

State of the Market



- Premiums have stabilized, but underwriting scrutiny continues.
- Q3 2022 EPL increases are expected to be approximately 10-15% due to existing and expected litigation in a variety of areas (discrimination/vaccine mandates/discrimination, wrongful terminations, and potential issues stemming from Dobbs etc);
- Rate increases could be higher in CA and NY as well as for companies experiencing significant growth
- Excess pricing generally follows rates being sought by primary, but oftentimes excess positions draw more competition than primary allowing for some softening in excess pricing

Legal & Regulatory Developments



- In March 2022, President Biden signed into law the "*Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act*". The Act provides that no pre-dispute arbitration agreement is valid or enforceable with respect to a case that is filed under Federal, Tribal, or State law if it relates to a sexual assault or harassment dispute.
- Courts continue to grapple with COVID based disability lawsuits
- Top EEOC priorities for 2023 include racial systemic discrimination; pay transparency/equity; civil rights impact of the Pandemic
- New York **City's** pay transparency law goes into effect on November 1, 2022. On June 1, 2022, New York **State's** Legislature passed a similar bill, which, if enacted would go into effect 270 days later.
- Pay transparency continues to be the hottest trend in pay equity legislation – many states have proposed/pending laws in the area.

Coverage Trends: Pricing, Terms & Conditions



- Although carriers have not introduced any new or significant change in coverage, we continue to see the following routinely added: Privacy and Biometric Exclusions (BIPA); Mass Class Action retentions; and, separate retentions for high-wage earners.
- Some carriers are reducing limits and increasing retentions, depending on company size, locations and industry vertical.
- Capacity remains relatively stable. However, several carriers have decreased their appetite for EPL if any large exposure exists.
- The recent decision by the US Supreme Court in *Dobbs v. Jackson* could result in supplemental applications, increase retentions, exclusions or sublimits.

Emerging Risks & Trouble Spots



- Most challenged sectors continue to include those most impacted by the pandemic/staffing shortages – healthcare, hospitality, retail, staffing firms, etc.
- The trend toward State legalization of marijuana, in direct conflict with Federal law, is an area of concern for EPL underwriters.
- Diversity, Inclusion and Equity continues to be an area of potential risk for employers and, accordingly, an area of focus for EPL underwriters.
- The full impact of the June 2022 US Supreme Court decision in *Dobbs v. Jackson* is uncertain but should not be underestimated. The related legal landscape is rapidly evolving. However, it is almost certain we will see significant claim activity in the next 12-18 months. EPL underwriters are currently evaluating how to best address this risk.