

## Employment Related Lawsuits Are on the Rise. Are You Covered?

Article By:

Insurance Recovery at Gilbert LLP

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On September 25, 2014, the **Equal Employment Opportunity Commission** (“EEOC”) filed the first two suits in its history challenging transgender discrimination under the 1964 Civil Rights Act. As discrimination litigation evolves, it is important to know whether your insurance coverage is evolving with it.

Coverage for employee-related lawsuits has always been important, but the increase in suits brought by the EEOC over the last several years (and the last several decades) has made employment practices liability (“EPL”) insurance of particular importance to protecting your company. Last year, the EEOC recovered a record-setting \$372.1 million.

Now, the scope of EEOC suits is increasing as a result of the EEOC’s ongoing efforts to implement its Strategic Enforcement Plan (“SEP”), adopted in December of 2012. As part of its SEP, the EEOC makes “coverage of lesbian, gay, bisexual and transgender individuals under Title VII’s sex discrimination provisions, as they may apply” a “top commission enforcement priority.”

Comprehensive general liability (“CGL”) policies, are a type of commercial third-party liability insurance. Most businesses in the United States purchase CGL policies in order to protect against the risk of suits by third parties. If a patron sues you for a slip and fall in your mom-and-pop shop, your CGL policy probably covers the suit. Likewise, if you distribute across the entire country a product that allegedly causes bodily harm to thousands of people, your CGL policy probably covers the suits.

As broad as CGL coverage is, however, it is only one piece to a balanced insurance portfolio. CGL policies typically exclude coverage for suits brought by employees of the company. EPL policies step in to fill one part of the gap in coverage. Other parts of the gap are filled by workman’s compensation policies and directors and officers liability policies.

A typical EPL policy may list a number of categories of protected classes covered by insurance, and then add coverage for “other protected classes.” A policy may also protect against claims for “Discrimination,” and define that discrimination broadly to mean “any actual or alleged violation of any employment discrimination law.” However, some policies offer more limited coverage. For example, some carriers may restrict coverage to only sexual harassment.

Just as you protect your company from fire by installing sprinklers in your warehouses and doing regular safety inspections, it is imperative that you keep your employment practices up to date. Educate your employees on proper workplace behavior, and try to think about ways to get ahead of the curve to minimize your liability for alleged workplace discriminations.

Just as discrimination litigation is evolving, other areas of litigation continue to evolve and create new risks for your company. In addition, coverage law continues to evolve across the United States, on a state-by-state basis. As coverage law evolves, it has a direct effect on the value of your insurance portfolio.

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