Employment Practices Liability

Why you need Employment Practices Liability insurance (EPL):

- A private company is more likely to have an Employment Practices claim than a General Liability or property claim.
- 3 out of every 5 employers are sued by former employees.
- 65% of all companies that have ever fired an employee have been hit with an employment related lawsuit.
- The median compensatory award for all plaintiff verdicts is $325,000.
- Over 40% of all Employment Practices claims are brought against firms with less than 100 employees.

The following are important coverages that we offer in our EPL policy. Make sure that your policy includes all of these features.

<table>
<thead>
<tr>
<th>Coverage Features</th>
<th>Our Group</th>
<th>Competitors’ Policy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fair Labor Standards Act (FLSA) - $100,000 sub-limit for defense costs and loss (available in most jurisdictions). This helps protect employers in the event they are confronted with wage and hour disputes</td>
<td>✔️</td>
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<tr>
<td>Defense and Settlement provision (“Hammer Clause”) softened to cover 75% of defense costs and loss after Insured’s final refusal to consent to settle a claim</td>
<td>✔️</td>
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<td>Defense outside the limit – We bear all costs of defense above the retention and defense costs do not erode the Limit of Liability (if a $500k or higher limit is chosen and there are fewer than 200 employees)</td>
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<td>Duty to Defend - We have an obligation to defend all claims (as defined by the policy) even if found to be groundless, false or fraudulent. We use expert outside defense counsel and in-house claim adjusters to control defense costs as well as to reduce overall claim costs</td>
<td>✔️</td>
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<td>Full Prior Acts available for most risks - provides coverage for acts occurring prior to the inception of the policy that result in claims made during the policy period</td>
<td>✔️</td>
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<td>Punitive Damages are included in the definition of Loss with most favorable venue wording (available in most jurisdictions). Punitive damages can be one of the largest EPL exposures for an organization. Most favorable venue wording is especially important for organizations with multiple locations as punitive damages are not insurable in all states</td>
<td>✔️</td>
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<tr>
<td>Independent Contractors are included in the definition of Employee.</td>
<td>✔️</td>
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<td>Risk Management Services – Free human resources consultation HELPLINE service with unlimited calls and no time limits plus an online HR Resource Center</td>
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Employment Practices Liability Product

This Policy Includes:

- Fair Labor Standards Act (FLSA) - $100,000 sub-limit for defense costs and loss (available in most jurisdictions)
- Defense and Settlement Provision (Hammer Clause) softened to cover 75% of defense costs and loss after insured’s final refusal to consent to settle a claim
- Defense Outside the Limit up to 200 employees if a $500,000 limit or higher is chosen
- Full Prior Acts coverage for claim-free accounts for most states and classes
- Punitive Damages with most favorable venue wording included in the definition of Loss (available in most jurisdictions)
- Front and Back Pay included in the definition of Loss
- “For” wording applies to Bodily Injury/Property Damage exclusion
- Wrongful Act definition expanded to included coverage for the negligent violation of the Uniformed Services Employment & Reemployment Rights Act (USERRA)
- Independent Contractors are included in the definition of Employee
- Full Severability
- Spousal Liability extended to Domestic Partners
- Final Adjudication wording for fraud exclusion
- Defense costs coverage for breach of express employment contract
- Retaliation carve backs for many exclusions
- Defense costs coverage for claims involving the modification of real property

Additional Advantages:

- A.M. Best rated A++ carrier
- Optional Third Party Discrimination and Harassment coverage available for most classes
- Extended Reporting Periods of 1, 2, and 3 years available for 50%, 100% and 150% of the annual premium
- Free human resources consultation HELPLINE service with unlimited calls and no time limits plus an online HR Resource Center
- Competitive pricing
- Timely responses to all inquiries and submissions
- Efficient and fair payment of claim
- Technical competence
Employment Practices Liability Product

Claim Examples

- **Discrimination/Wrongful Termination:** A female Marketing Manager took leave subject to the Family Medical Leave Act (FMLA) upon the birth of her first child. She was terminated one month after her return to work for poor work performance and the company eliminated her position. There was no documentation of poor performance prior to her FMLA leave.

