



Medical Providers Employment Practices Protection

Claim Examples

Employment Practices Liability:

- ▶ An employee was promoted four times during her nine year employment with a three-physician office but filed suit for breach of contract, racial discrimination, fraud and emotional distress when she was not promoted to office manager after the office merged with another practice. After four years of litigation, the practice settled the case for \$75,000 and defense costs in excess of \$272,000.
- ▶ A medical assistant was demoted to part-time clerk because she was pregnant, as the physician said she would not be able to work the necessary hours. The jury awarded the young woman \$53,000 in compensatory damages plus \$350,000 in punitive damages.
- ▶ A doctor from Florida was ordered to pay \$20,644,500 when three female former employees alleged that the defendant sexually harassed and assaulted each one on different occasions.
- ▶ An administrative assistant working in a surgical center was ordered by her office manager to bill patients for procedures that were not performed. The assistant was uncomfortable doing this and brought the situation to the attention of the owners of the center. The administrative assistant was let go shortly thereafter. She then brought charges against the surgical center for wrongful termination.

Third Party Discrimination:

- ▶ A man complaining of stomach pain went to a physician's office for immediate treatment. Due to the lack of insurance, the office refused to treat the man and sent him to a clinic five miles away. The man filed suit against the physician's office for racial and religious discrimination due to his Middle Eastern and Muslim background.
- ▶ The state of Massachusetts sued a Boston dentist charging him with refusing to treat patients with the AIDS virus and telling employees not to accept HIV-positive patients. They were seeking restitution of \$10,000 per plaintiff.

Third Party Harassment

- ▶ A physician, who has his own practice but was doing rounds at a local hospital, was charged with sexual harassment by two of the hospital's nurses. The nurses claimed the physician made sexual comments and gestures on multiple occasions while the physician was visiting patients.

- ▶ While visiting a medical office, a female drug representative was repeatedly harassed verbally and then touched inappropriately by one of the practice's physicians. The partners were informed, however, when nothing was done the drug representative brought charges of sexual harassment. The defense costs were \$45,000 and the claim was settled for \$225,000

Patient Molestation:

- ▶ A prominent surgeon was accused of forcing a female patient to commit a sex act. The surgeon was acquitted after a lengthy trial; however, he incurred defense costs of over \$140,000.
- ▶ Suit was brought against an oral surgeon and his assistant for allegedly fondling a patient. The surgeon had to relinquish his license and undergo a rigorous investigation. During the investigation, it was found that while under anesthesia, the patient hallucinated.
- ▶ A patient visited a chiropractor for the first time due to a back injury arising from an automobile accident. Being unfamiliar with proper spinal adjustments and manipulations, she felt she was touched inappropriately while the chiropractor performed a lower back adjustment. Although the charges were found to be unsubstantiated and were dismissed by the court, the chiropractor incurred substantial defense costs.

Privacy Breach Expense

- ▶ A dentist's credit card reader is hacked via their wi-fi system, and the practice is legally required to notify all patients and provide them with identity theft monitoring coverage for one year.

Fair Labor Standards Act (FLSA)

- ▶ A small medical office paid over \$20,000 to an employee in overtime wages, and \$4,500 in fees for misclassification of the administrative staff members.
- ▶ A surgery center was sued by three former employees who handled the medical billing for misclassification as independent contractors and failure to pay overtime. The plaintiffs were each awarded \$10,000, and the defense costs exceeded \$20,000



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Product Features:

