or as a full and complete explanation of coverage under any insurance policy. While the information contained herein has been compiled from sources believed to be reliable, no warranty, guarantee, or representation, either expressed or implied, is made as to the correctness or sufficiency of any representation contained herein.