



Insuring Against Retaliation by Disgruntled Employees

A relatively novel type of insurance is available to businesses – one that protects against the risk of employment-related litigation. Businesses can insure against certain types of employment-related liability, such as wrongful termination, sexual harassment and most complaints of discrimination. Under an employment practices liability insurance policy, the insurance company would insure your business for both liability and defense costs up to stated policy limits. Punitive damages, civil or criminal fines, and non-monetary damages (e.g., reinstatement of an employee) would not typically be covered. Acts by an employee within the scope of his employment could also be insured so that your key employees are protected from personal attacks by retaliating employees.

As is typical with most insurance, the business would be required to alert the insurer as soon as it knows of a situation that will probably result in a claim. The insurance company retains the absolute rights to hire defense counsel and to settle the case up to policy limits.

Some companies also offer a review of all personnel policies and practices, including employee handbooks, job applications, collective bargaining agreements, affirmative action programs and employment contracts. Such a review is intended to help a business identify and remedy deficiencies in Human Resource practices and often results in lower premiums.

The advantages of obtaining this type of insurance are that it:

- Avoids the potentially steep cost of hiring attorneys to defend the company in the event of employee claims.
- Minimizes the potential disaster of losing a lawsuit or claim brought by an employee.
- Allows you to budget your cash flow for reasonable premiums; whereas it is much more difficult to budget for a huge judgment that must be paid.

The disadvantages of such insurance are:

- It does require a periodic cash outlay in the form of premiums.
- You do not have the right to select a law firm in the event of a claim. (However, you may be able to encourage the insurer to choose counsel as long as the lawyer is on their pre-approved list.)
- You have little control over settling a claim—the insurance company can do that in an attempt to limit their risk even if you disagree with settlement. (That said, insurance companies claim that they are as motivated as the insured to make reasonable settlement decisions since the insurance company could face payment of future claims if their insured is perceived as an "easy" target for employment litigation.)

If your business chooses not to obtain employment hazard insurance, it should nonetheless strongly consider engaging an experienced human resource consultant or employment lawyer to conduct a review of your personnel practices and procedures. The modest fee charged for a human resource review pales in comparison to the potentially astronomical cost of paying an attorney to defend even one lawsuit or discrimination claim.

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