

PRIVATE COMPANY / NOT-FOR-PROFIT EMPLOYMENT PRACTICES LIABILITY CASE STUDIES

An organization's workforce is often its most important asset: productive, hardworking, diligent...and obviously human. When you add the human element to the mix, the results can be combustible. Often the best of intentions can go awry. That's why it is so important to have an Employment Practices Liability (EPL) insurance policy that provides comprehensive coverage for a multitude of risks. The following cases highlight many of the exposures and potential damages that could adversely impact an organization's bottom line.

SEXUAL HARASSMENT

A female attorney employed by a property company alleged that she was sexually harassed by the owner's brother-in-law (also an employee), and that the company failed to stop the misconduct. The harassment – which involved hugging, grabbing and attempted kissing – escalated to the point that the attorney reported she could no longer work there. The company assured her that the brother-in-law would be transferred to another location, and she agreed to return to work. Upon her return, however, she saw him in the office and immediately resigned her employment. There was no evidence that the brother-in-law had ever been disciplined.

Potential exposure/loss: The employee sued the company and the brother-in-law in state court. At private mediation, the company agreed to settle the lawsuit for more than \$1 million.

WRONGFUL TERMINATION/ RETALIATION

A food manufacturing company employee sued his employer alleging wrongful termination. The plaintiff asserted that he was fired after he reported violations of federal and state law concerning the plant to management and advised them that he had a duty to report these violations to legal authorities.

Potential exposure/loss: The company was ultimately cited for minor violations by the state licensing board. The case settled for \$450,000.

GENDER DISCRIMINATION / EQUAL PAY ACT VIOLATIONS

Four female hotel sales managers filed charges alleging that their former employer discriminated against them based on their gender and violated the Equal Pay Act by failing to pay them wages comparable to their male counterparts.

Potential exposure/loss: Due to the complications surrounding multi-claimant situations, defense costs exceeded \$300,000. Settlement with all four claimants totaled over \$500,000.

GENDER DISCRIMINATION / RETALIATION

The only female department head in an engineering firm repeatedly complained that she was paid less than her male counterparts. After investigating her complaints, the company concluded that the female employee was being paid fairly. However, she continued to complain, began to exhibit a hostile attitude toward her manager, and a sudden poor work performance. Following a heated exchange about her pay complaints, the employee left angrily, stating that the company would be "hearing from her attorney." Two days later, she was terminated for insubordination.

Potential exposure/loss: The employee sued for gender discrimination, unequal pay and retaliation. Deposition testimony by the Human Resources Manager and supervisor supported her allegations of retaliation, even though there was no basis for the underlying claim of unequal pay. After expending nearly

\$425,000 in legal fees to defend the lawsuit, the company settled at private mediation for \$450,000.

RELIGIOUS DISCRIMINATION

Employees at a small company were allowed to listen quietly to their radios while they worked at their desks. A co-worker complained to management that another worker was listening to a Christian-themed radio station. When asked to change the channel, the worker refused and was fired. The worker alleged that she was discriminated against her based on her religion.

Potential exposure/loss: The matter settled for \$350,000, and defense costs totaled approximately \$250,000.

RETALIATION

An employee at a substance abuse treatment center filed a complaint in Federal Court asserting that he was terminated in retaliation for participating in a public hearing. Upon termination, the plaintiff was provided a letter noting that he was terminated because his testimony placed the treatment center at risk. While defense counsel could have explained the meaning and intention of the letter through witness testimony, the letter at first glance appeared to be direct evidence of retaliation.

Potential exposure/loss: After incurring close to \$200,000 in defense expenses, this matter ultimately settled for \$300,000.

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PRIVATE COMPANY / NOT-FOR-PROFIT EPL CASE STUDIES

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SOCIAL MEDIA

An employee of a small, family-owned company attended a gay ride rally and posted pictures of the event on Facebook. His employer viewed the post, questioned the employee about his political beliefs, and eventually terminated his employment. The employee filed charges with the EEOC asserting that he was subjected to a hostile work environment, wrongful termination, discrimination, invasion of privacy and retaliation.

Potential exposure/loss: After incurring \$75,000 in defense expenses, the case settled for \$155,000.

DISABILITY DISCRIMINATION

An administrative employee complained that he had injured his back and requested that his employer provide an ergonomic chair and permit reduced working hours. His repeated requests were denied and the plaintiff alleged that he was terminated for requesting that his disability be accommodated. He then filed a charge of discrimination, and later a suit alleging disability discrimination, failure to provide a reasonable accommodation for the disability, failure to engage in an interactive process, retaliation and wrongful termination in violation of public policy.

Potential exposure/loss: Defense costs ultimately totaled more than \$150,000 and the case resolved for more than \$200,000.

DISABILITY DISCRIMINATION

A non-profit company whose mission is to provide job training, education and employment to people with disabilities and other barriers to employment, was sued in State Court for terminating one of its employees based on his disability and refusing to provide an accommodation for the same. Defense counsel filed a dispositive motion in an attempt to show that the plaintiff's injuries did not constitute a "disability" within the meaning of the ADA, but was unsuccessful. The ruling on this motion emboldened the plaintiff and the case was ultimately settled given the troubling jurisdiction and the lack of evidence demonstrating that an accommodation was made.

Potential exposure/loss: Approximately \$65,000 in defense expenses was incurred in an attempt to resolve this matter via dispositive motion. After the unsuccessful ruling, the case was settled for \$150,000.

SEXUAL HARASSMENT

An office manager asserted that she was sexually harassed by the owner of the company. Her attorney sent the insurer a demand letter. Despite the fact that no formal proceedings had been initiated (no lawsuit or administrative charges were filed), the insurer, upon investigation, determined that sufficient evidence existed to support the manager's claims.

Potential exposure/loss: Given the evidence, the insurer promptly settled the matter for \$250,000. Almost \$20,000 in defense expenses were incurred.

WEBSITE ACCESSIBILITY / ADA

A third-party user of a small business's website alleged that the website was not accessible to visually impaired visitors to the site. The claimant alleged that the website had no voice-recognition ability or other content formatting for auditory picture descriptions that could be heard and understood.

Potential exposure/loss: The third party was able to bring suit seeking injunctive relief requiring the website be made accessible. In addition, there were attorneys' fees in excess of \$50,000 due to the plaintiff's demands regarding changes to the website.

CONTACTS

Allied World Insurance Company

Will Grein

Senior Vice President

*Private Company / Not-For-Profit
Management Liability Division*

E. will.grein@awac.com

T. 646.794.0554

**Please see our listing of Regional
Private / Not-for-Profit Contacts.**

"A" (Excellent) by A.M. Best Company

"A-" (Strong) by Standard & Poor's

"A3" (Good) by Moody's



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