

Employment Practices Liability Claim Reporting – Time is of the Essence

One of the most frequently cited reasons for denial of an Employment Practices Liability (EPL) claim, (typically covered under an Association's Directors & Officers' (D&O) policy), is late notice. Luckily, this common problem can be easily corrected by simply understanding what constitutes a claim. The first step to ensure avoidance of late reporting is to comprehend how your policy defines both a claim and the period during which it must be reported.

What constitutes a claim?

In most D&O policies the definition of a claim includes receipt of a lawsuit or a charge filed with the EEOC or a similar state agency, as well as any written demand for damages. EPL claims usually involve allegations of discrimination or harassment but can also include claims related to wrongful termination, hostile workplace and retaliatory discharge.

Claims are frequently not reported because the organization often views the EEOC or state charge as "frivolous" and "not posing a threat of exposure".

Claims made basis

EPL coverage is primarily written on what is termed a "claims made" basis. A policy

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written on a "claims made" basis means the policy must be in force at the time the claim is made (regardless of the actual date of the incident) in order for the insurance carrier to respond.

Most policies contain language which cites how soon a claim must be made. The most common phrases are: "as soon as practicable" or when "you first become aware of the claim". However, under a "claims made" policy a new claim must also be reported to the carrier within the same policy period as it is received by the policy holder.

Late notice

Failure to report claims on a timely basis almost always results in a "late notice" denial of coverage being issued by carrier. Legal fees accrued prior to the date the claim was reported are not covered. Prompt reporting not only allows you access to the people who know what needs to be done

immediately, but allows your insurer to gain control of the claim from the start, which has been proven to minimize litigation as well as the overall cost of claims.

The best way to avoid denial of coverage based on late reporting is to gain a solid understanding of what constitutes a claim, under your policy as well as the noted time requirements.

For more information please contact your Mesirow Financial representative.

This article is intended as an overview and should not be viewed as legal advice. Please consult with your attorney if you have any questions.