

EPLI Market in 2021 Shows Increased Risks Due to COVID-19

It has been nearly a year since the first recorded COVID-19 case in the U.S. was announced, and the virus continues to take a devastating toll on the country. In addition to the obvious health impacts, the pandemic has had a tremendous effect on the economy, infiltrating nearly every sector. The insurance market is one arena that is beginning to experience the ripples of instability, uncertainty, and increased risks that fluctuating guidelines and rising infection and death rates have wrought.

While industries that were able to move their employees to remote work did so at the beginning of the pandemic, numerous employers were unable to do so due to the nature of the work. In addition, as restrictions lifted, some remote workers were sent back to the workplace. As a result, employers could see a significant increase in claims related to COVID-19. As such, the outlook for employment practices liability insurance shows an increase in risks for 2021.

What Is EPLI?

One question that frequently gets asked is, "Is employment practices liability insurance the same as workers' compensation?" It is not. EPLI coverage provides employers protection against claims that are filed for wrongful employer practices or acts. There are four major claim categories EPLI policies usually cover, though some policies may cover others:

- Privacy rights
- Negligence
- Discrimination
- Employment status

What Does COVID Have To Do With EPLI?

At first glance, it may not seem like any of these types of claims would have any relevance to the pandemic. However, there are several coronavirus-related claims that do have the potential to fall within the employment practices liability insurance coverage. One type of case, in particular, could fall within EPLI policy provisions. While these policies typically don't cover claims related to injuries or illnesses, they generally cover policy rights infringement cases. This is relevant because when someone in the workplace contracts COVID-19, contact tracing is conducted. During this process, other employees inevitably discover that a coworker has the virus. Thus, claims alleging unlawful disclosure of health information could result.

What Are the Risks for 2021?

EPLI insurance carriers may see a rise in the number of cases filed. In addition to potential increases in privacy rights claims, one other category of professional liability coverage likely to see increased risks for claims is director's and officer's liability insurance. The economic downfall from the pandemic is primed to continue and deepen in the new year. Small businesses in particular will face significant financial hardships, as they have so far.

Larger corporations often have surplus capital to withstand business interruptions while supporting employees, at least to some extent. The same is not true for small businesses. As such, it is quite likely that more D&O claims will be filed in 2021 due to increased litigation. Furthermore, it is entirely possible that courts will order higher payouts because of a widespread perception that companies should have been better prepared for the scenario the country is currently facing.

Sources

Miranda, Leticia. "Even With a Vaccine, U.S. Economy Faces Long Path Toward Recovery." NBC News, November 9, 2020, <https://www.nbcnews.com/business/economy/even-vaccine-u-s-economy-faces-long-path-toward-recovery-n1247196>.

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