

# EMPLOYMENT RELATED PRACTICES LIABILITY (CLAIMS MADE POLICY)

This is a claims made and reported policy. Coverage is limited to liability for claims first made against you and reported to us while the coverage is in force. Please review the policy carefully and discuss policy coverage with your insurance agent or broker.

The limits of liability available to pay for judgements or settlements shall be reduced by amounts incurred for defense costs. Amounts incurred for defense costs shall be applied against the retention amount.

In consideration of the payment of the premium and in reliance on all statements made and information furnished to us, including the statements made in the Application and its attachments and any materials submitted therewith, all of which are made a part hereof, we agree to the policy as a contract with you.

Throughout the policy, the words "you" and "your" refer to the Named "Insured(s)" shown in the Declarations and any other person(s) or organizations(s) qualifying as an "Insured" under this policy. The words "we", "us" "our" and "insurer" refer to the underwriters providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION VIII. DEFINITIONS.

## SECTION I – INSURING AGREEMENT – WHAT IS COVERED

### 1. Insuring Agreement

We shall pay those amounts the "insured" is legally required to pay by reason of a "claim" arising out of your "wrongful employment practice" to which this insurance applies. The "wrongful employment practice" must take place on or after the "retroactive date" but before the end of the "policy period". A "claim" for a "wrongful employment practice" must be first made against you and reported to us during the "policy period" or any extended reporting period we provide under this policy.

### 2. Defense

- a. We have the right and duty to defend and appoint an attorney to defend any "claim" brought against any "insured" for a "wrongful employment practice" to which this insurance applies even if the "claim" is groundless or fraudulent. Our duty to defend any "claim" ends after the applicable Limits of Liability have been exhausted by payment of "loss".
- b. We have the right to make any investigation, conduct any negotiation, or enter into the settlement of any "claim" which in our sole discretion is deemed necessary.

- c. We shall pay all reasonable costs we ask the "insured" to incur while helping us investigate or defend a "claim". We, however, will not pay for any costs incurred before receiving notice of a claim, nor will we pay more than \$100 per day for earnings lost by the "insured" because of time taken off from work.
- d. We shall pay premiums for appeal bonds, or bonds to release property being used to secure a legal obligation, if required in a "claim" we defend. We shall only pay, however, for bonds valued up to our applicable Limits of Liability. We shall have no obligation to appeal or to obtain these bonds. We shall pay the costs taxed against an "insured" in a "claim" we defend.
- e. Payments for the costs of defense, investigation, or settlement of a "claim" are included within our Limits of Liability. They are not in addition to our Limits of Liability.
- f. We shall pay all interest on that amount of any judgment within our Limits of Liability:
  - (1) Which accrues after entry of judgement; and
  - (2) Before we pay, offer to pay, or deposit in court that part of the judgement within our applicable Limits of Liability.

These interest payments are not included within our Limits of Liability.

### 3. Coverage Territory

We cover "wrongful employment practice(s)" occurring anywhere in the world if the "claim" is made for such "wrongful employment practice" in the United States of America, its territories and possessions.

### 4. Transfer Of Control

You may take over control of any outstanding "claim" previously reported to us only if we both agree that you should, or if a court orders you to do so.

If your Limits of Liability are exhausted, we will notify you of all outstanding "claim(s)" so that you can take over control of the defense. We will help transfer control to you.

We shall take whatever steps are necessary to continue the defense of any outstanding "claim" and avoid a default judgement during the transfer of control to you. If we do so, we shall not waive or give up any of our rights. You shall pay all reasonable expenses we incur for taking such steps after the Limits of Liability are exhausted.

## **SECTION II – EXCLUSIONS – WHAT IS NOT COVERED**

This insurance does not apply to:

### **1. Property Damage**

Any "claim" arising out of "property damage".

### **2. Bodily Injury**

Any "claim" arising out of "bodily injury". This exclusion does not apply to any "claim" for emotional distress, mental anguish, or humiliation arising from a "wrongful employment practice".

### **3. Workers Compensation Benefits**

Any "claim" arising out of any obligation under a workers' compensation, employers liability, disability, insurance, medical, severance or social security benefits, unemployment compensation law, or any similar law.

### **4. Willful Failure To Comply With The Law**

Any "claim" arising out of the "willful" failure to comply with any law or any government or administrative order or regulation relating to employment practices by or with the "insured's" consent. However, to the extent that a "claim" is otherwise covered under the policy, we will defend a "claim" asserting "willful" failure to comply with any law or any government or administrative order or regulation until such time as the "insured" is judicially determined to have intentionally failed to comply with the law or any government or administrative order or regulation.

