

**Professional Indemnity Agency
EPLI Department
Employment Practices Liability Insurance
Five Things You Don't Want In An EPLI Policy
Forms Comparison**

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Note: Comparisons such as this one are subject to interpretation. Every effort has been made to provide an accurate comparison and include information felt to be pertinent to our brokers, agents and policyholders. It is important to note that this comparison should not be used as a substitute for a thorough review of each insurers application, basic policy form and mandatory or optional endorsements, which may not be considered in this comparison. ***Always read the policy.***

Background

Based on discussions with brokers and risk management consultants we identified the five major things that you do not want to see in an EPLI policy. Listed in order of importance they are - (1) an "Intentional Acts Exclusion", (2) does not provide "full prior acts coverage", (3) has a "full bodily injury and/or an "assault & battery" exclusion, (4) is written on a "claims-made and reported" form, and (5) has a "prior knowledge exclusion that include the knowledge of employees".

- 1. Intentional Acts Exclusion** - This is at the top of the list of all of the risk management consultants, with whom we have spoken. Quoting from *The EPL Book* published by Griffin Communications, Inc. - EPL . . . "litigation differs from other types of litigation because the plaintiff typically will allege intentional wrongdoing as opposed to or in addition to allegations of negligence. Discrimination and harassment are 'intentional torts' and most terminations from employment are the result of intentional conduct". An intentional acts exclusion allows the insurance company's claims department too much latitude to deny a claim.
- 2. Does Not Provide Full Prior Acts Coverage** - An EPLI policy with a "retroactive date" or "continuity date" is a no-no. Quoting from *Professional Liability Insurance* published by the International Risk Management Institute, Inc. - Retroactive dates in EPL policies preclude coverage for claims caused by acts, errors, or omissions that took place before the retroactive date - despite the fact that a claim associated with such events is made against the insured during the policy period. Policies written without a retroactive date (which is an increasing trend among insurers) are said to provide "full prior acts coverage". If you think about it most EPL claims do not suddenly occur, the sexual harassment or the discrimination has been going on for an extended period of time (sometimes years). All of the past incidents will be indicated in the lawsuit filed by the employee. Again this leaves too much discretion to the insurer's claims department.
- 3. Unmodified Bodily Injury and/or Assault & Battery Exclusion** - We have included modified bodily injury exclusion in the Houston Casualty policy at the request of our reinsurers. The Houston Casualty exclusion however does not apply to emotional distress, humiliation, mental injury or mental anguish, which are often included in the definition of bodily injury. It also does not apply to rape (an extreme form of sexual harassment) because we modify the harassment coverage to include assault and battery, which is required for bodily injury to exist. Many of the new forms now have full-

unmodified bodily injury exclusion or an assault & battery exclusion, which would preclude coverage for numerous types of EPL claims. Incidentally, the reason for the bodily injury exclusion is to prevent the EPLI policy from having to respond to a claim that is covered by a CGL policy.

4. **Claims-Made and Reported** - We just received quite an education on this subject from one of our legal counsel. Many state insurance departments will not allow a "claims-made and reported" form to be approved in their state. The reason is this - a "pure claims-made" policy has only one trigger, that the claim must be made during the term of the policy. The reporting requirement is typically specified that claims must be reported "as soon as practical". A claims-made and reported policy imposes two requirements before coverage is triggered. First, the claim must be first made against the insured during the policy period. Second, the claim must also be reported to the insurer during a stipulated reporting period. Most of the policies specify 30 or 60 days. This is a very limiting feature. Generally, the notice at the beginning of a policy form will indicate that the policy is either "claims-made" or "claims-made and reported". In a recent review of the United States Liability Insurance (USLI) EPL form we noted that it was a claims-made and reported, but this was not indicate in the policy notice. Read your policies carefully.
5. **Employee Prior Knowledge** - All EPLI policies that provide "full prior acts" coverage will have "prior knowledge exclusions". The person having the prior knowledge can range from the individual who signs the application, senior management, to any employee. This is unreasonable, as basically this would eliminate coverage for most claims prior to the issuance of the policy.

Five Things You Don't Want In An EPLI Policy Forms Comparison

Column Headings -

1. The form has an “intentional acts” exclusion.
2. The form does not provide “full prior acts” coverage.
3. The form has an unmodified “bodily injury” and/or “assault & battery” exclusion.
4. The form is claims-made and reported.
5. The form has an “employee” or “any insured” prior knowledge provision.

Note - The fewer “X”s the better the form.

| Policy Form | 1 | 2 | 3 | 4 | 5 |
|--|----------|----------|----------|----------|----------|
| ACE MPE 001 | X | | X | X | |
| Admiral EPL 4000 (10-98) | | X | X | | |
| AIG 67548 (4-97) | X | | X | X | X |
| AIG 73524 (8-99) | X | X | X | X | X |
| Angel/Lloyds | | | | | |
| C N A Pro Epack G-132823A (6-00) | X | | X | X | X |
| E-Risk/Lloyds Combo | X | | X | X | X |
| Evanston EP 2000 (4-00) | X | X | X | X | |
| Fireman's Fund 7006-1-98, w/End. 105642 (2/00) | | X | | X | |
| General Star GS1-EL-02 (2-00) | | | | | |
| Genesis GIIC - 8001 (6-97) | | X | | X | X |
| Great American Combo D 2100 (1-99) | X | | X | X | X |
| Gulf RP 8002h (6/00) | X | X | X | X | X |
| Hartford GL 00 R424 00 0498 | X | | X | X | |
| Houston Casualty EP 0001 (03/02) | | | | | |
| Kemper EP 7100 (02-97) | X | X | X | X | |
| Lexington EPL (09/00) | | | | X | |
| Markel MAIC 2019 (10-97) | X | X | X | X | X |
| NAS/Lloyds EPLI - Broad (JAN 01) | | | | X | |
| NAS/Lloyds EPLI (JAN 01) | | | | X | |
| Pacific Insurance (Hartford) (1-99) | X | | X | X | X |
| Philadelphia 1560 (12-96) | X | | X | X | X |
| Presidio/Lloyds 2002 | X | | | X | |
| Scottsdale ELH-J-I (6-99) | X | X | X | X | X |
| St. Paul EP 001 (2-98) | X | | | X | |
| Swett/Lloyds EPLX - 022S | | | | | |
| Travelers Combo DPR-100 (7-98) | X | | X | X | |
| Travelers EPL 1001 (5-97) | X | | X | | |
| U.S. Liability Insurance (USLI) EPLJ (4-00) | X | | X | X | |
| U.S. Risk DISC (11-98) | | | X | X | X |
| Zurich STF - CEP - 100A | | | X | X | X |
| Zurich U-EPL-100-A-CW (3-98) | | | X | X | |