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Top 10 Things to Look for in an Employment Practices Liability Policy

1. Broad Insured Definition – The definition of insured should cover the entity, directors, officers and employees (including full-time, part-time, seasonal, temporary, leased and loaned).
 2. Broad Claim Definition – The definition of claim should include written demands for monetary damage, as well as criminal, civil, administrative, and regulatory proceedings, investigations, and arbitrations.
 3. Broad Loss Definition – The definition of loss should include damages, settlements and judgements, defense costs, front and back pay, and punitive damages (with most favorable venue wording).
 4. Broad Definition of Covered Wrongful Employment Practice – The definition of wrongful employment practice should include wrongful termination, sexual harassment or other unlawful in the work place, violation of federal, state, local or common laws concerning employment or discrimination in employment, employment related misrepresentation, wrongful deprivation of career opportunities, negligent evaluation of employees, failure to adopt adequate employment policies, defamation, and retaliation against employees.
 5. No Prior Acts Exclusion – The policy should not exclude acts occurring prior to the inception date of the policy.
 6. Final Adjudication Wording on Personal Profit and Fraud Exclusions – These exclusions should only apply if it is established in a final adjudication that the insured “in-fact” gained any profit, or committed any fraudulent act.
 7. Emotional Distress and Mental Anguish Carve out of BI/PPD Exclusion – Emotional distress and mental anguish should be carved out of the bodily injury exclusion since these are alleged in many EPL suits.
 8. Retaliation Carve out of Pollution Exclusion, ERISA, Cobra, Fair Labor Standards Act, OSHA, NLRA - There should be a carve out of these exclusions for retaliatory claims. Pollution or violations of OSHA, for example, are not covered by an EPLI policy, but a wrongful dismissal of an employee who is terminated for exercising their rights under such laws or being a whistleblower, should not be excluded.
 9. Carve out of Contract Exclusion – There should be wording in the contract exclusion that provides that the exclusion would not apply if and to the extent that liability would have attached in the absence of such a contract.
 10. Mediation Provision – There should be a benefit to the insured if a timely settlement is reached via mediation.
- ❖ Other things to look for in an EPLI Program include an excellent risk management program, an option to provide a 3rd party extension, a “softened” hammer clause, flexibility in limits and retentions, excellent claims handling ability and the ability to provide related coverages such as D&O, E&O, and Fiduciary Liability in a combined policy.