
Insurance Coverage for Employment Practices Claims

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Why Should I Care?



- **Considerations for Defense Counsel**

- Policy Benefits: Duty to Defend, Duty to Indemnify, Duty to Settle
- Professional Liability
- Timing!

- **Considerations for Plaintiff's Counsel**

- Availability of funds to settle/satisfy judgment
- Pleading into Coverage
- Settlement Negotiations

What Now? Collect Everything!



- **Commercial General Liability**
 - Applies to Bodily Injury and Property Damage
 - Includes Personal & Advertising Injury Coverage
- **Professional Liability/Errors & Omissions**
 - Requires “Professional Services”
- **Directors & Officers Liability**
 - Applies to “Wrongful Acts”
 - Typically excludes employment practices/claims by employees
- **Employment Practices Liability (EPL)**
 - Applies to “Wrongful Employment Acts”

Claims-Made Coverage



- What is Claims-Made Coverage?
- What is Claims-Made-and-Reported Coverage?
- When do I report?
 - “Claim”
 - Circumstances that may lead to a “Claim”

Claims Reporting



- Wrongful Acts/EPL Coverages Triggered by a “Claim”
- What is a “Claim”?
 - Lawsuit
 - Administrative Proceedings
 - Internal Investigation
 - Derivative Suit
 - “Written demand for monetary relief”
 - “Written demand for monetary or nonmonetary relief”

Related/Interrelated Claims



Example:

More than one **Claim** involving the same **Wrongful Act** or **Related Wrongful Acts** of one or more **Insureds** shall be considered a **single Claim**.

All such **Claims** constituting a single **Claim** shall be **deemed to have been made** on the earlier of the following dates: (1) the earliest date on which any such **Claim** was first made; or (2) the earliest date on which any such **Wrongful Act** or **Related Wrongful Act** was reported under this Policy or any other policy providing similar coverage.

Plead with Coverage in Mind

- Intentional conduct → Excluded
- Malicious acts → Excluded
- Illegal profit → Excluded
- Fines/penalties → Excluded

Considerations for Plaintiff's Counsel



Use Your Discovery Tools

- Federal and Idaho Rules permit discovery of “insurance agreements” which “may be liable.”
- All policies dating back to first “occurrence” are relevant where claim asserts bodily injury or property damage.
- Obtain all potential coverages.
- Obtain and examine complete documents.
- Ask for ROR letters.

Consider a Limits Demand

- A demand within policy limits triggers insurer's duty to evaluate settlement opportunity giving "equal consideration" to insured's interest as its own.
- Rejection of opportunity to settle within limits puts burden of excess judgment on insurer.
- Punitive Damages assignable in Idaho.