



ForeFront PortfolioSM Risk Analyzer for Privately Held Companies

EMPLOYMENT PRACTICES LIABILITY



Risk review performed for: _____

Date: _____

Q
I
C
B
B

The Purpose of the Risk Analyzer

When it comes to insuring your company, you can't afford to leave things to chance. A lack of proper coverage at a critical time can potentially result in a huge financial loss. The key to a sound base of insurance protection is securing coverage that truly meets all of your company's unique exposure needs.

How? Chubb's **ForeFront PortfolioSM Risk Analyzer** can help. The **Risk Analyzer** can help you uncover some of the biggest potential threats to your company's bottom line. It will help you answer several important questions about your company's possible financial exposures:

- What are your company's exposures and vulnerabilities?
- What is your company's tolerance for risk?
- Is your company's insurance protection adequate?

Your trusted agent or broker can assist you in using the **Risk Analyzer** to identify possible financial exposures your company might have in each of eight critical areas:

Risk*	Description
Employment practices liability	Employees and former employees can sue a company, its board members, and its officers for discrimination, harassment, and other employment practices exposures.
Fiduciary liability	Retirees, former employees, and employees can sue the company and its plan fiduciaries for alleged mismanagement in administering benefits.
Crime	A trusted employee can embezzle funds, steal inventory, or commit fraud over a long period of time.
Directors and officers liability	Investors, shareholders, customers, clients, government regulators, creditors, and competitors can sue a company's board members and officers over their actions or decisions.
Miscellaneous professional liability	Customers and related third parties can sue professional service providers for negligence in providing or failure to provide a service.
Workplace violence expense	An employee, relative of an employee, or outsider can threaten or perpetrate harm against employees in the workplace.
Internet liability	An outside person or company can sue the company for copyright infringement or defamation over content it posts on its Web site.
Kidnap/ransom and extortion	An employee can be kidnapped while traveling, or a criminal can attempt extortion against the company by threatening its employees or products.

By using Chubb's **ForeFront Portfolio Risk Analyzer**, you are taking an important step toward effectively managing some of your company's most dangerous financial exposures. Your answers to the **Risk Analyzer** questions will serve as the foundation for a program of insurance coverage, specifically designed to meet your company's needs.

* Shaded area denotes the risk area covered by this version of the **Risk Analyzer**.

Employment Practices Liability Coverage Gap Analysis

WHAT ARE SOME TYPICAL GAPS IN TRADITIONAL COVERAGE?

ForeFront Portfolio Employment Practices Liability Insurance (EPLI) can help fill coverage gaps that may exist in your company's current insurance program. For example:

- A **general liability (GL)**¹ policy covers “occurrences” and may not respond to claims requiring an intent to act (such as common EPL claims like discrimination and wrongful termination).
- **Workers' compensation** will cover an injury event, but not retaliation against an employee who files a workers' compensation claim.
- An **umbrella policy** typically contains the same coverage exclusions as a GL policy.
- **Directors and officers (D&O) liability insurance** is designed to provide coverage for the individual and typically excludes coverage for claims against the corporation itself (the entity).
- A **D&O** policy typically excludes coverage for claims made by employees (including officers).

In summary, GL, workers' compensation, umbrella, and D&O policies may not cover the employment practices liability arising out of:

- Employee interviewing, testing, references, or hiring (or failure to hire) practices.
- Employee orientation, education and training, evaluation, failure to promote, discipline, or wrongful termination.
- Employee handbooks and other employment documentation.
- Retaliation against an employee.

¹ GL policy references are based on the commercial ISO policy.

Employment Practices Liability Risk Analysis

GENERAL EMPLOYMENT PRACTICES

Question:

Has your company made or does it now make critical employment decisions (e.g., demotion, termination, suspension from work) without consulting a human resources professional or outside attorney?

Yes No

Does your company lack a comprehensive personnel file for any of its employees?

Yes No

Exposure:

Your company could be subject to claims from former, current, and potential employees if they feel that they were treated unfairly or that employment actions were not handled appropriately.

Your company could also be subject to claims if it does not have consistent documentation with respect to any adverse employment decisions.

Consider this:

According to the *2005 Chubb Private Company Risk Survey*², **69%** of respondents retained legal, HR, and other consultants to address exposures.

² For the *2005 Chubb Private Company Risk Survey*, Chubb interviewed 451 executives from privately owned companies in 46 U.S. states in order to gain a better understanding of the companies' potential liability exposures.

Employment Practices Liability Risk Analysis

EMPLOYMENT POLICIES

Question:

Does your company publish, disseminate, and enforce equal employment and anti-harassment policies?

Yes No

Does it also have an effective complaint resolution mechanism that employees are aware of and encouraged to use?

Yes No

Does your company train its managers and supervisors on its equal employment, anti-harassment, and anti-discrimination policies?

