

Smaller Employers Hardest Hit in a Battle Where Winning Can Mean Losing

This phenomenon is not limited to large corporations. Mid-sized and smaller companies are being hit hard— and ultimately hit hardest. A recent case tells the story. A Philadelphia jury returned a verdict for a plaintiff who worked at a water treatment company. Apparently, the plaintiff was subjected to national origin slurs and the jury deliberated for less than one-half hour and awarded the plaintiff \$200,000 in front and back pay, \$100,000 for emotional distress, and \$265,000 for the plaintiff's attorneys, for a total of \$565,000. The company has fifteen employees. Not only can they not afford to lose, but small and mid-sized employers cannot even afford to win employment lawsuits. A company with fifty employees can ill afford to pay \$100,000 or more in legal fees to win such a dispute—the cost of the defense alone may be a disaster.

Most mid-sized or smaller employers may not consider the need for a program of insurance and risk management to help insulate them. By all indications, however, the employment litigation trend is not subsiding. When the Society for Human Resource Management (SHRM) randomly polled members recently, 57 percent of the 616 respondents said their organizations had faced an employment-related lawsuit at least once during the past five years. Sixty percent of them reported slight to substantial increases in litigation costs for employment matters; 85 percent felt the majority of employment-related litigation cases are not legitimate. Based on these reports, the conclusion is that the majority of employers are paying ever increasing costs to defend employment litigation they believe is without merit. For more information, please visit the SHRM website.

EPLI: A Viable Solution

No company bears the risk of fire, theft, or customer injury without the protection of insurance. Yet, it is far more likely that a company will face an employee lawsuit than the devastating effects of a fire. Almost 75 percent of all litigation against corporations today involves employment disputes, and the typical expense of such a lawsuit exceeds \$250,000 in judgments, costs, and attorneys' fees.

Typically, general liability policies do not include coverage for allegations of workplace discrimination or wrongful discharge. Directors and officers liability policies may provide them some coverage, but most D & O policies do not cover the corporation or its employees. EPLI offers a way for employers to shift this risk. Yet, according to the recent SHRM litigation survey, only 22 percent of the respondents reported having EPLI coverage.

All employers—large and small—should develop preventive strategies to address exposure to employment lawsuits. Part of any preventive strategy should be policies and procedures that promote an issue-free workplace. However, no program is fail-safe. Employers must take action to limit this exposure which is undeniably a cost of doing business. Practical and cost effective, EPLI is an option to address this risk.

EPRMA provides an additional benefit. With ComplyAmerica Training, small businesses are able to protect their own managers. Too often the first casualty of a charge of discrimination is the manager who sometimes is directly involved but more often simply mishandles the situation. Recognizing problem behavior and having access to help through the Helpline can save your manager's career. This training is used by Hitachi, American Express and other Fortune 500 companies. With EPRMA membership small businesses can afford the same risk management strategies used by much larger more sophisticated companies.