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THE WORLD'S LARGEST JUNK REMOVAL SERVICE

**Managing Employment Practices Liability:
Strategies to Reduce Your Risk**



PRESENTED BY:
LIBERTY INSURANCE AGENCY

Steve Pscolar

YOUR LIBERTY TEAM



Kevin Heher
CPCU, ARM,
AFSB, AAI
PRESIDENT

Kevin is President of Liberty Insurance Agency, a family owned business established in 1950. We work for our clients and strive to be their go-to trusted advisor for insurance & risk management strategies and solutions.



Jason Rigby, CRM
**SENIOR VICE
PRESIDENT, PROPERTY
& CASUALTY**

Jason joined Liberty Insurance Agency as a Broker/Producer in 2013. Jason's focus has been to bring his knowledge and understanding of enterprise risk management to employers who wish to better understand and more aggressively manage the quality and cost of their risk management program. As Senior Vice President of the Commercial Property & Casualty Department, Jason has worked to deliver a higher level of value to Liberty's clients through innovative strategies aimed at expanded support to Human Resource Directors.

YOUR LIBERTY TEAM



Steve Pcsolar, CISR
ACCOUNT MANAGER

Steve's primary role is to assist with day-to-day account service activities and requests, including correspondences, account file maintenance, certificate requests, MVR reports, etc. Steve has over 8 years of property-casualty experience and completed the Certified Insurance Service Representative (CISR) designation in 2015. To further expand his service capabilities he is working towards his Certified Risk Manager designation.



Anthony Viola
CLAIM MANAGER

Anthony is responsible for coordinating the claims handling process. Anthony has over 20 years of property & casualty experience working as a multi-line claims adjuster with Travelers Insurance. Anthony serves as an advocate to the client to achieve the best optimal outcome. He monitors the performance of the carriers to ensure the highest level of customer service and participates in claim review meetings.



Agenda

- **Increasing monetary exposures**
- **Employment Practices Liability (EPL) insurance specifications, coverage and exclusions**
- **Concerns due to COVID-19**
- **EPL insurance policies**
- **Limiting exposures**





Increasing Monetary Exposures

- **There were 67,448 charges filed for discrimination with the U.S. Equal Employment Opportunity Commission (EEOC) in 2020.***



*Per data from EEOC. Includes race, sex, national origin, religion, retaliation, age, disability, and equal pay act harassment.



What percentage of discrimination case are won?

- **The EEOC achieved a successful outcome in 95.8% of all district court resolutions.**
- **The EEOC advances opportunity in the workplace by enforcing federal laws prohibiting employment discrimination. More information is available at www.eeoc.gov -- February 26, 2021**



How much is the average EEOC settlement?

- **According to EEOC data, the average out-of-court settlement for employment discrimination claims is about \$40,000.**
- **Studies of verdicts have shown that about 10% of wrongful termination cases result in a verdict of \$1 million or more. -- May 5, 2021**



Strategies to Reduce Exposure

- **As litigation and damage awards costs continue to rise, experts predict that employment liability will only become more complex.**
- **Employers must limit their exposure by focusing on:**
 - **Desirable Human Resources policies and practices**
 - **EPL insurance coverage**



Safe Workplace & OSHA Violation Claims

- **Most policies *exclude* coverage for both defense and settlement for actual or alleged violations of OSHA statutes.**
- **For employees citing quitting their job due to an unsafe workspace, if the employee is terminated, there is “likely” coverage for retaliation.**
- **Whether or not the employee has a valid OSHA claim is a separate discussion, but without an EPLI policy, these suits would have to be covered out of pocket, and if any damages are awarded, they would come directly from the company**
 - **Coverage for retaliation only*****



COVID-19 and Employee Concerns

- **Wage & Hour Claims**
- **FLSA Violations (Fair Labor Standards Act)**
- **FMLA Violations (Businesses with more than 50 employees in a 75 mile radius) requires private employers to give employees up to 12 weeks of unpaid leave a year for specific reasons.**
- **Eligible employees:**
 - **Works for a covered employer**
 - **Has worked for the employer for at least 12 months**
 - **Has at least 1,250 hours of service for the employer during the 12 month period immediately preceding the leave;**
 - **And works at a location where the employer has at least 50 employees within 75 miles**



