



Just when you thought you had it all covered

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An area of liability that has seen a dramatic increase in recent years is Employer Practices Liability (EPL). Landmark cases that have been instrumental in the increased frequency are the U.S. Senate confirmation of Justice Clarence Thomas and the Paula Jones suit against President Clinton. Federal agencies such as EEOC, DOL and their state counterparts also have been partly responsible for the proliferation of employment related lawsuits.

While we have the opinion that most dentists we know are "good folks" who treat their employees well, none are exempt from the liability associated with being an employer. The most common types of wrongful employment practices claims are:

1. wrongful termination
2. sexual harassment

3. discrimination
4. employer retaliation

Let's look at some examples that illustrate just how easy it is for an employer to unintentionally or willfully subject themselves to EPL situations.

- A medical assistant was demoted to part-time clerk because she was pregnant, as the physician said she would not be able to work the necessary hours. The jury awarded her \$53,000 in compensatory damages plus \$350,000 in punitive damages.
- A Florida doctor was ordered to pay \$20,644,500 when three former female employees alleged that the defendant sexually harassed and assaulted each one on different occasions
- A former employee sued a firm alleging the employee had been terminated in retaliation for filing a workers compensation claim. The matter was ultimately settled for close to \$50,000; the cost to defend the insured exceeded \$80,000.
- Two former employees sued a company claiming that the company's employee handbook had created an employment contract and the company's termination of the individual constituted a breach of contract. The matter was ultimately settled for \$100,000; the cost to defend the insured exceeded \$340,000.

There is a real danger, because regardless of whether a genuine wrongful employment practice actually was committed, it only takes an accusation for an employer to have to defend himself or herself. Defense costs alone are usually three times any damages. There even may be no merit to the case, but it still requires attorneys and therefore legal costs, which are never inexpensive. In recalling the old adage "an ounce of prevention is worth a pound of cure" here, the prevention is insurance. However, unless you have an insurance policy specifically designed for EPL, you are probably

not adequately covered.

You may think you have coverage under one of your other policies, but there are usually endorsements that exclude or limit coverage in this area. For instance, some business office policies may provide a nominal amount of coverage in the package but it is limited to \$5,000 or another specified amount. Your professional liability policy may provide defense of sexual harassment, but only with regard to treating a patient.

There is no substitute for understanding EPL and having a policy that specifically provides coverage. Most EPL insurers will require evidence of an anti-discrimination and anti-harassment policy to be in place by the employer. They may also mandate a review of your employment application. The importance of these measures cannot be emphasized enough, and their presence is very helpful and effective in risk control and prevention.

All EPL policies are not equal. Besides different limits of liability coverage, most have endorsements that exclude or add coverage for various situations. Most policies carry a deductible of \$5,000 or more so that the employer also "has some skin in the game." As you know, the lower the deductible the more expensive the premium is.

MDIS has EPL coverage available both as an enhancement to an existing business policy and as an individual, stand-alone policy. Besides being your connection for coverage we can also help with sample anti-discrimination and anti-harassment measures. Don't hesitate to call us for a quote or to discuss your situation. We take your protection and the well being of your practice seriously.

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