



Spotlight on Accounting Firms Employment Practices Liability

While the transition from an office to a work from home environment may seem to lessen an organization's exposure to employment-related litigation, an in-person setting is not required to be exposed to allegations of discrimination, wrongful termination, harassment or third-party claims, to name a few.

Momentum behind the #MeToo and movements for racial justice have elevated awareness of inequality issues in the workplace, with justice often being sought through employment litigation. Consequently, a broad Employment Practices Liability (EPL) insurance program, tailored to the unique requirements of an accounting firm, remains as critical as ever to any accounting firm's risk transfer strategy.

EPL Exposures Unique to Accounting Firms

While accounting firms are among the workplaces that have transitioned to conducting business via video conferencing, they continue to have unique exposures that should be taken into account when considering EPL coverage:

- Failure to make partner opens the door for potential discrimination-based suits, on the basis of race, sex, age, religious belief and/or medical history. The current social/political environment has made employees more attuned to these issues
- While accounting firm professionals are generally classified as exempt from overtime, accounting firms must ensure that administrative members of the firm are appropriately compensated if they have non-exempt status. Failing to pay appropriate overtime wages can result in wage and hour litigation, while misclassification of an employee's exempt/non-exempt status could lead to allegations of discrimination
- Accounting firms, as with many professional services firms, can operate in high pressure, competitive environments which can lead to allegations of hostile work environments

State of the EPL Market

In this current hard EPL insurance marketplace, companies with minimal year-over-year exposure changes and no claims activity are seeing 10-35% increase at renewal. In addition to increased rates, insureds are seeing rising retentions, reduced capacity and enhanced underwriting. For some insureds, the addition of coverage restrictions such as COVID-19 discrimination exclusions and requirements around implementing reductions in force, present even further challenges for 2021.

Having the expertise of a broker who knows the accounting firm industry, has strong relationships with the key insurance carriers and has in-depth knowledge of coverage, is critical to obtaining the broadest EPL program at the best possible cost.

Examples of coverage features that can be negotiated include:

- Broad definition of “Wrongful Employment Act” including coverage for actual or alleged wrongful termination, age, race or gender discrimination, harassment, retaliation and other workplace torts
- Coverage for harassment or discrimination by third parties
- Expanded definition of Employee to include independent contractor, leased employees, volunteers, interns
- Broad coverage for claims brought by partners and failure to make partner claims
- Retaliation coverage for violations of Worker Adjustment and Retraining Notification Act (WARN), Consolidated Omnibus Budget Reconciliation Act (COBRA), disability benefits law, or similar laws when alleged in connection with a covered employment claim
- Employee privacy breach defense sublimit
- Punitive damage coverage, most favorable venue affirmation where insurable
- Claim reporting obligation is triggered only when executive committee within firm become aware of claim
- Full prior acts coverage available
- Worldwide coverage available
- No intentional acts exclusion
- Choice of counsel available, or policy wording allowing input in selection of defense counsel
- Defense costs sublimit for Wage & Hour Claims
- Limits of liability in excess of \$20 million are available
- EPL can be purchased in conjunction with Executive Risk insurance (Directors & Officers, Crime and Fiduciary insurance coverages)

Loss Mitigation Steps

Accounting firms can take a wide variety of steps to mitigate or avoid their exposure to employment risks:

- Review, evaluate and consider updating your firm's employment policy on discrimination, harassment and pay equality together with any public statements or commitments on the topic. Is your company following its own policy? Does the policy need to be updated? Are your public statements consistent with your company's actions?
- Contemplate your third-party discrimination risk. Is your organization providing equal accommodations and opportunities for all customers, clients, vendors, etc.? Claims by customers can also entail claims of accommodation around the Americans with Disabilities Act (ADA)
- Keep up to date on evolving legislative action, particularly in California, often a leader in progressive employment legislation
- Don't try to do it all yourself. Consider hiring a Human Resources (HR) consulting firm or even an outside employment counsel firm to guide your organization, offer best practices solutions and help with the implementation of mitigating tactics, such as training webinars
- Consult with your insurance broker to determine if your current EPL insurer offers loss mitigation services. Oftentimes these services are offered at no additional charge

Let's Start a Conversation

The Accounting Firm Specialty practice team of Lemme, a division of EPIC, has deep expertise negotiating Employment Practices Liability policies specifically tailored to address the unique exposures faced by the accounting profession.

Our team is available to answer any questions you may have about Employment Practices Liability (EPL) insurance coverage. For more information, please contact us at: lemmebestpractices@lemme.com