Limiting HR Exposures

- **Conduct an HR audit to review:**
 - **Employee handbook**
 - **Recruitment and hiring practices**
 - **Disciplinary and termination practices**
 - **Performance review requirements**
 - **Promotion and demotion procedures**
 - **Workplace rules**
 - **Training and supervision of employees**



HR Strategies

- **Establish solid recruitment and hiring processes that stress a 'zero-tolerance' policy for discrimination and/or harassment.**
- **Institute a proper employee orientation.**
- **Establish standard disciplinary action and termination plans.**
- **Keep records and remain consistent throughout all hiring processes.**



Recruitment

- **Job interview pose additional liabilities if interviewers are not aware of the laws**
 - **All employees involved in supervisory positions should receive additional training particularly in interview skills**
 - **Educate supervisors & interviewers through periodic training to avoid questions pertaining to the following:**
 - **Age**
 - **Religion**
 - **Race**
 - **National Origin**





Application of Employment

- **At-will agreement**
- **EEO statement**
- **Authorizations to verify information**
- **Perform due diligence**
- **Contact references**
- **Check school records**
- **Verify degrees earned**
- **Conduct aptitude testing**
- **Explain and conduct drug/alcohol testing**



Employment Offers

- At-Will Employment:

- **Make a job offer in writing -- specify position, duties, salary, vacation accrual and stipulations of any bonus or incentive pay**

- Contract Employees:

- **Be aware of contract breaches**
- **Outline salary in bi-weekly or monthly increments**
- **If stated as annual, may be misconstrued as contract for a year**



Employment Orientation

- **Orient all new hires on the following:**
 - **Review employee handbook**
 - **Explain all workplace policies and rules**
 - ***Explain grievance procedure***
 - **Require employees to sign and acknowledge information was reviewed and understood**





Annual Reviews

- **When conducting annual reviews:**
 - **Be specific about criticisms, goals for the future, etc.**
 - **Be objective versus subjective**
 - **Offer positive criticism**
 - **Set performance-based criteria**
- **Require employees to conduct self assessments to:**
 - **Be a part of goal-setting process**
 - **Write comments**
 - **Sign performance-based criteria**



Enforcing Performance Policies

- **If an employee's performance is subpar:**
 - **Outline areas of improvement in writing**
 - **Set timelines for improvement**
 - **Explain consequences, if no improvement**
- **Institute uniform disciplinary actions:**
 - **Actions should be equitable for similar infractions**
 - **Review policies and consequences**
 - **Increase action in severity**
- **Document all occurrences:**
 - **Indicate action taken**
 - **Specify employee and results of your actions**



Course of Action

- Courses of action may include:

- **Disciplinary**
- **Training**
- **Reassignment of duties**
- **Restructure workplace**
- **Periodic review for employees and supervisors**
- **Workplace policies and rules**
- **Employee handbook**
- **Performance management**



Handling Terminations

- **After failed attempts:**
 - **Conduct a review of employee's personnel file with a labor attorney or legal counsel to identify possible legal ramifications**
 - **Proceed with termination or review the disciplinary process**
- **Present termination notice calmly and concisely:**
 - **Inform employee in person in a private manner**
 - **HR representative should be present, as a witness, and present continuing benefit options, such as COBRA**
 - **Also consider having security personnel escort the employee out of the building, if necessary**



Review

- **Reduce your liability by putting the proper procedures in place, communicating them to management and employees and promptly addressing all complaints.**
 - **Consider additional employee/supervisor training stressing a zero-tolerance policy for discrimination and harassment**
 - **Utilize written employment policies and best practices**
 - **Thoroughly investigate every incident of harassment; give employees options for reporting grievances**
 - **Conduct objective annual reviews and have employees participate in review process via self-assessment**
 - **Document all occurrences and remain consistent**



Working Together

- **Take the first step in reducing your employment practices liability.**
- **We can help you:**
 - **Secure custom EPL insurance coverage**
 - **Conduct an HR audit**
 - **Establish loss control procedures and policies**
 - **Avoid litigation**

Working together to reduce employment-related risks!

Thank you!

Liberty Insurance Agency is your trusted advisor and here to service your account! Please do not hesitate to contact Jason or Steve directly with any questions or concerns.

We will be breaking down the topics in this training to focus specifically on the areas where you can make improvements if needed. While every 1-800-GOT-JUNK? operation should be considered Best-In-Class, we take great pride in making sure this message is sent loud and clear to the carriers writing your policies.