Hidden Exposures? Protect Your Business with Third-Party EPLI
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In today’s litigious society, harassment and discrimination incidents have become increasingly common. To protect your business from claims by workers, such as wrongful termination, breach of employment contract, wrongful discipline, failure to employ or promote, sexual harassment and discrimination, you likely have third-party EPLI (employment practices liability insurance) in place.

But if your employees frequently deal directly with the public, there may be a glaring gap in your coverage. Your business and workers may also be at risk for harassment and discrimination claims from a customer, client, supplier, vendor or visitor. The bad news: these types of claims are not covered by commercial general liability insurance or standard first-party EPLI.

To protect your business, you need third-party EPLI. The types of wrongful acts typically covered by third-party EPLI are discrimination and harassment. Discrimination can include claims based on nationality, sex, disability, age, race, religion, pregnancy or sexual orientation. Harassment can take on many forms, such as unwelcomed sexual advances, requests for sexual favors, and other types of verbal or physical abuse. Third-party EPLI reimburses your company for court and legal fees, as well as any settlements between the business and the accuser.

Third-party EPLI may be appropriate if you frequently meet with clients or deal with vendors. And it’s absolutely essential for any businesses that interact with the public. Examples include large customer service teams, cable television installers, contractors, restaurant, hotel, and transportation workers, and real estate agents.

A customer sued a New Jersey gas station after being sexually assaulted by an attendant who was filling up her car. The woman claimed that the station attendant made inappropriate advances, performed a lewd act and touched her while she was buying gas. The woman claimed that another employee at the gas station did nothing to prevent the incident or intervene during it. 

In another example that made national headlines, thousands of African American patrons of Denny’s restaurants claimed they were refused service, were forced to wait longer than other customers, had to
pre-pay for food, or pay more for food compared to white customers. These claims, which totaled 4,300 and spanned several years across multiple states, culminated in a class-action lawsuit against the national restaurant chain. Denny’s settled the suit in federal court, and the members of the class-action suit were awarded $54 million for damages.  

Starbucks was sued in federal court by a group of 12 hearing-impaired customers who claim they were mocked and mistreated at a coffee shop in New York City. The deaf customers claimed being harassed multiple times because of their disability. During one instance, a Starbucks employee called the police in response to hearing-impaired patrons who met at a Starbucks to hold their monthly Deaf Chat Group meeting, though the patrons were paying customers. The police apologized to the customers and reprimanded the employee for calling the police despite evidence of illegal conduct.

The level of interaction a company has with those who might claim a wrongful act, and the industry in which you operate, can affect the cost of third-party EPLI. Other factors come into play, too, like whether you’ve been sued in the past over employment practices.

While third-party EPLI helps defray the cost of lawsuits and judgments brought against your business, one thing it doesn’t protect is your reputation. Therefore, companies are doing more than just purchasing a third-party EPLI policy; they’re also taking steps to make it less likely they’ll have to use that policy. Effective training and education, no matter your level of exposure, can help prevent claims of wrongful acts against your business or employees. Creating training programs to educate employees on what constitutes harassment and discrimination, as well as putting processes in place about what to do in the event of an allegation, are good starting points. Ask your broker for guidance.

When screening and hiring new employees, it’s essential to create programs that help your HR team vet candidates solely on their qualifications for the job. Documenting your process helps everyone understand job requirements and will provide backup should issues arise.

It’s a good practice to display all corporate policies as they relate to hiring and worker conduct in employee handbooks so the policy is available to everyone and can be reviewed when necessary. Many companies also ask employees to sign a document affirming they have read the employee handbook.

Unfortunately, all of the employee education and training in the world can’t stop a customer or vendor from claiming harassment or discrimination by one of your employees. But a carefully developed third-party EPLI plan that assesses your exposure and helps you completely cover your business can minimize your risk.

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1 NJ.com, “Woman Claims Roxbury Gas Station Worker Sexually Assaulted Her”

2 The New York Times, “Denny’s Restaurant to Pay $54 Million in Race Bias Suits”

3 USA Today, “Deaf Customers Sue Starbucks, Say They’re Mocked”

For more information, please call 1.877.426.7779