



## 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 percent 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:

- ▶ Financial stability of a carrier rated A++ by A.M. Best
- ▶ Specialized claims unit with expertise in professional and management liability
- ▶ Unsurpassed service with a sense of urgency and care
- ▶ Policyholders have access to many free and discounted services through our Business Resource Center that will assist in growing and protecting their business
- ▶ Free access to eRisk Hub®, an online cyber risk management tool with breach coaches, HIPAA resources and security
- ▶ Free human resources consultation helpline with unlimited calls and no time limits plus an online human resource center





## 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.

**The Business Resource Center is available to all insureds with discounts on background check services, tenant screenings, motor vehicle records, and other great services!**





# 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
- ▶ Three out of every five employers are sued by former employees
- ▶ Sixty-five percent of all companies that have ever fired an employee have been hit with an employment-related lawsuit
- ▶ In 2006, the median award for all plaintiff verdicts was over \$200,000
- ▶ Over 40 percent of all employment practices claims are brought against firms with fewer than 100 employees

The following are important coverages that we offer; make sure your policy includes all of these features:

COVERAGE FEATURES	USLI	COMPETITORS
Fair Labor Standards Act (FLSA) – \$100,000 sub-limit for defense costs and loss (available in most jurisdictions) to protect employers in the event they are confronted with wage and hour disputes		
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 \$500,000 or higher limit is chosen and there are fewer than 200 employees)		
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		
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		
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.		
Independent contractors are included in the definition of employee		
Risk management services – Free human resources consultation helpline service with unlimited calls and no time limits		
Policyholders have access to many services through our Business Resource Center that will assist in growing and protecting their businesses.		

This document does not amend, extend or alter the coverage afforded by the policy. For a complete understanding of any insurance you purchase, you must first read your policy, declaration page and any endorsements and discuss them with your agent. A sample policy is available from your agent. Your actual policy conditions may be amended by endorsement or affected by state laws.



CARRIER:

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# Employment Practices Liability Application – All States

THIS COVERAGE IS LIMITED TO CLAIMS FIRST MADE AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD AS STATED IN THE DECLARATIONS OR ANY APPLICABLE EXTENDED REPORTING PERIOD. DEFENSE COSTS SHALL BE APPLIED AGAINST THE RETENTION. PLEASE READ YOUR POLICY CAREFULLY.

**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 and III 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 the application and submit details in a USLI claim supplement.

Primary Applicant's name (See #4 to add subsidiary(ies)/affiliate(s)): \_\_\_\_\_

Location address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

Web address: \_\_\_\_\_ Email address of primary contact: \_\_\_\_\_

### Description of Operations:

Empty box for 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(s) covered?  Yes  No  
 If "Yes," include employees in employee count above and provide:  
 a. Name of subsidiary(ies)/affiliate(s): \_\_\_\_\_  
 b. Is the subsidiary(ies)/affiliate(s) at least 50% owned by the applicant?  Yes  No  
 c. Does the subsidiary(ies)/affiliate(s) fall within the same class of business as the applicant?  Yes  No
5. Expiring policy: Retroactive date: \_\_\_\_\_ Carrier: \_\_\_\_\_ Limits: \_\_\_\_\_ Retention: \_\_\_\_\_ Premium: \_\_\_\_\_

### (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?  Yes  No  
 If "Yes," what percentage of the workforce was/will be affected? \_\_\_\_\_ %
7. Within the last five years, has any employment related, 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 related, 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?  Yes  No  
 If "Yes," complete USLI Claim Supplement for each claim.
9. Has any policy for employment practices liability insurance ever been cancelled or non-renewed by the carrier?  Yes  No  
 (Do not answer if applicant is located in Missouri)

### III. WRITTEN EMPLOYMENT GUIDELINES

- Applicant currently has a written **e-mail/internet** policy in place **OR**
- Applicant agrees to implement a written **email/internet** policy within 60 days of the effective date of coverage **OR**
- Applicant does not have a written **email/internet** policy in place and will not implement such policy.

The written employment policies below are required to obtain coverage with USLI. By checking the boxes below and signing this application, the applicant agrees they either have or will implement and maintain the policies below within sixty (60) days of the effective date of coverage

- Applicant currently has a written **anti-discrimination** policy in place **OR**
- Applicant agrees to implement a written **anti-discrimination** policy within 60 days of the effective date of coverage **OR**
- Applicant does not have a written **anti-discrimination** policy in place and will not implement such policy.
  