Yes No

Exposure:

Your company may be at risk if it has not created and disseminated a carefully drafted set of employment policies to its employees. The mere existence of a policy may not be enough to ensure a solid defense to liability. It is also imperative that employees be made aware of those policies, as well as what avenues are in place for employees to submit a complaint of discrimination or harassment.

Consider this:

To demonstrate that a company has taken reasonable steps to prevent harassment, a company must:

1. Publicize policies and procedures.
 2. Train employees on the laws.
 3. Establish a complaint resolution process.
 4. Train internal investigators.
 5. Impose effective sanctions.
-

Consider this:

GL, workers' compensation, umbrella, and D&O liability policies may not cover the potential employment practices liability exposures arising from employee handbooks and other employment documentation.

Employment Practices Liability Risk Analysis

EMPLOYEE HIRING AND TERMINATION

Question:

Have any of your supervisors or managers hired or fired an employee?

Yes No

Exposure:

Any time your company hires (or fails to hire) or terminates an employee, your company is at risk for employment-related allegations and lawsuits.

Could this happen to you?

Terminated employee sues for harassment, wrongful termination, retaliation, discrimination

- A female employee alleged that a supervisor made abusive and sexually explicit comments to her, as well as sexual advances.
- She was terminated soon after.
- She sued the company and two managers—alleging sexual harassment, intentional infliction of emotional distress, wrongful termination, retaliation, and sex discrimination—for \$275,000, plus recovery of legal fees.
- In defense, the company stated she was a problem employee (tardy for work, conflicts with managers, patchy performance, talked about her sex life, made vulgar comments) and her termination was part of a broad reduction in force.
- During discovery, it came to light that management tolerated sexual jokes around the office but assumed no one was offended.

Result: A court panel ordered the company to pay the plaintiff approximately \$100,000 plus legal fees. The company also accrued more than \$30,000 in defense costs.

Consider this:

GL, workers' compensation, umbrella, and D&O liability policies may not cover the potential employment practices liability exposures arising from employee interviewing, testing, references, or hiring (or failure to hire) practices; or retaliation against an employee.

Employment Practices Liability Risk Analysis

REDUCTIONS IN FORCE

Question:

Has your company made or does it expect to make any staff reductions, downsizings, or layoffs as a result of mergers, acquisitions, or cost-cutting initiatives?

Yes No

Exposure:

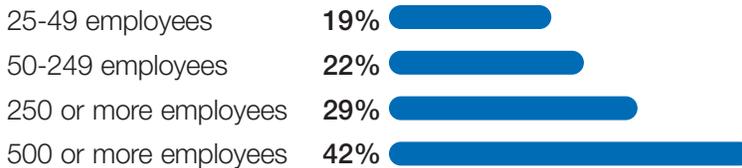
Employers may face heightened exposure to wrongful termination and discrimination allegations as a result of staff reductions, layoffs, downsizing, or outsourcing initiatives. It is important for an employer to consider any adverse impacts that such initiatives may have on older workers, minority staff, and female staff.

Consider this:

According to the *2005 Chubb Private Company Risk Survey*, about 1 in 5 (**21%**) companies plan to reduce their work force, and nearly 1 in 3 (**31%**) plan to outsource functions or operations during the year ahead.

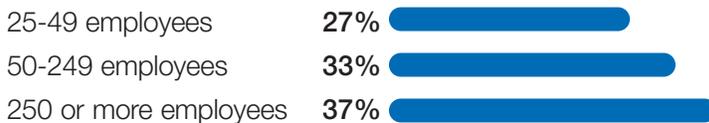
Size of company

Percent planning to reduce work force in year ahead:



Size of company

Percent planning to outsource functions/operations in year ahead:



Employment Practices Liability Risk Analysis

PROTECTED EMPLOYEE CLASSES

Question:

Does your company have a mechanism to review diversity within your compensation, promotion, job assignment, and hiring practices to assure there is no adverse impact on women and minorities within your workforce?

Yes No

Exposure:

Your company may be at risk for discrimination allegations (such as discrimination in pay practices, job assignments, training opportunities, and promotional opportunities (e.g., glass ceiling/walls, etc.)) from employees alleging violations of the Americans with Disabilities Act (ADA), the Civil Rights Act of 1991, the Age Discrimination in Employment Act (ADEA), Title VII of the Civil Rights Act of 1964, and numerous other state and federal statutes.

Could this happen to you?

Employee sues for wrongful termination, age discrimination, disability discrimination

- A company terminated a male, 54-year-old supervisor, who had a documented history of performance issues, for smoking in a restricted storage area containing flammable chemicals.
- He sued for wrongful termination, alleging age discrimination (on the basis of his manager's comments that he was "too old"); disability discrimination because the company refused to accommodate his high blood pressure; and that he could only be terminated for good cause.
- He sought back pay, front pay, special damages, and attorney fees totaling an estimated \$275,000, in addition to punitive damages.