- **Third Party Liability:** A blind customer entered a local grocery store with his guide dog. The manager of the meat/deli department asked the customer to take his dog outside because he thought the dog presented a health hazard. The customer sued for violation of the Americans with Disabilities Act.

- **Internet/Email Liability:** An employee who intended to email a pornographic joke to only a single recipient accidentally pressed the wrong button, sending the off-color joke to the company’s entire workforce. The employer made the employee send a follow-up email apologizing to the workforce. Two months later, during a company downsizing, an employee sued for a hostile work environment and used the email as evidence.

- **Spousal Liability:** The president of a company was being threatened with a sexual harassment suit by one of his employees. The president decided to transfer most of his assets into his wife’s name in order to avoid being personally sued and subjecting his personal assets to any possible claim settlement against him. The employee later sued the president for sexual harassment. The suit named both the president and the president’s wife because of her ownership interest in the president’s assets. These assets were later subjected to the settlement provisions.

- **Retaliation:** An African American employee of a barge repair and painting firm complained to management that some of his coworkers were using racial slurs and jokes. His supervisor transferred him to an inside warehouse position at a reduced hourly rate stating that it would be better for him to work alone rather than be exposed to those workers. The employee later sued for discrimination and retaliation for reporting the discrimination.
Employment Practices Liability Application - All States

This application is for a Claims Made policy. Please read your policy carefully. Defense costs shall be applied against the retention.

New York Disclosure Notice: Under EPL 133 NY and EPL162 NY, if made part of your policy, or Section IV Exclusions C, the limits of liability available under this policy may be completely exhausted by the payment of defense costs.

Applicant may qualify for an INSTANT QUOTE by completing Section I below. Section II answers will be required prior to binding and are subject to underwriting approval.

I. INSTANT QUOTE INFORMATION

Instant quote is not available for accounts with losses in the past five years. If there is a loss history, please complete Section I and submit details in a claim supplement.

Primary Applicant’s name (See #4 to add subsidiary[ies]/affiliate[s]): ____________________________________________

Location address: ____________________________________________ ☐ Same as mailing address

City: ____________________________________________ State: ____________ Zip: ____________

Web address: ____________________________________________

Email address of primary contact: ____________________________________________

Description of Operations:

Full-time employees________ Part-time _________ Temporary/ Seasonal _________ Independent contractors _________ Leased _______

How many of the above are located in: California ____________ Florida ____________ Louisiana ____________ Outside the U.S. ____________

II. UNDERWRITING INFORMATION

1. Year established: ____________________________________________

2. Do more than 50% of all employees currently earn more than $100,000? ☐ Yes ☐ No

3. a) Is the applicant a subsidiary of another organization? ☐ Yes ☐ No

   b) Is the applicant a franchisee of another organization? ☐ Yes ☐ No

   c) Name of parent and/or franchisor and location ____________________________________________

4. Does the applicant want any subsidiary[ies]/affiliate[es] covered? If “Yes,” include employees in employee count above and provide:

   a) Name of subsidiary[ies]/affiliate[es] ____________________________________________

   b) Is the subsidiary[ies]/affiliate[es] at least 50% owned by the applicant? ☐ Yes ☐ No

   c) Does the subsidiary[ies]/affiliate[es] fall within the same class of business as the applicant? ☐ Yes ☐ No

5. Expiring policy: Retroactive date ____________ Carrier __________________ Limits ____________ Retention _________ Premium ____________

Written Guideline Requirements:

a) Does each entity proposed for insurance have a written e-mail/internet policy currently in place or is willing to implement one? ☐ Yes ☐ No

b) Does each entity proposed for insurance have a written anti-discrimination and anti-harassment policy currently in place? ☐ Yes ☐ No

      (Attach a statement of details for all “Yes” answers to the following questions)

6. a) Has any entity proposed for insurance closed, sold, merged with or acquired any company in the past 12 months or anticipates doing so in the next 12 months? ☐ Yes ☐ No

b) Has any entity proposed for insurance downsized, laid off or reduced staff in the past 12 months or anticipates doing so in the next 12 months?

