



# Insurance

## BUSINESS AMERICA

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# HALL OF FAME

## 2018

**IBA honors 29 of the insurance industry's most influential leaders**

### MANAGING TODAY'S EMPLOYMENT RISKS

Why employment practices liability is more crucial for your clients than ever before

### MEET THE 2018 YOUNG GUNS

Get to know 54 rising stars who are rewriting the future of insurance

### EXPERT ADVICE ON E&S

Four leaders in the E&S segment reveal the best opportunities for brokers

# Professionally speaking

Professional liability insurance is particularly crucial for modern businesses. *IBA* uncovered the potential exposures your clients need to know about

**PROFESSIONAL LIABILITY** is a wide-ranging product that's required by a significant number of American businesses. Pretty much any company that provides professional services to clients faces the risk of being sued if the services they perform cause injury, financial loss or reputational damage. From architects and dentists to law firms and restaurants, organizations in all industries and of all sizes face some level of professional liability risk.

be held by every company that employs staff. EPL policies provide coverage for an array of employment-related exposures, including wrongful termination, sexual harassment and discrimination, breach of contract, and failure to employ/promote.

"Some policies go well beyond the basic coverages to include coverage for claims arising from third parties – a critically important coverage today," says














**"Underwriters are responding to the current climate surrounding sexual harassment by limiting coverage and increasing rates for those organizations with significant exposure"**

**Robert Sargent, Tennant Risk Services**

One of the most important forms of professional liability insurance is employment practices liability [EPL] coverage. EPL protects an organization and its employees from legal judgments and related expenses resulting from allegations of wrongful acts. It's an important type of coverage that should

Robert Sargent, executive vice president at Tennant Risk Services, a division of Worldwide Facilities. "Third-party liability coverage would typically respond to claims from third parties, such as customers or vendors, involving discrimination or sexual harassment."

## WHAT DOES EPL COVER?

-  Discrimination, sexual harassment
-  Wrongful termination
-  Third-party liability
-  Breach of contract
-  Failure to employ/promote
-  Wrongful discipline
-  Failure to grant tenure
-  Defamation, humiliation, mental anguish
-  Libel, slander
-  Invasion of privacy
-  Civil rights violations

In today's climate, broader policies are more important than ever before. With the heightened awareness of sexual harassment, most organizations need broad coverage to ensure they're protected in the event of any unexpected claims. As Sargent explains, there is no 'one size fits all' policy when it comes to EPL. The varying level – and type – of risk means that brokers and agents often need to find a unique combination of coverage for each client.

"Underwriters are responding to the current climate surrounding sexual harassment by limiting coverage and increasing rates for those organizations with significant exposure," Sargent says. "In addition, underwriters will expect exposed organizations to have strong risk management programs, including training and policies, along with enforcement."

### Managing today's EPL risk

Despite the strength and flexibility of many modern EPL policies, the coverage should not be seen as a replacement or substitute for a

well-thought-out risk management program. Organizational leaders need to be made aware of the risks they face in the modern employment landscape and find ways to address them. In 2018, employee grievances are often not so easy to spot.

“An organization that does not have strong training, policies and procedures related to employment and sexual harassment, along with comprehensive employment practices liability insurance, is exposed to significant financial and reputational loss,” Sargent says. “Even if the organization did nothing wrong, significant exposure to legal expenses is possible.”

As with many other insurance segments,

the EPL space is highly competitive. Underwriters are under pressure to balance underwriting profitability with market pressures; they are challenged to seek more rate in a market segment that has a potential for eroding loss experience, while market pressures force them to create broader coverage options at competitive prices.

“The current heightened awareness related to sexual harassment is changing the focus on EPL placement and underwriting for many types of organizations,” Sargent says. “Underwriters are concerned about a potential wave of sexual harassment claims from employees and from customers and vendors. Given the market, underwriters are

reviewing accounts closely, and brokers are recommending broad coverage, often with increased limits.”

Another challenging area for many modern organizations is wage and hour claims, which most policies either don’t cover or provide limited coverage for. Wage and hour claims typically allege violations of wage and hour laws and are sometimes brought as class-action suits.

“Wage and hour claims are on the rise and can be expensive, so most insurers are providing only limited coverage, if at all,” Sargent says, “but coverage is available for some types of accounts, depending on the jurisdiction.”

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# SECTOR FOCUS: PROFESSIONAL LIABILITY

## Economic and social drivers

The condition of the EPL insurance marketplace is tied closely to the overall temperature of the national economy. Many EPL claims are attributed to the hiring and firing of employees, and when the economy struggles like it did during the 2008 financial crisis, there's naturally a higher turnover of staff and an increased number of companies closing their doors. If the economy is growing and everyone is making money, the unemployment rate is low, and those are the most profitable years for the EPL market. When the economy starts to dip, claims frequency starts to increase.

"During the last financial crisis, many companies were letting employees go and giving them six- or nine-month severance packages," says Michael Kinsley, head of management liability products at NAS Insurance. "But in many cases, people couldn't find new jobs and were forced to bring claims against their old employers just to survive. Those were not necessarily claims for wrongful termination; they could also have been things like a claim for harassment that happened at a Christmas party five years ago."

Many economists are predicting that the current bull market has entered its final stages, which means the EPL marketplace could be in line for an influx of claims in the near future. For an organization that doesn't hold a robust EPL policy, the consequences could be catastrophic.

Claims could come from a salesperson who left the company three years ago or a temporary employee who interned for the summer. And those claims could encompass anything from wrongful termination based on racial discrimination, failure to promote or sexual harassment, which Kinsey describes as the "low-hanging fruit" because "it is easy to allege and difficult to disprove."

The US Equal Employment Opportunity Commission [EEOC] is, according to Kinsey, very claimant-friendly and often leans in favor of the employee. Although the EEOC does not make the final decision, they do issue a right-



to-sue letter, which is an important first step in the process.

"The Trump administration has put in a new EEOC chair who is hot on tightening up

component of the massive employment practices liability spectrum. For insurers, it's a space that is difficult to get right. Heightened awareness around sexual harassment and



**"The biggest asset in this space is your data ... That gives you a better understanding of rates, retention and claims trends and can help differentiate you from the competition"**

**Michael Kinsley, NAS Insurance**

the interpretation of the laws related to transgender discrimination and sexual identity issues," Kinsey says. "In the past 10 to 15 years, those laws have been interpreted very loosely, and the EEOC is trying to tell the US Congress to write laws that actually are enforceable and targeted to these specific issues so that a sexual discrimination law is not interpreted into a gender discrimination case."

Sexual discrimination is a timely issue that organizations and insurers are being forced to deal with, but in reality, it's just one

workers' rights is clearly a positive, but it also creates scope for increasing numbers of complex and costly claims.

"It's a tough spot for insurers, and there's a lot that goes into managing an EPL book properly," Kinsey says. "There are a lot of moving pieces and things to consider. The biggest asset in this space is your data – data that you can capture on your previous books of business. That gives you a better understanding of rates, retention and claims trends and can help differentiate you from the competition." ■