### **5. Contractual Liability**

Any "claim" the "insured" assumes under any contract or agreement. This exclusion, however, shall not apply to any liability the "insured" would have in the absence of the contract or agreement.

### **6. ERISA, COBRA, NLRA, OSHA And WARN**

Any "claim" arising out of the "insured's" failure to fulfill any duty or obligation imposed by:

- a. the Employment Retirement Income Security Act of 1974;
- b. the Consolidated Omnibus Budget Reconciliation Act of 1985;
- c. the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988);
- d. the National Labor Relations Act of 1947;
- e. the Occupational Safety Act of 1970;
- f. any amendments to such laws; or
- g. any regulations promulgated under any such laws;

### **7. Accommodations**

Any costs of expenses incurred by an "insured" to make premises accessible to persons with disabilities as required by the Americans with Disabilities Act of 1990 (ADA), including amendments to that law, or similar federal, state, or local statutory or common law.

### **8. Strikes And Lockouts**

Any "claim" arising out of a lockout, strike, picket line, replacement or other similar actions resulting from labor disputes, labor negotiations or collective bargaining agreements.

### **9. Dishonest Acts**

Any "claim" arising out of any dishonest, fraudulent, criminal or malicious act by or at the direction of any "insured".

### **10. Non-Monetary Relief**

That part of any settlement or judgement of a "claim" which awards non-monetary relief including, but not limited to, injunctive relief, declaratory relief, disgorgement, employment related education or training, job reinstatement, or other equitable remedies.

### **11. Prior Knowledge**

Any "claim" arising out of incidents or circumstances of which any "insured" had knowledge prior to the policy effective date shown in the Declarations, and which any "insured" could reasonably foresee might result in a "claim".

### **12. Written Employment Contract**

Any "claim" arising out of any written employment contract.

### **13. Retaliatory Acts**

Any liability arising out of a retaliatory action.

### **14. Reorganization/Downsizing Actions And Facility Closings**

Any "wrongful employment practice" that occurs after you reorganize and/or downsize operations or close one or more places of business operations resulting in the termination within a 60 day period of more than 20% of your employees at any place of business operation.

With respect to the Exclusions under Section II, the "wrongful employment practice" of any "insured" shall not be imputed to any other "insured" for the purpose of determining the applicability of the Prior Knowledge Exclusion.

### SECTION III – WHO IS AN INSURED

1. **Individual.** If you are shown in the Declarations as an individual, you and your spouse are "insured(s)" only for the conduct of a business of which you are the sole owner.
2. **Corporation.** If you are shown in the Declarations as a corporation or organization other than a partnership or joint venture, you are an "insured". Your stockholders are also an "insured" but only with respect to their liability as stockholders.
3. **Partnership Or Joint Venture.** If you are shown in the Declarations as a partnership or joint venture, you are an "insured". Your partners or co-venturers and their spouses are also an "insured", but only for the conduct of your business.
4. **Subsidiaries.** Any subsidiary in which you own greater than 50% is an "insured" as long as the subsidiary is listed on the Application for coverage.
5. **Acquisitions.** Any organization that you acquire or form while this policy is in effect is an "insured" if you own greater than 50% of it, but no acquired or formed organization is covered for more than ninety (90) days or the remainder of the "policy period", whichever is less, from the date that you acquire or form it, or for "loss" that arises out of a "wrongful employment practice" that happened or commenced before you acquired or formed it, or for "loss" covered under any other insurance, unless we agree otherwise in writing.
6. **Employees.** Your "employee(s)" and directors are an "insured" only for the conduct of your business within the scope of their employment or their duties as directors. Your "employee" and director will only be an "insured" if he/she was your "employee" or director on the date of the alleged "wrongful employment practice".

### SECTION IV – LIMITS OF LIABILITY

1. The limits shown in the Declarations to this policy and the information contained in this section fix the most we shall pay regardless of the number of:
  - a. Persons or organizations covered by this policy; or
  - b. "Claim(s)" made.
2. The Aggregate Limit is the most we shall pay for all "loss" covered under this policy.
3. Subject to the Aggregate Limit, the each "wrongful employment practice" limit is the most we shall pay for all "loss" that results from a single "wrongful employment practice".

