

EPLI Lawsuits on the Rise Due to COVID-19

The coronavirus pandemic of 2020 had both immediate and far-ranging effects on business management. Employers struggled to keep afloat while making critical changes in the way business operations were conducted. Some of these changes revolved around procedures and policies governing remote work options for employees. Others included the implementation of safety procedures, reduced hours, and cuts in payroll. Unfortunately, rapid evolution of the pandemic workplace has resulted in a sharp increase in employment practices liability insurance (EPLI) lawsuits. Employers need to gain an understanding of the factors behind these legal challenges, helping them to manage the risks that employment practices liability insurance is designed to cover.

A Spate of Employee Lawsuits in the Wake of the Pandemic

As the pandemic spread across the United States, state lockdown orders and social distancing recommendations meant that employers had to make exceedingly difficult decisions. Many businesses were forced to curtail operations altogether, while others were able to reduce hours and workforces to make ends meet. So-called "essential" businesses such as gas stations, grocery stores, and pharmacies could remain in operation, but the spread of the coronavirus in cities across the country put employees at risk.

COVID-19 took its toll on essential workers, with thousands reporting illness and still others dying from complications of the infection. The first EPLI lawsuit filed in the U.S. occurred on March 25, 2020. The estate of a deceased Walmart employee sued the retailer, alleging managers knew that several of their employees and customers were infected with COVID-19. Negligence on the part of the store and its managers were alleged to include:

- Failure to adopt and promote social distancing/quarantine guidelines mandated by state and federal authorities.
- Failure to adequately clean and sterilize store areas to prevent the spread of infection.
- Failure to provide personal protective equipment (PPE) to the deceased employee and others in the store.
- Failure to develop a response plan for infections.
- Failure to provide warnings to employees who may have been exposed to COVID-infected individuals.

A Looming EPLI Crisis?

After the Walmart negligence lawsuit was submitted to courts, other employee lawsuits followed. In Texas, the family of a deceased meatpacking employee sued the company for negligence, alleging that the employee had been told to report to work despite exhibiting symptoms of COVID-19 under threat of dismissal. In that lawsuit, filed in April 2020, other employees claimed that the meatpacking company took no precautions against the spread of infection, potentially putting plant workers at risk of illness or death.

Since then, dozens of similar lawsuits were filed, putting strains on even the most comprehensive employment practices liability insurance. As the pandemic continues, business analysts expect hundreds, if not thousands, of legal claims against employers for failing to take precautions against the spread of COVID-19. The defense costs of lawsuits alone can negatively harm business assets; paying claims or settlements for failing to protect employees may bankrupt employers who have struggled throughout the pandemic. EPLI coverage may protect many employers, but even this insurance protection may not be enough to withstand repeated legal claims.

Managing COVID Risks in the Workplace

Employment practices liability insurance (EPLI) is one of the cornerstones of a robust risk management program for employers. Protecting the business and its employees supplements the coverage afforded by this valuable insurance. Employers facing legal claims against their employment practices must do more to prevent the spread of COVID-19 in the workplace. Business owners must also evaluate their existing insurance coverages, pinpointing exclusions and coverage gaps that may come back to haunt them if employees were to become infected.

Summary

The pandemic has created significant challenges; smart business owners took the steps needed to prevent infections from harming business operations, while others may have unnecessarily put their workers at risk of illness

or death. By adopting stringent risk management practices, including following the guidelines of infectious disease agencies and state/federal officials, employers may weather the challenges imposed by COVID-19 while helping to keep their workers safe.

Sources

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