      If “Yes,” what percentage of the workforce was/will be affected? _____________________________

7. Within the last five years, has any employment related, or third party discrimination, or third party harassment inquiry, complaint, notice of hearing, claim or suit been made against any entity proposed for insurance or any person proposed for insurance in the capacity of either director, officer, member (if an LLC), or employee of any entity proposed for insurance? If “Yes,” complete USLI Claim Supplement for each claim ☐ Yes ☐ No

8. Is any person proposed for this insurance aware of any fact, circumstance, or situation which may result in an employment claim, or third party discrimination, or third party harassment claim against any entity proposed for insurance or any of its directors, officers, members (if an LLC) or employees?

      If “Yes,” complete USLI Claim Supplement for each claim ☐ Yes ☐ No

9. Has any policy for employment practices liability insurance ever been cancelled or non-renewed by the carrier?

      (Do not answer if applicant is located in Missouri) ☐ Yes ☐ No
Any person who, with intent to defraud or knowing that he is facilitating a fraud concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.

**Arizona Notice:** Misrepresentations, omissions, concealment of facts and incorrect statements shall prevent recovery under the policy only if the misrepresentations, omissions, concealment of facts or incorrect statements are: fraudulent or material either to the acceptance of the risk, or to the hazard assumed by the insurer or the insurer in good faith would either not have issued the policy, or would not have issued a policy in as large an amount, or would not have provided coverage with respect to the hazard resulting in the loss, if the true facts had been made known to the insurer as required either by the application for the policy or otherwise.

**Colorado Fraud Statement:** It is unlawful to knowingly provide false, incomplete, or misleading facts or information to an insurance company for the purpose of defrauding or attempting to defraud the company. Penalties may include imprisonment, fines, denial of insurance and civil damages. Any insurance company or agent of an insurance company who knowingly provides false, incomplete, or misleading facts or information to any policyholder or claimant for the purpose of defrauding or attempting to defraud the policyholder or claimant with regard to a settlement or award payable from insurance proceeds shall be reported to the Colorado division of insurance within the department of regulatory agencies.

**District of Columbia Fraud Statement:** WARNING: It is a crime to provide false or misleading information to an insurer for the purpose of defrauding the insurer or any other person. Penalties include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

**Florida Fraud Statement:** Any person who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony of the third degree.

**Florida Notice:** (Applies only if policy is non-admitted) You are agreeing to place coverage in the surplus lines market. Superior coverage may be available in the admitted market and at a lesser cost. Persons insured by surplus lines carriers are not protected under the Florida Insurance Guaranty Act with respect to any right of recovery for the obligation of an insolvent unlicensed insurer.

**Florida Fraud Statement:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto may be guilty of a crime and may be subject to fines and confinement in prison.

**Kentucky Fraud Statement:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance containing any materially false information or conceals, for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime.

**Maine Fraud Statement:** It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits. A binder may not be withdrawn but a prospective notice of cancellation may be sent and coverage denied for fraud or material misrepresentation in obtaining coverage. A policy may not be unilaterally rescinded or voided.

**Maryland:** Any person who knowingly or willfully presents a false or fraudulent claim for payment of a loss or benefit or who knowingly or willfully presents false or misleading information to an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

**Minnesota Notice:** Authorization or agreement to bind the insurance may be withdrawn or modified only based on changes to the information contained in this application prior to the effective date of the insurance applied for that may render inaccurate, untrue or incomplete any statement made with a minimum of 10 days notice given to the insured prior to the effective date of cancellation when the contract has been in effect for less than 90 days or is being canceled for nonpayment of premium.

**New Jersey Disclosure Notice:** Any person who includes any false or misleading information on an application for an insurance policy is subject to civil and criminal penalties.

