

EMPLOYMENT PRACTICES LIABILITY COVERAGE CHECKLIST

Choosing an Employment Practices Liability Coverage (EPLI) policy can be complicated, but this simple checklist prepared by [Don Phin](#) will review the buying process and help you make the best decision.

Below are some pros and cons concerning EPLI on its own and with additional coverage:

EPLI with Directors and Officers (D&O)

PROS:

- Ease of program administration
- Consistent defense provisions
- Cost-effective



CONS:

- Potential D&O limit exhaustion by non-D&O claims
- Lack of coverage breadth



EPLI with Comprehensive General Liability (CGL)

PROS:

- Ease of program administration
- Cost-effective



CONS:

- Non-concurrent coverage triggers (e.g., EPL: claims-made; CGL: occurrence)
- Lack of coverage breadth



EPLI on a Stand-alone Basis

PROS:

- Broad scope of coverage
- Insulates limits of insured's other policies
- Availability of risk management and loss prevention services



CONS:

- Additional policy adds complexity to administrative process
- Higher cost compared to other alternatives



EMPLOYMENT PRACTICES LIABILITY COVERAGE CHECKLIST

POLICY TYPE

There are two different policy types to choose from:

- Stand-alone EPL Policy
- Coverage via Endorsement to:
 - D&O Policy
 - CGL Policy
 - E&O/Professional Liability Policy
 - Umbrella Liability Policy

COVERED ACTS

Check exact policy definitions of covered perils:

- | | |
|---|---|
| <input type="checkbox"/> Wrongful Termination | <input type="checkbox"/> Libel, Slander |
| <input type="checkbox"/> Sexual Harassment | <input type="checkbox"/> Employment-Related Defamation |
| <input type="checkbox"/> Discrimination | <input type="checkbox"/> Employment-Related Emotional Distress |
| <input type="checkbox"/> Workplace Torts | <input type="checkbox"/> Constructive Discharge |
| <input type="checkbox"/> Breach of Oral/Written Employment Contract | <input type="checkbox"/> False Arrest |
| <input type="checkbox"/> Employment-Related Misrepresentation | <input type="checkbox"/> Retaliatory Actions (including/excluding lockouts) |
| <input type="checkbox"/> Wrongful Failure To Employ | <input type="checkbox"/> Whistleblower Claims |
| <input type="checkbox"/> Wrongful Failure To Promote | <input type="checkbox"/> Wrongful Hiring |
| <input type="checkbox"/> Wrongful Discipline | <input type="checkbox"/> Mental Anguish, Humiliation, Emotional Distress |
| <input type="checkbox"/> Wrongful Deprivation of a Career Opportunity | <input type="checkbox"/> Other Torts (List) |
| <input type="checkbox"/> Failure To Grant Tenure | <input type="checkbox"/> Wage and Hour |
| <input type="checkbox"/> Negligent Evaluation | <input type="checkbox"/> Punitive damages |
| <input type="checkbox"/> Negligent Supervision | |
| <input type="checkbox"/> Invasion of Privacy | |

EMPLOYMENT PRACTICES LIABILITY COVERAGE CHECKLIST

COVERED PERSONS

Check which persons will be covered by the policy:

- | | |
|---|--|
| <input type="checkbox"/> Employees | <input type="checkbox"/> Directors and Officers |
| <input type="checkbox"/> Leased | <input type="checkbox"/> Partners |
| <input type="checkbox"/> Seasonal | <input type="checkbox"/> Shareholders |
| <input type="checkbox"/> Part-Time | <input type="checkbox"/> Volunteers |
| <input type="checkbox"/> Temporary | <input type="checkbox"/> Independent Contractors |
| <input type="checkbox"/> Managerial/Supervisory Employees | <input type="checkbox"/> Joint Employers |
| <input type="checkbox"/> Former Employees | <input type="checkbox"/> Others (List) |

COVERED ORGANIZATIONS

Check which persons will be covered by the policy:

- Corporate Entity
- Automatic Coverage or Notification Required for:
 - Newly Acquired Entities
 - Newly Created Entities

DEFENSE PROVISIONS

Check which defense provisions will be necessary:

- Duty to Defend?
- Non-Duty to Defend?
- Counsel Selection Endorsement Included?
- Insured/Insurer Chooses Counsel
- Insured/Insurer Approves Counsel
- Claim Reporting Requirements (trigger provisions)?

EMPLOYMENT PRACTICES LIABILITY COVERAGE CHECKLIST

THIRD-PARTY LIABILITY

Check which third-party liability coverages will be part of the policy:

- Coverage Within Policy
- Coverage Available by Endorsement
- Coverage for:
 - Harassment
 - Sexual Harassment
 - Discrimination
 - Other Acts (list)

LIMITS, RETENTIONS/DEDUCTIBLES

Check the limits, retentions and deductibles that will apply:

Policy Type:

- Working Layer
- Catastrophe Layer

Defense Cost Coverage:

- Within Policy Limits
- In Addition to Policy Limits

Policy Limit:

- Per Claim
- Annual Aggregate

Deductible:

- Deductible Applies/Does Not Apply to Defense Costs?
- Annual Aggregate Applicable?

Exclusions:

- ADA Accommodation Expenses
- Assault & Battery
- Back Pay
- Bodily Injury
- Breach of Employment Contract
- Class Action Lawsuits
- Downsizing and Lay Offs
- Front Pay
- Intentional Acts
- Mergers and Acquisitions
- Personal Injury
- Retaliatory Acts of Employer
- Wage and Hour

EMPLOYMENT PRACTICES LIABILITY COVERAGE CHECKLIST

Additional Considerations:

Covered Territory

- Suit in U.S.
- Act and Suit in U.S.
- Worldwide

Settlement Provision

- Unilateral Insurer Discretion
- "Hammer Clause"
- Other

Exclusions:

Trigger Type

- Pure Claims-Made
- Claims-Made and Reported
- Length of Post-Policy Reporting Window (if any)
- Prior Acts Coverage Available?
- Retroactive Date (If Any)

Discovery/Awareness Provision

- Included
- Not Included
- Applicable during Extended Reporting Period (if purchased)?

NEED ADDITIONAL HELP?

Learn more from these risk management services:

- > Online tools
- > Hotline support
- > Training

ABOUT DON PHIN

Don Phin has been a California employment practices attorney since 1983, and litigated cases for 17 years. He is currently chairing Vistage HR groups, coaching HR executives remotely, conducting workplace investigations and supporting the HR consulting needs of ThinkHR members through HRSherpas.com.

ABOUT THINKHR

ThinkHR sets the standard for quality and leadership in integrated HR solutions that combine the best of human expertise and innovative technology. ThinkHR offers a cloud-based platform supported by live HR experts who help employers and HR professionals ensure compliance and resolve people-related issues quickly and efficiently.

Edition: 02.0416