

Employment-related Lawsuits May Surge On Ledbetter Act

by David Saul, AAI



Employment-related lawsuits are a growing concern for employers of all sizes. On Jan. 29, President Barack Obama signed the Lilly Ledbetter Fair Pay Act, which could cause an alarming surge in employee lawsuits. The Ledbetter Act essentially negates a 2007 Supreme Court decision that allowed employees only 180 days to file wage-discrimination claims.

Under the new law, employees can file suit for alleged wage discrimination going back as far as 10 or 20 years, because each paycheck can be considered an act of discrimination.

Even in 2007, the U.S. Equal Employment Opportunity Commission reported 82,792 charges filed for harassment, and harassment-charge receipts filed and resolved were valued at \$251.7 million. The new law gives employees far more latitude in bringing lawsuits and simultaneously makes it quite difficult for employers to defend against wage discrimination based on age, sex, national origin and disability.

As costs for litigation and damage awards climb, experts predict that employment liability will only become more complex. As a result, it is critical for employers to understand their exposures and options to manage the risk

Strategies to reduce exposure

Two effective risk management strategies include solid human-resources practices and employment practices liability (EPL) insurance coverage, a

Policies the Employee Handbook Should Cover

- Sexual harassment
- Alternative dispute resolution/arbitration
- Grievances
- Termination
- Internet usage/employee privacy
- Internal job postings
- Employment-at-will
- Equal opportunity
- Discrimination
- Disabled employees and accommodations
- Employee discipline
- Performance evaluations
- Pregnancy leave
- Hiring and interviewing
- Employment application form

policy used to cover your risk due to the ever-changing legal and employment environment.

The three most common employment-related lawsuits today are:

Wrongful termination — the discharge of an employee for invalid reasons.

Discrimination — the denial of equal treatment of workers who are members of a protected class.

Sexual Harassment — when a worker is subject to unwelcome sexual advances, obscene or offensive remarks, or the failure to stop such behavior.

Employment practices liability (EPL) insurance works hand-in-hand with your internal employment practices to provide the necessary resources to defend your company against a suit or to pay a claim. To best understand how to cover your EPL risk, it's important to know the potential sources:

- Recruitment practices
- Employment applications
- Employment offers

- Employee orientation
- Annual conduct reviews
- Enforcing performance policies
- Termination
- Improper documentation of the above items

To limit your exposure, engaging in solid human resources practices is an important strategy in reducing your company's liability.

To verify your HR policies and best practices, conduct a thorough HR audit:

- Verify that the employee handbook outlines all policies and terms of employment in clear and concise language.
- Require employees to sign an acknowledgement form for receipt of the handbook.
- Develop training for supervisors including interview skills, performance reviews, any zero-tolerance policies and any other policies.

Employment law is often complex and varies depending on the jurisdiction. Well-organized and credible documents can demonstrate fair treatment, deter litigation, ensure employee honesty and, should litigation occur, demonstrate the employer's actions.

In addition to having the appropriate employment policies and HR best practices in place, EPL insurance coverage is another useful risk management tool used to defend against a suit or pay a claim. In fact, evidence of desirable practices and policies will be required to obtain EPL coverage. Typically, the insurance underwriter will require a copy of your employee handbook, which should cover the following policies:

- Sexual harassment
- Discrimination
- Equal opportunity
- Disabled employees and accommodations
- Grievances
- Employee discipline
- Termination
- Performance evaluations
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In addition, you are usually required to provide the most recent annual report or SEC 10-K, the list of entities proposed for the coverage, and most recent EEO-1 reports.

EPL insurance works hand-in-hand with your internal employment practices to provide the necessary resources to defend your company against a suit or to pay a claim. The concern in the business sector due to this new law is that employers will be facing a barrage of new lawsuits claiming pay discrimination going back years and years. The cost of defending these suits could be devastating, especially at a time when revenue and profits are significantly down. Judgments and settlements could be even more damaging. Worse still, employee lawsuits are currently surging

from the widespread layoffs due to the recession.

As with all of your risk-management needs, your insurance agent is committed to assisting you in assessing your employment-related policies and helping you to develop best-practice solutions. Call your agent to learn more about this

effective risk management services.
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