



Management Liability

Epac 3 – Employment Practices Liability

Small business owners want to spend time growing their business and increasing its profitability – not addressing allegations of workplace misconduct and paying attorneys to investigate and defend against them. The emergence of movements such as #MeToo and the changing social and cultural landscape of the modern workplace have contributed to an increase in lawsuits against employers that contain allegations of discrimination, harassment, retaliation and wrongful termination. These are among the most costly and time-consuming claims a small business may face.

CNA's Epac 3 Employment Practices Liability (EPL) insurance coverage helps shield businesses, business owners and employees against loss from claims alleging wrongful employment practices, including discrimination, harassment, retaliation, failure to hire or promote, wrongful discipline and breach of employment contract.

Why should an employer consider EPL coverage?

- The median cost of defending and resolving a claim has risen to \$175,000 for disability discrimination¹ and \$250,000 for age discrimination². These can be crippling losses for small and medium-sized businesses to absorb.
- Unlike other types of lawsuits, employment claims often allow for a successful plaintiff to recover their attorneys' fees, in addition to any other damages awarded for back pay or emotional distress.
- The Equal Employment Opportunity Commission (EEOC) and a growing number of states recommend or require that small businesses conduct anti-harassment training. Employers without a complimentary program available through their insurance provider will need to pay for these trainings out of pocket.
- Third parties, such as customers and clients, may also assert a claim for discrimination or harassment arising out of their interaction with your business.

¹ Gainsburg, Rebecca. "Disability discrimination losses are rising in severity: Data Spotlight," Advisen.com. Published April 20, 2021.

² Gainsburg, Rebecca. "Age discrimination losses increasing in severity: Data Spotlight," Advisen.com. Published July 19, 2021.

Employment Practices Liability Claim Scenarios

Example	Cost	Description
Hostile Environment Sexual Harassment	\$500,000 jury verdict, plus defense costs	A female employee filed suit alleging constructive discharge and hostile environment sexual harassment. Plaintiff claimed that she was forced to resign after repeated incidents of sexual harassment by an independent contractor who delivered water to the office. The senior manager in the office was aware of the harassment but did nothing to rectify the situation. The case went to trial and the jury awarded Plaintiff a \$500,000 verdict.
Age Discrimination	\$200,000 in defense costs through trial	A 62-year-old factory worker filed suit alleging age discrimination after she was fired, purportedly for failure to follow safety protocols. Plaintiff alleged that prior to termination she had been subjected to ageist comments, such as a supervisor who said was not qualified for a training program because “you can’t teach an old dog new tricks” and that her replacement was 30 years younger and had less experience. Defense counsel provided the employer with a budget of approximately \$200,000 to take the case through trial.
Disability Discrimination	\$160,000 plus defense costs	Plaintiff applied for a position and received an offer of employment, conditioned on passing a pre-employment medical exam. The employer’s doctor, who did not examine or speak to Plaintiff, refused to approve him for employment because of the alleged side effects of a prescription medication. Although Plaintiff provided a letter from his personal doctor indicating he was not impaired by his medication and was able to work, the employer rescinded its job offer. The EEOC filed a disability discrimination lawsuit on behalf of Plaintiff. The lawsuit was subsequently settled for \$160,000, plus a consent decree which required which required the employer to modify its hiring procedures and to provide Americans with Disabilities Act training to its managers.

Why should an employer consider securing EPL coverage with CNA?

1. The Support of a Management Liability Leader

- Coverage written through CNA, a long-term provider of management liability solutions with an “A” rating from A.M. Best and an “A+” rating from Standard & Poor’s

2. State of the Market EPL Coverage

- Coverage for a broad range of wrongful employment practices, including whistleblower activity, bullying false imprisonment, false arrest, detention, malicious prosecution and invasion of privacy
- Third-party Wrongful Act coverage for claims brought by non-employees alleging harassment or discrimination
- Coverage for volunteers, interns and independent contractors
- Coverage provided for wrongful acts committed via social media or online
- Settlement retention credit available for claim settlement per CNA recommendation

3. Broad Appetite for Many Industry Classes

Epac 3 can be written for:

- Private companies
- Not-for-profit organizations
- Publicly traded companies

4. EPL Risk Control Resources

Beyond HR® – CNA helps purchasers of Employment Practices Liability insurance (EPL) manage employment-related risks by providing complimentary risk control resources, including online training to assist in the prevention of discrimination, harassment, retaliation, and wrongful termination. The EEOC, state fair employment practice agencies, courts and certain state laws have emphasized that periodic training of this kind is essential. CNA’s Beyond HR® platform provides online, trackable training to help your clients mitigate these risks.

Beyond HR® offers additional features that include:

- A searchable database of articles and checklists on important workplace topics
- Refresher bulletins to support the online training modules
- A model employment handbook, policies and forms
- Webinars on current employment issues
- On-demand training and podcasts on workplace topics such as disability accommodation, pregnancy discrimination, documentation of discipline and performance, and cybercrime

HR Help Line – Additionally, policyholders can use the HR Help Line to obtain complimentary consultation on employment laws and risk control strategies from Jackson Lewis, P.C., a national law firm that advises employers on all aspects of workplace law. Simply have your client's human resources representative call CNA's toll-free line at 888-CNA-EPL1 (888-262-3751), identify the company as a CNA EPL policyholder and provide the company's policy number, and a Jackson Lewis attorney will return the call³. There is no limit on the number of times a policyholder can contact the HR Help Line.

These value-added resources are a significant benefit to your clients who purchase EPL coverage through CNA. Comparable resources may cost thousands of dollars if purchased separately.

Dedicated Team of Claim Professionals

Management liability claims are highly complex, and an experienced team can make all the difference. Our dedicated professionals understand these complexities and are dedicated to addressing claims fairly and effectively. Their local jurisdictional knowledge and catastrophic claim expertise allow them to navigate challenging issues while providing superior support to AVMA members.

Stability and Financial Strength

CNA is one of the largest U.S. commercial property and casualty insurance companies. Backed by more than 120 years of experience, CNA provides a broad range of standard and specialized insurance products and services for businesses and professionals in the U.S., Canada and Europe.

For more information, contact your local underwriter or visit cna.com.

¹ Gainsburg, Rebecca. "Disability discrimination losses are rising in severity: Data Spotlight," Advisen.com. Published April 20, 2021.

² Gainsburg, Rebecca. "Age discrimination losses increasing in severity: Data Spotlight," Advisen.com. Published July 19, 2021.

³ The Help Line cannot be used for legal advice on specific employment actions such as termination decisions, the adequacy of a response to a claim of harassment or discrimination, a particular employee's status under wage hour or other laws, or the need for a reasonable accommodation. For legal advice on specific employment situations, policyholders should retain an attorney to conduct an appropriate review of all relevant facts and circumstances. The Help Line cannot be used to report claims under any policy, or to answer any questions regarding insurance requirements or coverage.

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