Result: The company settled, paying the former employee approximately \$350,000, as well as more than \$125,000 in defense costs.

Employment Practices Liability Risk Analysis

PUBLIC INTERACTION

Question:

Do employees interact directly with the public, and have they in the past?

Yes No

Exposure:

Your company may be at risk for allegations of sexual harassment and discrimination made by customers, service providers, or other business invitees.

Consider this:

- According to the *2005 Chubb Private Company Risk Survey*, **43%** of executives are concerned about the possible financial damage resulting from a lawsuit for wrongful termination, discrimination, or sexual harassment.
 - For the 161 companies in the survey that experienced an EPL incident in the past five years, 34% reported costs to their company ranging between \$11,000 and \$300,000. Within this group, the average cost was **\$74,400**.
-

Employment Practices Liability Risk Analysis

EEOC COMPLAINTS AND CHARGES

Question:

Has your company experienced any Equal Employment Opportunity Commission (EEOC) or equivalent state agency charges of discrimination filed against it by a current, past, or prospective employee?

Yes No

Exposure:

EEOC charges can be time-consuming and a great drain on your internal resources. Additionally, the EEOC can bring a direct lawsuit against your organization, which can have a significant financial impact on your bottom line.

Consider this:

- According to the *2005 Chubb Private Company Risk Survey*, **25%** of respondents reported that an employee filed a discrimination or harassment complaint with the federal EEOC or state agency against their company.
 - Over the past 10 years, an average of more than **79,000** EPL charges have been filed annually with the EEOC, resulting in more than **\$2.2 billion** in benefits for complainants.
-

Chubb's Solution

Chubb's *ForeFront Portfolio EPLI* covers the financial assets of privately owned companies from employment-related exposures, including harassment, discrimination, wrongful termination, retaliation, and other workplace wrongdoings.

WHO IS INSURED BY FOREFRONT PORTFOLIO EPLI?

Chubb's policy insures the company and its directors, officers, and employees if a claim is brought by or on behalf of a current, prospective, or past employee.

WHAT ARE THE COVERAGE HIGHLIGHTS OF FOREFRONT PORTFOLIO EPLI?

- **Chubb manages the defense with expert attorneys**—Because Chubb has the duty to defend its customers, should a claim arise, we retain expert counsel at affordable rates to manage a strong defense, sparing your company this burdensome worry. We've selected a superb panel of attorneys with unparalleled experience in private company issues who are dedicated to helping secure the most positive outcome possible for your company. If there is a covered claim, Chubb pays 100% of defense costs (within the available limits and after payment of any applicable deductible), even if only part of the claim is actually covered.
- **Companies with fewer than 250 employees may qualify for special coverage features**, including an optional, separate \$1 million defense costs limit, a lower deductible for EPLI coverage, and a short, simple application form.
- **Insurance for allegations of discrimination and workplace and sexual harassment.**
- **Definition of insured** includes the company, its executives, and employees.
- **Definition of employee** includes part-time, leased, temporary, and seasonal employees, as well as volunteers.
- **Optional third-party coverage for allegations of sexual harassment and discrimination** insures lawsuits brought by customers, vendors, and service providers.
- **Coverage for punitive and exemplary damages** (where insurable by law).
- **Access to Chubb's Employment Practices Liability (EPL) Loss Prevention Program**, a multifaceted resource—offering a wide array of employment tools and information via Web-based ChubbWorksSM, a toll-free hot line, a panel of consultants, and more—designed to help companies reduce their EPL exposures.

IF PURCHASED SEPARATELY,
the services offered through ChubbWorksSM
(www.chubbworks.com), a component of
Chubb's EPL Loss Prevention Program,
would cost between \$1,000
and \$10,000 annually.

Risk Analysis Summary

Your answers to the *Risk Analyzer* questions on the preceding pages could point to areas where your company may have significant financial exposures or gaps in its current insurance program that threaten its financial well being. Your answers will help you and your agent or broker to develop a *ForeFront Portfolio* insurance program that is tailored to your company's specific needs.

THE NEXT STEP

Your agent or broker will develop a recommendation for managing your company's risks with *ForeFront Portfolio*—an integrated insurance solution from Chubb.



Chubb Group of Insurance Companies

Warren, NJ 07059

www.chubb.com

For promotional purposes, Chubb refers to the member insurers of the Chubb Group of Insurance Companies underwriting coverage. Not all insurers do business in all jurisdictions.

This literature is descriptive only. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy as issued. Actual coverage is subject to the language of the policies as issued. Loss scenarios are hypothetical in nature and for illustrative purposes only. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms, conditions, and endorsements of the policy as issued. It is impossible to state in the abstract whether the policy would necessarily provide coverage in any given situation. Consult your agent, broker, or other expert.

Form 14-01-0939(Ed. 9/06)