



Employment Practices Liability: Coverage, Claims and Marketplace Trends

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Presentation Agenda



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Panelists



Aaron Stone
Brown & Brown, Moderator



Shawn Harris
Brown & Brown, Panelist



Andrew Long
Brown & Brown, Panelist



Joseph Kelly
Sompo International, Panelist



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Coverage

Coverage

TYPES OF COVERAGE

Employment Wrongful Acts

- Discrimination
 - Age
 - Disability
 - Gender
- Sexual Harassment
- Wrongful Termination
- Retaliation

Who Can Bring Claims?

- Past, present and prospective Employees
- Independent Contractors
- Third parties
 - Harassment
 - Discrimination

Who is Covered?

- Insureds
 - Employees
 - Officers/Directors
 - The Entity
- Independent Contractors?

Coverage

- **Key Coverage Features**

- » Other Insurance Clause
- » Severability of the Application
- » Notice & Claims Reporting
- » Exclusions

- **New offerings**

- » Crisis expense
- » Wage & hour
- » Immigration expense
- » Workplace Violence



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Claim Issues and Trends

Claim Issues and Trends

Incidence and Types of Claims

- **EEOC Charges:**
 - » FY 2010 – 99,922
 - » FY 2016 – 91,503
 - » FY 2021 – 61,331
- **Types in 2021:**
 - » Race 34%
 - » Sex 30%
 - » Disability 37%
 - » Age 21%
 - » Retaliation 56%

Trends and Trending

- **Why the decline in Charges?**
 - » EPL claims driven by lost wages and attorney fees
 - » EEOC and court system shut down during Covid
 - » Excellent job market meant employees didn't stay out unemployed
- **Looming Recession – More EPL Claims?**
 - » The goal of the Federal Reserve is to increase unemployment
 - » Terminated employees who cannot find work will file claims

Claim Issues and Trends

Claim Process



Common Coverage Issues

- Use of Panel v. Non-Panel Vendors
- Covered v. Non-Covered Loss
- Breach of Contract / Employment Agreements
- Wage & Hour

Claim Issues and Trends

- **Litigation Trends**

- » **Class Action**

- Covid claims
 - Wage & hour
 - ADA-Website accessibility

- » **Biometric Privacy**

- Illinois class action results
 - Plaintiff's bar focused on biometric personal data and geolocation information as drivers for future litigation efforts

- **Damages/Verdicts**

- » **Nuclear Verdicts and Social Inflation**

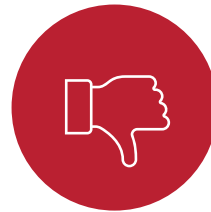


Common Issues That Impact Claims



You should do the following:

- » Implement good HR policies and procedures and follow them
- » Conduct thorough investigations of employee complaints
- » Performance Evaluations
- » Document, document, document



You should not do the following:

- » Ignore employee complaints
- » Retaliate against an employee for making a complaint
- » Fail to conduct/incompetently conduct investigation of employee complaints
- » Treat similarly situated employees unequally

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Policy Placement Issues in the Marketplace

Placement Issues

After years of hardening market conditions, we are now entering into a more stabilized and improving state of the market.

- Increased premiums along with increased retentions/deductibles over the past few years
- Coverage restrictions
- Increasing underwriting standards



Placement Issues

- **Underwriting Standards**

- » Additional underwriting information required
 - Supplemental applications – biometric privacy questions, *Covid-19/vaccine questions*
 - EEO-1 reports
 - Copy of employee handbook
- » Carriers scrutinizing responses more than ever
 - Where are your employees located
 - How much are your employees paid

- **Coverage Restrictions**

- » Biometric Privacy
- » Wage & Hour
- » Separate, higher retentions
 - Mass/Class action
 - State specific (California)
 - High earner

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Questions and Answers





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