**New York Disclosure Notice:** This policy is written on a claims made basis and shall provide no coverage for claims arising out of incidents, occurrences or alleged Wrongful Acts or Wrongful Employment Acts that took place prior to retroactive date, if any, stated on the declarations. This policy shall cover only those claims made against an insured while the policy remains in effect for incidents reported during the Policy Period or any subsequent renewal of this Policy or any extended reporting period and all coverage under the policy ceases upon termination of the policy except for the automatic extended reporting period coverage unless the insured purchases additional extended reporting period coverage. The policy includes an automatic 60 day extended claims reporting period following the termination of this policy. The Insured may purchase for an additional premium an additional extended reporting period of 12 months, 24 months or 36 months following the termination of this policy. Potential coverage gaps may arise upon the expiration for this extended reporting period. During the first several years of a claims-made relationship, claims-made rates are comparatively lower than occurrence rates. The insured can expect substantial annual premium increases independent overall rate increases until the claims-made relationship has matured.

**North Dakota Fraud Statement:** Notice to North Dakota applicants – Any person who knowingly and with the intent to defraud and insurance company or other person, files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty.

**Ohio Fraud Statement:** Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud. I understand that any material misrepresentation or omission made by me on this application or any subsequent renewal of this Policy or any extended reporting period and all coverage under the policy ceases upon termination of the policy except for the automatic extended reporting period coverage unless the insured purchases additional extended reporting period coverage. The policy includes an automatic 60 day extended claims reporting period following the termination of this policy. The Insured may purchase an additional premium an additional extended reporting period of 12 months, 24 months or 36 months following the termination of this policy. Potential coverage gaps may arise upon the expiration for this extended reporting period. During the first several years of a claims-made relationship, claims-made rates are comparatively lower than occurrence rates. The insured can expect substantial annual premium increases independent overall rate increases until the claims-made relationship has matured.

**Ohio Fraud Statement:** It is a crime to knowing provide false, incomplete or misleading information about any fact material thereto; or conceals, for the purpose of misleading, information concerning any fact material thereto may be guilty of a crime and may be subject to fines and confinement in prison.

**Oklahoma Fraud Statement:** WARNING: Any person who knowingly, and with intent to injure, defraud or deceive any insurer, makes any claim for the proceeds of an insurance policy containing any false, incomplete or misleading information is guilty of a felony.

**Oregon Fraud Statement:** Notice to Oregon applicants: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement may be guilty of insurance fraud. Penalties may include imprisonment and/or fines. In addition, an insurer may deny insurance benefits if false information materially related to a claim was provided by the applicant.

**Oregon Fraud Statement:** Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information or conceals for the purpose of misleading, information concerning any fact material thereto commits a fraudulent insurance act, which is a crime and subjects such person to criminal and civil penalties.
Tennessee and Virginia Fraud Statement: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties include imprisonment, fines and denial of insurance benefits.

Utah Notice: I understand that Punitive Damages are not insurable in the state of Utah. There will be no coverage afforded for Punitive Damages for any Claim brought in the State of Utah. Any coverage for Punitive Damages will only apply if a Claim is filed in a state which allows punitive or exemplary damages to be insurable. This may apply if a Claim is brought in another state by a subsidiary or additional location(s) of the Named Insured, outside the state of Utah, for which coverage is sought under the same policy.

Vermont Fraud Statement: Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance may be subject to fines and confinement in prison.

Virginia Notice: This Policy is written on a claims-made basis. Please read the policy carefully to understand your coverage. You have an option to purchase a separate limit of liability for the extended reporting period. If you do not elect this option, the limit of liability for the extended reporting period shall be part of the and in addition to limit specified in the declarations. If you have any questions regarding the cost of an extended reporting period, please contact your insurance company or your insurance agent. Statements in the application shall be deemed the insured’s representations.

Virginia Fraud Statement: Any person who knowingly and with intent to defraud an insurer, submits an Application for insurance or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Utah Fraud Statement: Any person who, with intent to defraud or knowing that he is facilitating a fraud against an insurer, submits an application or files a claim containing a false or deceptive statement is guilty of insurance fraud.

Washington Fraud Statement: It is a crime to knowingly provide false, incomplete or misleading information to an insurance company for the purpose of defrauding the company. Penalties may include imprisonment, fines or a denial of insurance benefits.

