

2024 EPL Insurance

Market Outlook

Amid challenging market conditions, most employment practices liability (EPL) insurance policyholders have experienced ongoing rate jumps, underwriting scrutiny and limited capacity over the last several years. Fortunately, these conditions have slightly cooled in the past 12 months, allowing for rate deceleration. According to industry data, most insureds with good claims history encountered slight premium hikes ranging between 3% and 7% in 2023. Most insureds can expect another year of modest rate increases going forward; yet, policyholders with poor loss history or who operate in certain states and industries may continue to face more substantial rate hikes.

Developments and Trends to Watch

- **Increased regulatory scrutiny**—In recent years, the White House and the U.S. Equal Employment Opportunity Commission (EEOC) have collaborated on various regulatory initiatives to fight systemic discrimination in the employment landscape. Such discrimination refers to workplace policies and procedures that can place underserved groups at a disadvantage (e.g., racial injustices and gender pay disparities). According to the EEOC's latest report, the agency filed 143 new employment discrimination lawsuits during fiscal year 2023, representing more than a 50% increase from the previous year. As regulatory scrutiny continues to rise in the employment space, it's crucial for businesses to maintain documented workplace policies that foster a culture of inclusivity, thus mitigating the risk of systemic discrimination lawsuits and associated EPL losses.
- **Discrimination concerns**—The emergence of legislation and litigation related to both size and pregnancy discrimination have contributed to rising EPL exposures over the past few years. As it pertains to size discrimination, federal employment laws prohibit adverse treatment based on a range of protected characteristics; however, these characteristics don't expressly include height and weight. As a result, some states and municipalities have started implementing legislation to address size discrimination in the workplace. These changes have largely stemmed from employees across the country voicing their support for expanding protected characteristics to include height and weight. As more areas follow suit and establish similar legislation, businesses that fail to ensure fair treatment of employees of all shapes and sizes could face significant legal penalties, lawsuits and subsequent EPL losses. In regard to pregnancy discrimination, the federal government introduced two related laws at the end of 2022 that officially went into effect in 2023: the Pregnant Workers Fairness Act and the Providing Urgent Maternal Protections for Nursing Mothers Act. These laws have been accompanied by a rise in litigation. Specifically, media company Bloomberg found that federal pregnancy discrimination lawsuits have surged by 67% since 2016. What's more, legal experts anticipate these trends to continue in the coming years, exacerbating companies' related EPL losses.
- **Artificial intelligence (AI) issues**—AI systems can leverage programmed algorithms and data sets to deliver automated employment decisions. While these systems may offer various benefits to businesses, such technology may also pose EPL exposures. For instance, AI systems could generate discriminatory employment decisions if the algorithms and data sets entered within these systems are biased toward specific groups. In 2023, the EEOC released guidance aimed at helping employers who use AI technology comply with federal fair employment laws. Along with other federal agencies, the EEOC recently issued a joint pledge to vigorously enforce anti-discrimination laws as the utilization of AI technology becomes more common. What's more, 2023 saw the EEOC's first AI-based discrimination settlement take place, in which a company in New York agreed to pay \$365,000 after a lawsuit filed on behalf of more than 200 job applicants alleged that the company's AI-powered hiring system was set up to automatically reject candidates above a certain age. As such, it's imperative for businesses to assess their AI technology for possible biases and mitigate EPL losses.

Tips for Insurance Buyers

- Establish a staff handbook and workplace policies that address discrimination, harassment and retaliation.
- Promote diversity, acceptance and inclusion in the workplace through routine employee training.
- Document all evaluations, staff complaints and situations that result in employee termination.
- Assess the algorithms for any AI systems utilized in employment processes to prevent discriminatory decisions.



WORKERS COMPENSATION
Non Renewed?
High Premiums?
State Fund?
(212) 390-8772
toughcomp.com
TOUGH COMP
FROM THE LAST RESORT
www.toughcomp.com

This document is not intended to be exhaustive, nor should any discussion or opinions be construed as legal advice. Readers should contact legal counsel or an insurance professional for appropriate advice.