

Safeguard employment practices in order to protect your church

By Marjorie Young

Would your church's insurance policy provide coverage if the church, the pastor, the board of directors, or the business manager was sued by an employee or former employee who claimed he or she was sexually harassed, wrongfully terminated or subjected to racial or sexual discrimination? Probably not, unless you have employment practices liability insurance (EPLI).

The need for EPLI has never been greater as employees and former employees file more complaints and lawsuits alleging they were wronged on the job. And state agencies and the federal government have gotten into the act too. The U.S. Equal Employment Opportunity Commission has collected billions of dollars from employers found to discriminate against their employees.

Not long ago, churches ran little risk of such complaints because their employees felt loyal to an organization doing God's work. Some employees still feel that way, but not all. It's been estimated that 19 percent of all lawsuits filed against churches result from employment disputes. It can take tens of thousands of dollars or more in legal fees to get to that point, an outlay few churches could afford.

Laws for employee protection

The need for EPLI grew from the passage of several laws geared to protecting employees from alleged wrongful acts committed by employers. The leading legislation was Title VII of The Civil Rights Act of 1964, which bars discrimination because of race, color, national origin, sex or religion, later amended to include pregnancies.

Other laws that may generate employee claims include The Equal Pay Act of 1963, Age Discrimination in Employment Act of 1967, The Americans with Disabilities Act of 1990 and various laws protecting "whistleblowers." All these significantly expand the number of plaintiffs who can sue and the remedies available to them. Employers of all sizes and types are vulnerable.

In response, insurers developed EPLI, which covers claims including:

- Wrongful termination
- Sexual harassment
- Discrimination
- Retaliation
- Failure to employ or promote

- Deprivation of a career opportunity
- Negligent evaluation
- Defamation
- Wrongful infliction of emotional distress

EPLI also covers your costs stemming from proceedings (civil, arbitration, regulatory and administrative), settlement agreements and trials, including defense costs and judgments. It covers charges brought by or on behalf of past, present or prospective employees (who can claim they weren't hired because of discrimination). Coverage can be extended to third-party claims of discrimination or harassment by employees while they are representing the insured company.

Higher retentions

Depending on circumstances, you may be encouraged to accept higher retentions (deductibles) than in the past. For instance, while insurance policies have traditionally had only one retention, some carriers have begun imposing higher retentions for class-action suits than for single-party suits. Companies are also using separate retentions for mass-action suits, which represent a smaller group than in a class action, but are filed by more than one employee.

There are several important considerations to keep in mind in order to get the most out of your EPLI dollar.

Buy catastrophic coverage. Most churches should look toward EPLI for catastrophic coverage. First dollar coverage is no longer available. Any money saved with a larger self-insured retention can go toward buying higher limits. Consider a \$10,000 to \$50,000 retention and \$2 million to \$5 million of coverage.

Remember to insure for punitive damages where permitted by law. Punitive damages, which can be enormous, are uninsurable in 26 states. Domestic carriers include "most favorable venue" language in their policies. However, if a case is brought against an insured in a jurisdiction where punitive damages are uninsurable, there is no guarantee that they can move to a more favorable venue where punitive damages are insurable.

Offshore policies option

Offshore carriers are not subject to U.S. law and offer full punitive damages coverage. The only catch is that using >>

offshore carriers may not be as easy as accessing domestic carriers since you have to select a domestic broker who knows how to access international markets. When offshore carriers provide coverage that is uninsurable in the United States, the law does not permit them to conduct business in the United States. Punitive damages wrap-around policies typically add 15 to 30 percent to your base premium.

Seek key coverage extensions. EPLI can even provide coverage for suits filed by non-employees who claim sexual harassment or discrimination based upon age, gender, race color, national origin, religion, sexual orientation or preference, or pregnancy. Adding a third-party liability endorsement is a good idea for most churches. Domestic carriers will generally charge up to 25 percent of the base EPLI premium to add this coverage, while offshore carriers generally charge around 15 percent.

Favorable policy language

Your broker may be able to negotiate more favorable policy language. You can request key coverage extensions, which may not cost anything extra. For example, a liberalization clause says that if the during policy year the employment practices form changes and coverages are broadened, you can opt to use the new wording of the amended policy.

Additionally, a rating-change endorsement lets you cancel your policy pro rata without a short-rate cancellation fee if the

carrier's financial rating declines. This endorsement can be helpful in protecting the buyer against changes in the insurer's solvency. This endorsement has become more important in light of the deteriorating financial health of a number of insurers.

Look for a package deal. Sometimes you have to buy a separate EPLI policy. However, sometimes EPLI can be bundled into another policy, such as a directors' and officers' liability policy. This can be more cost-effective.

Use loss control. No matter what kind of EPLI coverage you're buying, you'll be in a much better position if you have a proactive loss control program in place and communicate your policies to your employees. Sensitivity training, legal audits, diversity counselors and access to lawyers who are expert in handling employee terminations can all help reduce your risk.

Be sure that you have written procedures on hiring, promoting and firing. If you can show that your church "went by the book," it may prevent a complaint from ever reaching the court or a state or federal equal-opportunity commission. And if the complaint does advance to the next level, you'll have a better defense.





Marjorie Young is vice president of E.G. Bowman Company Inc., New York, NY. [egbowman.com]



THOMAS
CREATIVE APPAREL, INC
One Harmony Place
New London, OH 44851



www.thomasrobes.com
Free sample robes
Free 60 Page Robe Catalog & Swatches
Excellent Customer Service
Prompt Delivery Schedules
Finest Quality with Innovative Styling
Made in the USA
1-800-537-2575 • Fax: 419-929-0122
email: info@thomasrobes.com

We know where to look.
Thorough, Confidential, Inexpensive, Reliable **Background Screenings**

Protection for your most treasured assets . your children . your finances . your business . your reputation.
Accufax's 20+ years of experience, provides reliable background screenings for every area of your life.

800.256.8898 Accufax-us.com