4. All "claim(s)" arising from class action or suits arising out of related "wrongful employment practice(s)" or continuous, related, or repeated "wrongful employment practice(s)" shall be treated as arising out of one "wrongful employment practice". Only the policy in effect when the first such "claim" is made shall respond to all such "claim(s)".
5. All "claim(s)" arising out of one "wrongful employment practice" shall be deemed to be made on the date that the first such "claim" is made.
6. The Limits of Liability of this policy apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the "policy period" shown in the Declarations, unless the "policy period" is extended after issuance for an additional period of less than 12 months. In that case, the additional period shall be deemed part of the last preceding period for the purposes of determining the Limits of Liability.

### SECTION V – RETENTION

You shall be responsible for the retention amount shown in the Declarations. Expenses we incur in investigating, defending, and settling and "claim" are included in the retention. The retention shall apply separately to each "wrongful employment practice". The retention is not included within the Limits of Liability.

### SECTION VI – CONDITIONS

We have no duty to provide coverage under this policy unless there has been full compliance with all the conditions contained in this policy:

#### 1. Arbitration

Any controversy arising out of or relating to this policy or its breach shall be settled by binding arbitration in accordance with the rules of the American Arbitration Association. The arbitration panel will consist of three (3) arbitrators. One of the arbitrators will be chosen by you and one arbitrator will be chosen by us. Those two arbitrators will then choose the third arbitrator. Unless the parties otherwise agree, within thirty (30) days of the parties submitting their case and related documentation, the arbitration panel will issue a written decision resolving the controversy and stating the facts reviewed conclusions reached, and the reasons for reaching those conclusions. The arbitration panel may make an award of compensatory "loss", but may not award punitive or exemplary "loss".

The decision of the arbitration panel will be final and binding on both parties in any court. You will bear the expense of the arbitrator chosen by you. We will bear the expense of the arbitrator chosen by us. You and we will share equally the expense of the other arbitrator. The arbitration panel will allocate any remaining costs of the arbitration proceeding.

## **2. Assignment**

- a. The interest of any "insured" is not assignable. You cannot assign or transfer your interest in this policy without our written consent attached to the policy.
- b. If you die, or are declared legally incompetent, your rights and duties shall be transferred to your legal representative, but only while acting within the scope of their duties as such.

## **3. Bankruptcy or Insolvency**

Your bankruptcy, insolvency or inability to pay, will not relieve us from the payment of any "claim" arising out of a "wrongful employment practice" which takes place before such bankruptcy or insolvency. Under no circumstances will your bankruptcy, insolvency, or inability to pay require us to drop down, in any way replace, or assume any of your obligations with respect to your retention.

## **4. Duties In The Event Of An Incident Or Claim**

- a. If, during the "policy period", incidents or events occur which you reasonably believe may give rise to a "claim" for which coverage may be provided hereunder, such belief being based upon either written notice from the potential claimant or the potential claimant's representative or upon a contemporaneously made memorandum of an oral "claim", allegation or threat, you shall, during the "policy period" or any applicable extended reporting period, give written notice to us. Such written notice shall contain:
  - (1) The identity of the person(s) alleging a "wrongful employment practice";
  - (2) The identity of the "insured(s)" who allegedly were involved in the incidents or events;
  - (3) The identity of the witnesses to the alleged "wrongful employment practice";
  - (4) The date the alleged incidents or events took place; and
  - (5) The written notice or contemporaneously prepared memorandum referred to above.

If you submit written notice containing items (1) through (5) above, then any "claim" subsequently made against an "insured" arising out of such incidents or events shall be deemed, for the purpose of this insurance, to have been first made during the "policy period" in effect at the time such written notice was submitted to us.

- b. If a "claim" is made against any "insured", you must:
  - (1) Immediately record the specifics of the "claim" and the date received; and
  - (2) Notify us as soon as practicable.You must see to it that we receive written notice of this "claim" as soon as practicable.
- c. You and any other "insured" must:
  - (1) Immediately send us or our authorized representative copies of any demands, notices, summonses or legal papers received in connection with any "claim";
  - (2) Authorize us or our authorized representative to obtain records and other information;
  - (3) Cooperate with us or our authorized representative in the investigation, settlement or defense of the "claim"; and
  - (4) Assist us or our authorized representative, upon our request, in the enforcement of any right against any person or organization which may be liable to the "insured" because of injury or damage to which this insurance may also apply.
- d. No "insured" will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our prior consent. Subsequent payments which are deemed by us as having prejudiced by any such voluntary payment will also be the sole responsibility of the "insured".

