



Hotel Group Pays \$365,000 to Settle a Harassment Lawsuit – Are You Covered?

1. EPL Insurance Coverage and Features

- a. “Enumerated-perils” policies
- b. Provision for defense cost and damages resulting from alleged “Employment wrongful acts”
- c. Claims made vs. Occurrence coverage
- d. Extended Reporting Period
- e. Related wrongful acts
- f. Deductibles and Self-Insured Retention

2. Endorsements and Enhancements

- a. Special Handling
- b. Wage & Hour
- c. Third Party Liability
- d. Settlement Clause
- e. Domestic Partner
- f. Franchisor Indemnity
- g. Human Resources Consulting Services

3. Common Coverage Exclusions

- a. **Contractual Liability**
 - i. Application to warranty for work done in a workmanlike manner
- b. **Workers’ Compensation**
- c. **Consequential loss**
- d. **Bodily Injury**
- e. **Material misrepresentation**
- f. **Notice provisions**
 - i. Retroactive date or prior acts
 - ii. Late report of claim
- g. **Criminal, Fraudulent or malicious acts**
 - i. Employment provided in violation of law
 - ii. Fines and penalties imposed for violation of Federal/state law
- h. **FLSA Claims**
 - i. Difference between State and Federal policies
 - ii. Contractual wage claims
- i. **Strikes & lockouts**
- j. **ERISA**
- k. **Americans with Disabilities Act (ADA) claims**



4. The relationship between EPL and other insurance policies

a. EPL as an endorsement to D & O policies

- i. Removal of personal injury exclusions; broadening definition of “wrongful acts” and/or “who is an insured”
- ii. Restrictions on coverage
 1. Duty to defend
 2. Removal of business entity as an insured
 3. 3rd party liability for discrimination/harassment
 4. Multiple deductibles and/or limits
 5. Combined policy limits

b. Employers Liability within Workers’ Compensation Coverage

- i. Effect of State-specific law to coverage for Bodily Injury (mental injury)
- ii. Exclusive remedy
- iii. Applicable to specified claimants

5. Claims

a. Wrongful Act Elements

- i. Pervasive Conduct
- ii. Negligence may constitute an intentional act
- iii. Discriminatory Intent
- iv. Mixed motives
- v. Common Workplace Hazard

b. Defense Restrictions

- i. Counsel selection
- ii. Consent to settle
- iii. Hammer clauses

6. The Risks of Management

a. Changes in our environment

- i. Evolving insurance markets
- ii. The “new normal” business climate

b. Best Practices

- i. Management practices for loss prevention
- ii. Navigating the claims process

c. Statistics to consider