- Applicant currently has a written **anti-harassment** policy in place **OR**
- Applicant agrees to implement a written **anti-harassment** policy within 60 days of the effective date of coverage **OR**
- Applicant does not have a written **anti-harassment** policy in place and will not implement such policy.

### IV. ADDITIONAL APPLICANT INFORMATION

Applicant's mailing address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip code: \_\_\_\_\_

#### FRAUD STATEMENTS

**Alabama, Arkansas, District of Columbia, New Mexico, Rhode Island and West Virginia:** 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.

**California:** For your protection California law requires the following to appear on this application. Fraud Statement: Any person who knowingly presents false or fraudulent information to obtain or amend insurance coverage or to make a claim for the payment of a loss is guilty of a crime and may be subject to fines and confinement in state prison.

**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 a 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.

**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.

**Kansas Fraud Statement:** Any person who, knowingly and with intent to defraud, presents, causes to be presented or prepares with knowledge or belief that it will be presented to or by an insurer, purported insurer, broker or any agent thereof, any written, electronic, electronic impulse, facsimile, magnetic, oral, or telephonic communication or statement as part of, or in support of, an application for the issuance of, or the rating of an insurance policy for personal or commercial insurance, or a claim for payment or other benefit pursuant to an insurance policy for commercial or personal insurance which such person knows to contain materially false information concerning any fact material thereto; or conceals, for the purpose of misleading, information concerning 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.

**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

**Maryland Fraud Statement:** 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 information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.

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

**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.

**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.

**Kentucky and Pennsylvania 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, Virginia and 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 include imprisonment, fines and 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 may be guilty of a crime and may be subject to fines and confinement in prison.

#### STATE NOTICES

**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.

**Florida Surplus Lines 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 and Illinois Punitive Damage Notice:** I understand that there is no coverage for punitive damages assessed directly against an insured under Florida and Illinois law. However, I also understand that punitive damages that are not assessed directly against an insured, also known as "vicariously assessed punitive damages", are insurable under Florida and Illinois law. Therefore, if any Policy is issued to the Applicant as a result of this Application and such Policy provides coverage for punitive damages, I understand and acknowledge that the coverage for Claims brought in the State of Florida and Illinois is limited to "vicariously assessed punitive damages" and that there is no coverage for directly assessed punitive damages.

**Maine Notice:** The insurer is not permitted to withdraw any binder once issued, 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.

**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 extend 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.

**Ohio Representation Statement:** By acceptance of this policy, the Insured agrees the statements in the application (new or renewal) submitted to the company are true and correct. It is understood and agreed that, to the extent permitted by law, the Company reserves the right to rescind this policy, or any coverage provided herein, for material misrepresentations made by the Insured. It is understood and agreed that the statements made in the insurance applications are incorporated into, and shall form part of, this policy. **THE INSURED UNDERSTANDS AND AGREES THAT ANY MATERIAL MISREPRESENTATION OR OMISSION ON THIS APPLICATION WILL ACT TO RENDER ANY CONTRACT OF INSURANCE NULL AND WITHOUT EFFECT OR PROVIDE THE COMPANY THE RIGHT TO RESCIND IT.**

**Utah Punitive Damages 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

**Missouri and Rhode Island Disclosure Notice:** I understand and acknowledge that if a \$100,000 or \$250,000 Limit of Liability is chosen or if the Insured Organization has more than 200 employees, that Defense Costs are a part of the Limit of Liability. This means that Defense Costs will reduce my limits of insurance and may exhaust them completely and should that occur, I shall be liable for any further legal 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.

**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 not 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. A statement made in the application or in any affidavit made before or after a loss under the policy will not be deemed material or invalidate coverage unless it is clearly proven that such statement was material to the risk when assumed and was untrue.

If your state 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: \_\_\_\_\_

(Required in New Hampshire)

Agency mailing address: \_\_\_\_\_

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 provided 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 guides. 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: \_\_\_\_\_  
President, Chairperson of the Board, Managing Member, or Executive Director

Date: \_\_\_\_\_



## Privacy Notice At Collection

We may need to collect certain personal information to provide you with our services and products. For information on how we store, use and protect personal information, please see our Privacy Policy accessible on our website, <https://www.usli.com/privacy-policy/>.