Risks Multiply with EPLI on the Rise

There has never been a greater need for employers to purchase employment practices liability insurance (EPLI) than in today's uncertain economy. Layoffs, downsizing and other cost-cutting measures will help fuel employment-related claims. Consequently, it's a good time to market this coverage, but agents need to know the dangers and pitfalls associated with it.

EPLI coverage helps avoid the costs of employment-related litigation for companies that have enough employees to be covered by state and federal anti-discrimination laws. But employers of all sizes, have exposure to employment-related litigation. Small businesses can be crippled by claims of wrongful termination, breach of contract, defamation and invasion of privacy unless they are covered by an EPLI policy.

Carriers offer a myriad of choices but, due to the lack of a standard EPLI policy, it's important to obtain multiple quotes for the client to compare. Be sure to spend any extra time necessary with the underwriters so you fully understand the coverage offered. Critical areas include: Is the form on a claims made (most stand-alone policies) or occurrence (usually EPLI coverage attached to a CGL or BOP) basis? Will there be prior acts coverage? What are the definitions in the policy, including what is a "wrongful employment practice" or a "loss"? What are the exclusions and other limitations that narrow the scope of the policy? How does the policy treat intentional acts? Are punitive damages covered? Does the policy provide coverage for third party liability? Do defense costs erode limits? What endorsements are available that can be added for little or no cost?

Once the client receives options, let them choose which policy to purchase. From an errors and omissions perspective, be sure to not overplay your knowledge of the coverage. Your general duty as the agent is to procure the coverage requested. As always, be sure to reiterate to the client that all insurance coverage, including EPLI coverage, has limitations.

Once the coverage is in place, familiarize yourself with the claims notice requirements of the policy. In the standard discrimination claim, there is a required administrative complaint process prior to a claimant being allowed to file civil litigation. Most EPLI polices will require that notice be provided as soon as there is any knowledge that an administrative claim will be pursued. If notice of the administrative processing of the claim is not provided, there may be no coverage for a later civil suit. Conversely, if the carrier is provided notice of the administrative charge but not timely notice of a later civil suit being filed, there may be no coverage provided for the suit. The key in most notice situations is for the client to be aware of when notice of a potential claim must be made. The goal with all EPLI claims is to address them as early as possible, before they grow.

Employment practice liability litigation has been on the rise for some time, and with the downturn in the economy, it will likely increase. There's a risk of baseless claims, which are quite costly to defend, and this may also intensify with an increasingly frustrated and unemployed workforce. If a client chooses not to purchase the coverage, be sure to document it in the customer file. IA

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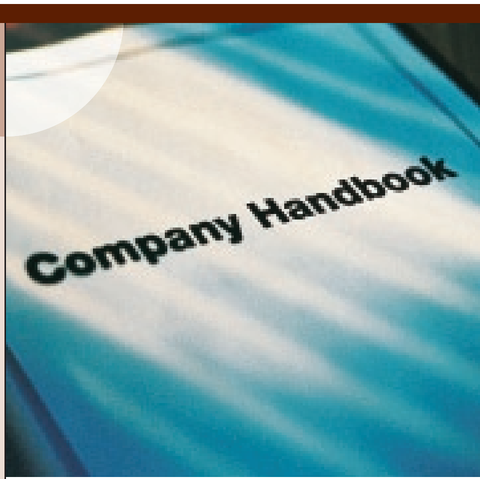

Put Money into Prevention

As a risk management tool, most carriers require documentation that an employer has put into practice policies and procedures to avoid employment related claims. For instance, applications for EPLI coverage may require proof that any employee handbook has been reviewed by an employment attorney and contains legal and necessary waivers of liability. To comply with some of these prerequisites, the employer will incur additional costs not covered by an EPLI policy. The client should also be aware that in order to avoid possible exposure to EPLI litigation, it may be in its best interest to incur the cost of consulting with an employment attorney prior to taking a potentially adverse employment action such as terminating an employee. The cost will not normally be covered by an EPLI policy but is usually well worth the savings to avoid an EPLI claim.

—A.P.

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