

EMPLOYMENT PRACTICES LIABILITY A GROWING CONCERN

By Emily Franchi

With labor laws constantly proliferating and changing employees' rights in the workplace, and with legal claims soaring, it's sometimes difficult to know what you should and shouldn't do as an employer.

Consider the following scenario based on an actual employment practices liability claim:

A medium-size CPA firm was getting increasing pressure from clients and non-clients to take on additional work, but the firm was having great difficulty finding qualified staff to handle the work. At one point, the firm's CEO sent out a memo to all staff members and selected clients, indicating that the firm was seeking "young people" interested in careers with the firm. As a result of responses to that memo, the firm hired two recent college graduates.

Several months later, the firm decided to dismiss two middle-aged employees who were under-performing and had never sufficiently developed their professional skills in accordance with firm standards. Upon termination, the two employees sued the firm, alleging violations of the Age Discrimination in Employment Act.

The dismissed employees also alleged that the firm had not provided them with the same levels of training, mentoring, or work opportunities that had been proffered to the younger employees, and as a consequence they were unable to develop professionally as the firm had required.

A verdict of \$2.2 million was awarded against the firm, which was ordered to repudiate the memo referring to "young people" and to inform all employees within the firm of the verdict.

Employee Charges Up 26 Percent

This was just one of thousands of charges filed by employees every year. The U.S. Equal Employment Opportunity Commission reports that in 2008 employees nationally filed 95,402 charges not including litigation, over alleged violations of laws prohibiting discrimination, harassment and retaliation. This is a 15 percent increase over the number of charges filed in 2007 (82,792) and a 26 percent increase over the number of charges filed in 2006 (75,768).

Employment practices liability is clearly a growing concern for employers. Non-discrimination laws alone cover age,

gender, sexual orientation, physical or mental disability, medical condition, pregnancy, physical appearance, religion or creed, national origin or ethnicity, race or color. Additionally, there are exposures from other allegations such as wrongful termination, breach of contract, slander or defamation, harassment, and failure to hire, train or compensate fairly.

As federal, state and local employment laws multiply, firms of all sizes are increasingly vulnerable to employment practices liability claims and litigation. Large firms are natural targets and suffer the greatest financial losses, but even small firms are often held responsible for damages of \$50,000 and up.

[Employment Practices Liability] policies will reimburse your company against the costs of defending a lawsuit in court and for judgments and settlements.

EPL Insurance Programs

In response to a growing demand from CPA firms of all sizes for insurance protection, some insurance companies provide employment practices liability (EPL) insurance as stand-alone coverage or as an endorsement to a businessowners policy (BOP). (An endorsement usually changes the terms and conditions of the policy.)

The cost of EPL coverage depends on the number of employees you have and various risk factors, such as whether your company has been sued over employment practices in the past. The policies will reimburse your company against the costs of defending a lawsuit in court and for judgments and settlements.

Some EPL insurance programs include various extra features. For example:

- defense and indemnity coverage for all full-time, part-time and contract workers;
- third-party coverage that protects the firm in the event that an allegation is made by a client's employee against an employee of the firm working on site with a client;
- financial incentives to encourage early reporting of incidents;

- human resources advice and services, such as:
 - access to a specialist who advises and assists policyholders with human resources protocols, including setting up and updating employee handbooks; and
 - online support that provides human resources tools to the policyholder, including job descriptions, best practices, and employee handbook templates that can be downloaded, customized and updated.

Loss Prevention Tips

To help mitigate losses from employee lawsuits, educate your managers and employees so that you minimize problems in the first place:

- Create and implement effective hiring and screening programs to avoid discrimination in hiring.
- Post company policies throughout the workplace and place them in employee handbooks so policies are clear to everyone.
- Show employees what steps to take if they are the object of harassment or discrimination by a supervisor. Make sure supervisors know where the company stands on behaviors that are not permissible.
- Document everything that occurs and the steps your company is taking to prevent and solve employee disputes.

Having a comprehensive, effective and user-friendly EPL insurance program in place is also a crucial first step toward preventing and minimizing such losses.



Editor's Note: Emily Franchi is a loss prevention specialist who provides CAMICO EPL policyholders with support on a variety of human resources management issues, focusing on employee relations and legislative compliance for the workplace. She works with policyholders to reduce exposure to potential employment practices claims, and she provides education and assistance in creating professional work environments. Emily can be contacted at efranchi@camico.com.