- ▶ Employment practices liability including third party discrimination and third party harassment (available for most classes of business)
- ▶ \$250,000 separate limit for defense costs for allegations of patient molestation offered automatically (available on most accounts; some restrictions may apply)
- ▶ Fair Labor Standards Act (FLSA) \$100,000 sub-limit for defense costs and loss (available to most accounts in most jurisdictions)
- ▶ Defense and settlement provision (“Hammer clause”) softened to cover 75 percent of defense costs and loss after insured’s final refusal to consent to settle a claim
- ▶ Defense outside the limit if a \$500,000 limit or higher is chosen (does not apply to allegations of patient molestation or violations of FLSA)
- ▶ Full prior acts coverage for claim-free accounts in most states
- ▶ \$50,000 in privacy breach expense, workplace violence, identity theft and kidnapping coverage
- ▶ Punitive damages with most favorable venue wording included in the definition of loss (available in most jurisdictions)
- ▶ Supplemental payments for attorney’s fees and other costs, expenses or fees resulting from the investigation or defense of a proceeding before the state licensing board, local medical board or society or governmental regulatory body regarding allegations of patient molestation (available for most classes of business)
- ▶ Front and back pay included in the definition of loss
- ▶ Wrongful act definition expanded to include coverage for the negligent violation of the Uniformed Services Employment and Reemployment Rights Act (USERRA)
- ▶ Independent contractors are included in the definition of employee
- ▶ Modified severability
- ▶ Spousal liability extended to domestic partners
- ▶ Final adjudication wording for fraud exclusion
- ▶ Defense costs coverage for claims involving the modification of real property

Additional Advantages:

- ▶ A.M. Best rated A++ carrier
- ▶ Extended reporting periods of 1, 2 and 3 years available for 50 percent, 100 percent and 150 percent of the annual premium
- ▶ Risk management Services – Free human resources consultation helpline service with unlimited calls and no time limits plus an online HR Resource Center
- ▶ Timely responses to all inquiries and submissions





Medical Providers Employment Practices Protection Policy

WHY YOU NEED IT:

- ▶ You would never consider not buying malpractice insurance. What about EPL?
- ▶ Charges for discrimination, harassment, wrongful termination, retaliation, and wage-and-hour violations are at all time highs.
- ▶ Discipline against physicians for sex-related offenses continues to increase involving revocation & suspension of medical license.
- ▶ Layoffs, downsizing, mergers between practices, salary freezes and reductions in benefits can be used by past and present employees as evidence of “tangible adverse employment actions” to file charges of discrimination, harassment, retaliation and wrongful termination against employees.
- ▶ An employer can be liable for discrimination and harassment by its employees toward a non-employee such as a patient or vendor

WHAT YOU CAN DO TO PROTECT YOURSELF:

- ▶ Purchase Medical Providers EPL coverage from an A++ rated insurance company specializing in EPL
- ▶ As you do with all insurance, look at the cost of transferring the risk:
 - \$150,000 = average cost of defense
 - \$250,000 = the average jury award if the case goes to verdict
 - \$???,??? = settlements that are private and not a matter of public record

WHAT COVERAGE ARE WE OFFERING

COVERAGE FEATURES	OUR GROUP	COMPETITORS' POLICY
Broad definition of Wrongful Employment Act – We cover Discrimination, Harassment, Retaliation, Wrongful Termination, Workplace Torts, negligent violations of certain employment laws, and include Third Party Discrimination, Third Party Harassment (Third Party Harassment is available for most classes of business)	✓	?
\$250,000 separate Defense Limit for allegations of Patient Molestation (available for most classes of business)	✓	?
\$100,000 Sub-limit for Defense and Loss for Wage-and-Hour Claims (not available in CA and FL or on accounts with prior claims)	✓	?
Defense Costs Outside the Limit – If a limit of \$500,000 or greater is chosen (This does not apply to defense of Patient Molestation)	✓	?
Duty to Defend – We investigate, defend and, with your consent, negotiate the settlement of any Claim	✓	?
Business Resource Center – free HR hotline with unlimited number of calls and not time limits plus discounted HR services such as background checks and online HR training modules	✓	?

IF YOU HAVE ELECTED NOT TO PURCHASE MEDICAL PROVIDERS EPL COVERAGE, PLEASE READ AND SIGN BELOW.

1. We acknowledge that our agent has fully explained the potential employment practices liability risks associated with the operation of our company/organization.
2. We understand that we have the option of purchasing employment practices liability insurance that can protect our company/ organization against the potential for significant monetary loss, including cost of defense from employment practices liability claims. We further acknowledge that our agent has recommended that we purchase the coverage and has provided us with one or more quotes for same.
3. We understand that by electing not to purchase such insurance, we are foregoing valuable protection which means our company/ organization will be responsible for paying the cost of defending and settling any and all employment practices liability claim (s) made against us.

Name _____

Title _____ Date _____

Signature _____