

HR STRATEGIES

Focus on strong human resources backed up with employment practices and liability insurance.

BY STEPHEN SHORE

Increasing regulation and heightened employee awareness of workplace rights has exposed manufacturers to an explosion of liabilities related to recruitment, employment contracts, human rights, employment standards, class action, privacy, wrongful dismissal, pay equity, workplace compensation, occupational health and safety and labour relations.

The most effective way to minimize risk is through tailored, effective employment agreements combined with policies and practices implemented by top-notch human resources professionals. But they can't eliminate risks, nor is there any guarantee a current, former or prospective employee will not launch a claim that requires a response from the employer. To help further reduce the financial risk, consider employment practices liability (EPL) insurance.

What types of claims are covered? As a general rule, coverage includes legal costs and damages arising from an employment-related claim for ha-



Workers have **RIGHTS**

HOW TO REDUCE RISKS POSED BY POTENTIAL LIABILITIES

arrassment, wrongful termination, breach of contract and vicarious liability. Negligent pension or benefits administration may also be covered under a more comprehensive plan; however, union issues or regulatory proceedings relating to occupational health and safety are not typically

covered.

What costs are covered? Generally, an EPL policy covers damage awards as well as the legal costs incurred or owing to another party. It's possible to purchase insurance for legal costs only (not damages), which may provide leverage to

An EPL policy typically covers damage awards and legal costs of the other party.

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withstand pressure to settle for "business reasons."

Who's covered? Coverage may extend to the actions of an insured individual or to a proceeding in which an organization is implicated either directly or through the action of an employee (vicarious liability).

Who makes key decisions? The insurer – as the ultimate payer of a claim – retains the right to steer the response. This includes deciding which counsel to appoint, what investigations to conduct and whether to litigate or settle. Some policies allow the insured to select counsel from a pre-approved roster or to recommend counsel for approval.

When does EPL make sense? An organization with a high frequency of employment-related claims, whether it's because of industry norms, size or peculiarities related to the business model, may consider EPL a good investment to help defray the costs associated with claims management. A smaller organization may look to EPL as a hedge against the risk of a complex or expensive claim that can cause unsustainable damage (class action or large

wrongful dismissal). A company with relatively few internal resources or where there's a high ratio of front-line to managerial staff may not be sufficiently resourced to address workplace issues as they arise. EPL coverage provides a backstop should matters go awry.

With or without EPL coverage, implementing strong human resources practices and strategies, including the following, reduces many employment-related risks:

Written employment contract. The relationship between an employer and employee is contractual even in the absence of written terms (or if the written terms are unenforceable). In that case, courts impute contractual terms through legal precedent known as common law. For example, without “just

cause for termination” a court will require an employer to provide an employee with “reasonable notice” of termination. Reasonable notice will almost always far exceed whatever minimum notice is required under employment standards legislation.

Utilizing an employment contract significantly reduces employment-related risks and achieve important business objectives.

Clarifying obligations

Although a termination clause may be the principal reason for an employment contract, it's not the only reason. A written employment contract clarifies obligations and entitlements during the course of the employment relationship including remuneration, duties of employ-



Minimize risk with detailed employment agreements.

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ment, hours of work, vacation and confidentiality obligations. It may also address post-employment covenants such as a restriction on the solicitation of customers.

If written contracts aren't in place, an enforceable contract can be introduced into an existing employment relationship under the right conditions and

with the assistance of experienced employment counsel.

Workplace violence and harassment policy. Every company is required to establish, implement and train employees on workplace violence and harassment, as well as comply with occupational health and safety and human rights law. Organizations with an up-to-date, well-written and properly implemented policy will be better prepared to prevent or respond to a claim of workplace abuse, and avoid expensive and potentially embarrassing litigation.

Employee handbook. Some employers will have a handbook that addresses various aspects of the employment relationship such as: core values, workplace rules and practices, hours of work, leaves, social media, use of confidential information, and workplace conflict resolution. A handbook should create clear and express expectations with a view of minimizing any misunderstanding or disagreement that might lead to a claim.

By covering these bases, manufacturers will be better prepared to handle employee-related issues that pose financial risks.

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