## **5. Transfer Of Rights Of Recovery Against Others To Us.**

You may be able to recover all or part of a "loss" from someone other than us. You, therefore, shall do all that is possible after a "loss" to preserve any such right of recovery. If we make a payment under this policy, that right of recovery shall belong to us. You shall do whatever is necessary, including signing documents, to help us obtain that recovery.

## **6. Automatic Reporting Period**

- a. Subject to all of the terms and conditions set forth in this paragraph, you have an automatic reporting period of sixty (60) days, starting with the end of the "policy period", during which any "claim", arising out of "wrongful employment practice(s)" which take place on or after the "retroactive date" but before the end of the "policy period", may be reported to us.
- b. This automatic reporting period does not extend the "policy period" or change the scope of coverage provided. We will consider any "claim" first made or brought during the automatic reporting period to have been made on the last date on which this insurance is in effect.
- c. The automatic reporting period will apply only if this insurance is cancelled or not renewed for any reason. Coverage under the automatic reporting period may not be cancelled.
- d. The limits of liability that apply at the end of the "policy period" are not renewed or increased for "claim(s)" first made or brought during the automatic reporting period.
- e. The automatic reporting period, however, will not apply to any "claim" if other insurance you buy covers the "claim" or would cover the "claim" if its limits of coverage had not been exhausted.

## **7. Extended Reporting Period**

- a. If you, or we, cancel or do not renew this policy, you shall have the right to buy an Extended Reporting Period Endorsement providing an extended reporting period of up to three (3) years, starting upon the expiration of the automatic reporting period. You do not have this right, however, if we cancel for nonpayment of premium. If an Extended Reporting Period becomes effective, it shall only apply to covered "claim(s)" from "wrongful employee practice(s)" which take place on or after the "retroactive date" but before the end of the "policy period", first made after the expiration of the automatic reporting period.
- b. The additional premium for the Extended Reporting Period Endorsement shall be calculated in accordance with our rules and rates. We will not charge more than 200% of the annual premium from the last "policy period".
- c. To obtain an Extended Reporting Period Endorsement, you must request it in writing within sixty (60) days after the "policy period" ends and pay the premium when due. If you do so, an Extended Reporting Period cannot be cancelled. If we do not receive the written request and payment as required, you may not exercise this right at a later date.

- d. The Limits of Liability that apply at the end of the "policy period" are not renewed or increased for any "claim" first made and reported during the Extended Reporting Period.
- e. This insurance, provided during the Extended Reporting Period, is excess over any other valid and collectible insurance that begins or continues in effect after the Extended Reporting Period becomes effective, whether the other insurance applies on a primary, excess, contingent, or any other basis.

## **8. Legal Action Against Us**

- a. No one can sue us to recover under this policy unless there has been full compliance with all the terms of this policy.
- b. A person or organization may sue us to recover up to the Limits of Liability under this policy only after your "claim" has been decided by:
  - (1) A trial, after which a final judgment has been entered; or
  - (2) A written settlement agreement signed by the party making the "claim" and us.
- c. No person or organization has the right to join us as a party or otherwise bring us into a "claim" asking for "loss" from an "insured".

## **9. Other Insurance**

If any part of "loss" is insured under this policy and any other current or prior policy, this policy shall provide coverage for such "loss" in excess of such other policy according to the applicable Limits of Liability of this policy and such other policy.

## **10. Policy Changes**

This policy contains all the agreements between you and us concerning this insurance. The first Named "insured" in the Declarations is authorized to request changes in this policy. This policy can only be changed by a written endorsement we issue and made part of this policy.

## 11. Warranties And Covenants

The "insured(s)" warrant and agree, as a condition to the insurer's obligations hereunder, as follows:

- a. The statements and representations made in the application are the "insured's" statements and representations, are true and shall be deemed material to the acceptance of the risk or the hazard assumed by the insurer under this policy. This policy is issued in reliance upon the truth of such statements and representations.
- b. In the event that any statement or representation in the application is untrue, this policy in its entirety shall be void at inception and of no effect whatsoever.

The truth of any statement or representation in the application shall be determined without regard to whether any "insured" knew the application contained such untrue statement or representation.