FRAUD STATEMENT (All Other States): Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

SuperTek and MicroTek: Rhode Island Disclosure Notice: I understand and acknowledge that Claims Expense or defense costs are a part of the limit of insurance for the MicroTekPak product. I also understand and acknowledge that Claims Expenses are part of the limits of insurance for Intellectual Property Claims coverage, if chosen, under the Technology product. This means that Claims Expense will reduce my limits of insurance and may exhaust them completely and should that occur, I shall be liable for any further defense costs. Claims Expense is as defined in the DEFINITIONS section of the policy form. Intellectual Property Claims are as defined in Section III of the Broad Form Endorsement for the Technology product. I also understand that the Limit of Liability for the Extended Reporting Period, if applicable, shall be a part of and not in addition to the limit specified in the Policy Declarations.

SuperTek and MicroTek: Missouri Disclosure Notice: I understand and acknowledge that Claims Expenses are part of the Limit of Liability for the MicroTekPak product. I also understand and acknowledge that Claims Expenses are part of the Limit of Liability for Intellectual Property Claims coverage, if chosen, under the Technology product. This means that Claims Expense will reduce my limits of insurance and may exhaust them completely and should that occur, I shall be liable for any further defense costs. Claims Expense is as defined in the DEFINITIONS section of the policy form. Intellectual Property Claims are as defined in Section III of the Broad Form Endorsement for the Technology product. I also understand that the Limit of Liability for the Extended Reporting Period, if applicable, shall be a part of and not in addition to the limit specified in the Policy Declarations.

Community Associations: Missouri Notice: Pursuant to Section IV, Paragraph R., some Defense Costs are within the Limit of Liability. Pursuant to Section IV, Paragraph R., some Defense Costs are within the Limit of Liability. Any Defense Costs paid under this coverage will reduce the available Limits of Insurance and may exhaust them completely and should that occur, I shall be liable for any further Defense Costs and Damages. Defense Costs are as defined in Section III. I also understand that the Limit of Liability for the Extended Reporting Period, if applicable, shall be a part of and not in addition to the limit specified in the Policy Declarations.

EPL, Corporate D&O and Non-Profit D&O: Missouri Notice: Missour requires that we have information regarding your Authorized Retail Agent or Broker, please provide below.

Retail agency name: ____________ License #: ____________

Agent’s signature: __________________ Main agency phone number: ____________

Agency mailing address: __________________ (Required in New Hampshire)

City: __________________________ State: __________________ Zip: ____________

The signer of this application acknowledges and understands that the information provided in this Application is material to the Insurer’s decision to provide the requested insurance and is relied on by the Insurer in providing such insurance. The signer of this application represents that the information provided in this Application is true and correct in all matters. The signer of this Application further represents that any changes in matters inquired about in this Application occurring prior to the effective date of coverage, which render the information herein untrue, incorrect or inaccurate in any way will be reported to the Insurer immediately in writing. The Insurer reserves the right to modify or withdraw any quote or binder issued if such changes are material to the insurability or premium charged, based on the Insurer’s underwriting guidelines. The Insurer is hereby authorized, but not required, to make any investigation and inquiry in connection with the information, statements and disclosures provided in this Application. The decision of the Insurer not to make or to limit any investigation or inquiry shall not be deemed a waiver of any rights by the Insurer and shall not estop the Insurer from relying on any statement in this Application in the event the Policy is issued. It is agreed that this Application shall be the basis of the contract should a policy be issued and it will be attached and become a part of the Policy.

New York Fraud Statement: Any person who knowingly and with intent to defraud any insurance company or other person files an application for insurance or statement of claim containing any materially false information, or conceals for the purpose of misleading, information concerning any fact material thereto, commits a fraudulent insurance act, which is a crime and shall also be subject to a civil penalty not to exceed five thousand dollars and the stated value of the claim for each such violation.

Applicant’s signature: __________________ Title: __________________ Date: __________________

President, Chairperson of the Board, Managing Member, or Executive Director