

2021 Employment Practices Liability Insurance Market Outlook



Like other lines of insurance, the employment practices liability (EPL) insurance market has hardened. This is due in part to a higher frequency and severity of claims in recent years, as well as increased legislative activity at the state and federal levels. As such, we predict that the majority of businesses will experience rate increases, coverage reductions and additional retention requirements in 2021. Large organizations and insureds who operate in riskier states may encounter more significant rate increases.

2021 Price Prediction

Overall:
+10% to +30%

Trends to Watch

- **Pandemic-related claims**—The ongoing COVID-19 pandemic has forced many organizations to make workplace changes. And with these changes, EPL claims followed. Some of the top pandemic-related EPL claims include allegations regarding employee leave concerns and remote work capabilities, allegations of discrimination related to workplace adjustments or layoffs, and allegations of retaliation after an objection to unsafe work conditions.
- **Social movements**—The #MeToo movement largely contributed to a 50% rise in sexual harassment lawsuits against employers over the past few years, according to the U.S. Equal Employment Opportunity Commission. Looking ahead, the Black Lives Matter movement has the potential to become a driving factor in race-related workplace discrimination and harassment lawsuits.
- **LGBTQ+ protections**—The U.S. Supreme Court confirmed in 2020 that Title VII of the Civil Rights Act of 1964 protects gay and transgender employees from workplace discrimination and harassment based on sexual orientation, gender identity and gender expression. This is a new development, but the Supreme Court's decision could lead to additional discrimination-based EPL claims in 2021.
- **Age discrimination issues**—According to the U.S. Bureau of Labor Statistics, the share of employees over the age of 55 is expected to rise to nearly 25% by 2024. This demographic shift makes it vital for employers to take steps to minimize the potential for age discrimination issues in the workplace. Such discrimination can lead to poor staff morale, a tarnished reputation and a rise in EPL claims.
- **Marijuana legalization**—Following the 2020 election, medical marijuana is now legal in 36 states and recreational marijuana is now legal in 15 states. As a result, some states have enacted legislation that restricts an employer's ability to conduct drug tests for marijuana. Further, several state court cases have ruled in favor of the employee in recent employment lawsuits related to marijuana usage.

Tips for Insurance Buyers

- Review your employee handbook and related policies. Ensure you have all appropriate policies in place, including language on discrimination, harassment and retaliation.
- Take note of any organizational changes created by the COVID-19 pandemic. These changes should be reviewed to ensure they are compliant with employment law.
- Document all evaluations, employee complaints and situations that result in employee termination or discipline.