## 12. Special Rights And Duties Of First Named "Insured"

You agree that when there is more than one person or entity covered under this policy, the first Named "Insured" in the Declarations shall act on behalf of all "insured(s)" as to:

- a. Giving and receiving notice of cancellation;
- b. Payment of premiums and receipt of return premiums;
- c. Acceptance of any endorsements to this policy; or
- d. Purchasing or deciding not to purchase the Extended Reporting Period Endorsement.

## SECTION VII – CANCELLATION OR NONRENEWAL

1. The first named "insured" shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first named "insured" written notice of cancellation at least:
  - a. Ten (10) days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. Thirty (30) days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first named "insured's" address shown in the Declarations.
4. Notice of cancellation will state the effective time and date of cancellation. The "policy period" will end on that date.

5. If this policy is cancelled, we will send the first named "insured" any premium refund due. If we cancel, the refund will be pro rata. If the first named "insured" cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund. If notice is mailed, proof of mailing will be sufficient proof of notice.
6. The policy cannot be cancelled by either party after the premium for an Extended Reporting Period is paid.
7. If we decide not to renew this policy, we will mail or deliver to the first named "insured" shown in the Declarations written notice of the nonrenewal not less than thirty (30) days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

## SECTION VIII – DEFINITIONS

1. "Bodily injury" means physical injury, sickness, or disease, including death resulting therefrom.
2. "Claim(s)" means:
  - a. A written demand or notice for monetary "loss"; or
  - b. A civil or administrative proceeding; or
  - c. A civil administrative proceeding; or
  - d. An arbitration, mediation, or any other alternative dispute resolution proceeding seeking "loss" to which the "insured" must submit or may submit with our prior consent;received by an "insured" in which a "wrongful employment practice" is alleged.
3. "Discrimination" means the failure or refusal to hire, or any other wrongful treatment of persons based on their race, sex, color, religion, sexual orientation or preference, marital status, pregnancy, age, disability, or other status that is protected pursuant to any applicable federal, state, or local statute or ordinance which is employment related.
4. "Employee" means any past, present or future employees of the "insured", whether such employee is in a supervisory, co-worker or subordinate position or otherwise, including any part-time, seasonal or temporary employee in his or her capacity as such.
5. "Harassment" means:
  - a. Unwelcome sexual advances, requests for sexual favors, or other verbal, visual or physical conduct of a sexual nature that is made a condition of employment with the "insured", is used as a basis for employment decisions with the "insured", creates a work environment with the "insured" that interferes with performance, or creates an intimidating, hostile, or offensive working environment; or

- b. Workplace harassment (i.e., harassment of a non-sexual nature) which creates a work environment with the "insured" that interferes with performance, or creates an intimidating, hostile, or offensive working environment.
6. "Insured(s)" mean any person or organization qualifying as such under Section III – Who Is An Insured.
  7. "Loss(es)" means a judgment, settlement, statutory attorney fees, and the costs associated with defense, investigation, or settlement of a "claim", including but not limited to punitive and exemplary damages (where insurable by law), back and front pay, "Loss" does not include compensation, benefits or commissions earned in the course of employment by an "Employee" but not paid by the "insured", nor does "Loss" include fines, taxes or penalties.  

The law of the jurisdiction most favorable to the insurability of punitive or exemplary damages shall control whether such damages are insurable, provided that such jurisdiction is where:

    1. Those damages are awarded or imposed;
    2. Any "Wrongful Employment Practice" was committed for which such damages were awarded or imposed; or
    3. The Named "Insured" is incorporated or has its principal place of business; or
    4. The Insurer is incorporated or has its principal place of business.
  8. "Policy period" means the period commencing on the effective date shown in the Declarations. This period ends on the earlier of the expiration date or the effective date of cancellation of this policy.
  9. "Property damage" means physical injury to, or destruction of, tangible property including the loss of use of tangible property, of the loss of use of tangible property which has not been physically injured or destroyed.
  10. "Retroactive date" refers to the date specified in the Declarations.
  11. "Wrongful employment practice(s)" means any actual or alleged act of:
    - a. "Discrimination"
    - b. "Harassment";
    - c. Any actual or alleged wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of implied contract or implied covenant of good faith and fair dealing;
    - d. Employment related misrepresentation to an Employee or applicant for employment;
    - e. Employment related libel, slander, humiliation, defamation or invasion of privacy;
    - f. Wrongful failure to employ or promote;
    - g. Wrongful deprivation of career opportunity, wrongful demotion or negligent evaluation;
    - h. Wrongful discipline;
    - i. False imprisonment;
    - j. Employment related malicious prosecution.