

Are you protecting your business against employee lawsuits?



Guest editorial
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In today's workplace, it's important for businesses to manage risk, including the potential for lawsuits from the general public, as well as your company's vendors, customers and even your own workforce. Thankfully, there are ways to protect your business. This article will address the risk of being sued by your own workers.

Employment practices liability (EPL) is an insurance policy specifically designed to protect organizations from claims brought by employees for a variety of workplace situations. EPL insurance can provide coverage for you, as an employer, for suits brought against

you by your employees for claims including, but not limited to:

- Discrimination
- Unlawful demotion
- Unlawful termination
- Harassment
- Hostile working environment
- Lack of advancement
- Wage & hour

EPL can also be extended to include harassment and discrimination suits brought against you by someone other than an employee (i.e., EPL including 3rd party coverage, which we will discuss later in this article).

Lawsuits against employers are on the rise. Companies are finding that they are vulnerable from the pre-hire process through the exit interview and beyond — even if the prospective employee was never hired or was with the company for a matter of only a few days.

It can happen to any employer. It could be a joke told in the break room, an employee you had to

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lay off or fire, or that person you chose not to hire. Every employer can become the target of legal action from past, present and even prospective employees. Even if the claim is groundless or fraudulent, the defense of a suit can be very costly, both financially and through time and resources.

Let's consider a couple of sample claim scenarios.

Standard EPL

An upfitter is sued by a recently terminated employee, who alleges he was terminated based on his age. The employee states he complained several times to his manager that he felt as though he wasn't receiving fair treatment or compensation in comparison to his younger fellow employees.

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Congress considers catalytic converter theft legislation Continued from p8

The PART Act requires new vehicles to have unique, traceable identifying numbers stamped on catalytic converters at the time of assembly. It also proposes a \$7 million grant program through which certain entities can voluntarily stamp VINs or other identifiers onto the catalytic converters of vehicles already on the road at no cost to vehicle owners.

Additionally, the bill increases record-keeping requirements for purchasers and establishes a federal criminal penalty for the theft, sale, trafficking or known purchase of

stolen catalytic converters of up to five years in jail.

H.R. 621 was introduced by Reps. Jim Baird (R-IN), Betty McCollum (D-MN), Angie Craig (D-MN), Randy Feenstra (R-IA) and Michael Guest (R-MS). S. 154 was introduced by Sens. Amy Klobuchar (D-MN), Mike Braun (R-IN), Ron Wyden (D-OR) and J.D. Vance (R-OH).

Contact your legislators

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- house.gov/
- senate.gov/senators/index.htm

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Oxy-acetylene transport considerations

NTEA members routinely receive inquiries from their fleet customers based on Occupational Safety and Health Administration (OSHA) requirements around service trucks with welding gas, particularly when parked at their facilities for a period of time. This brings up common questions regarding transportation and storage of oxygen and acetylene bottles, which are normally part of welding/cutting tools, in mechanics trucks. Proper securement and location of these bottles have been areas of confusion for the industry.

Key details

- Transport requirements for limited quantities of gaseous bottles like oxygen and acetylene require bottles to be securely attached to the truck body. Most states require bottles to be capped and regulators disconnected before transport.
- If kept in an enclosed compartment, sufficient ventilation should be designed into the location for gases being stored.
- If oxygen and acetylene bottles are stored and not anticipated to be used for more than 24 hours, OSHA requires them to be separated by a fireproof wall. However, OSHA has interpretations that may allow for a single bottle of oxygen and single bottle of acetylene used in construction not to be considered in storage if they are securely capped. Your state OSHA laws may be different.

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The employer claims the employee was terminated due to his lack of performance and poor attendance. In this case, the insurance company could pay to defend the employer as well as any damages awarded to the employee or settlement to the employee on the employer's behalf. In many cases, EPL coverage will also pay punitive damages where allowable by law. Even if no award or settlement is made, just the cost of defense can be very high.

EPL including 3rd party coverage

A parts distributor has a full inside sales staff, calling customers all over the United States as well as locally. One of their salesmen has regular contact with a female customer, who feels he repeatedly flirts with her during their sales calls, even suggesting he can give

her a break in pricing because he likes her. At one point, he suggests they meet in person, to which she declines. She sues the salesman's employer for sexual harassment. Under the 3rd party coverage extension, the insurance company could pay to defend the employer, pay any damages awarded or any settlement.

This coverage extension is important to include on your EPL policy because there was coverage provided in this scenario even though the claimant wasn't an employee.

It is commonly thought that standard general liability or garage liability policies would cover these types of claims. Unfortunately, that is rarely the case, and if coverage is afforded, it's done so on a limited basis. To insure these exposures, a separate policy likely must be purchased.

To obtain EPL, you must complete an application. The applications are typically brief, and obtaining a quote can be a quick process. The policies are underwritten based on many factors, but primarily:

- How many employees do you have?
- What is your turn-over rate?
- Do you have an employee manual?
- If so, does it include anti-discrimination wording, open-door policy wording, etc?

- Are you expecting any downsizing or growth in the next 12 months?
- Remember, actions that qualify as "harassment" or "hostile" are often defined in the courts as whatever the claimant interprets the actions to be. If the employee feels as though they're being harassed, he or she could have a case against you. This can be a frustrating situation for most employers because they truly care about this issue and diligently strive to keep this kind of behavior out of the workplace. Unfortunately, that's not always enough.

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