

Employment Practices Liability

Case Studies: U.S.

Employment practices liability (EPL) exposures continue to increase and take on new dimensions for companies across all industries, sizes, and geographies. Ongoing developments at the state and federal level and constantly evolving caselaw make it increasingly difficult for employers to navigate this expanding exposure and emphasize the importance of sound risk management practices to prevent and defend EPL claims.

The following case studies illustrate the benefits of comprehensive EPL coverage and an experienced carrier in responding to these risks.

Finance Company Wins Bias Case

Industry: Technology

Size: 8,000+ employees

An employee of an insured payment processor complained to the company's human resources department that he was passed over for promotion due to his race. He alleged a less qualified co-worker of a different race was given a position he deserved. The company investigated and found no evidence of discrimination. Nine months later, the company conducted a reduction in force, which eliminated the employee's position. After his termination, the former employee sued the company, alleging race discrimination, national origin discrimination, age discrimination, and retaliation. The insured disputed the discrimination allegations, referencing the former employee's praise of the relevant hiring manager even following the promotion announcement and noting that the former employee did not raise any of these concerns until after learning his role would be eliminated. AIG worked closely with the insured and defense counsel to fully understand the scope of the matter. Based on the insured's thorough and objective investigation into the complaints, AIG supported the insured in moving forward with litigation even though it would have been less costly to settle. A jury ultimately returned a verdict in favor of the insured. The AIG policy covered defense costs of almost \$300,000 above the \$250,000 retention.

IT Company Settles Retaliation Lawsuit

Industry: Professional Services

Size: ~1,800 employees

After his termination, a former executive of an insured consulting firm sued the company. He alleged that after he investigated sexual misconduct by an employee, other executives excluded him from meetings, reduced his bonus, and later terminated his employment. He sued for retaliation under Title VII of the Civil Rights Act and for a violation of public policy under California state law, claiming damages exceeding \$2 million. With AIG's support and expertise through a lengthy discovery period and mediation process, the case settled for less than one-quarter of the plaintiff's demand. The AIG EPL policy paid almost \$900,000 above the \$350,000 self-insured retention.

Pharmaceutical Company Wins Bias Case

Industry: Pharmaceutical

Size: ~700 employees

A former manager of an insured pharmaceutical corporation sued the company, alleging she had been terminated following co-workers' false complaints that she browsed inappropriate websites on a company device. She also alleged her co-workers routinely made sexual comments and inappropriate jokes in her presence and repeatedly told her that her professional success was solely due to her gender. In her lawsuit, she requested damages for sex discrimination, sexual harassment, and retaliation that violated state and federal laws. AIG worked with the insured to vigorously defend the matter and encouraged the filing of a summary judgment motion, which was granted with respect to all causes of action except retaliation. The trial ultimately returned a verdict in favor of the defense. The AIG EPL policy paid \$800,000 in defense costs above the \$150,000 self-insured retention.

Hotel Settles Guest Discrimination Lawsuit

Industry: Hospitality

Size: 1,000+ employees

A guest of an insured hotel filed a lawsuit following an incident that took place on the premises. He alleged that he was in the hotel lobby when he was approached by a security guard, who demanded proof that he was a hotel guest. Despite providing his room number, the police were called, and he was instructed to leave the premises. In his suit, he claimed damages for race discrimination, unlawful public accommodation discrimination, intentional infliction of emotional distress, and breach of contract. Upon receipt of the claim, AIG worked diligently with the insured to understand the events that occurred, and together AIG and the insured agreed that settling the matter would be the best course of action. AIG also recommended that the insured implement improvements to its employee training program, available through its AIG EPL policy, to avoid a recurrence. Under its third-party coverage provision, the AIG policy covered settlement and defense costs exceeding \$100,000 above the \$125,000 retention.

Software Company Settles Bias, Defamation Suit

Industry: Technology

Size: 500+ employees

During her employment, an executive of an insured software company published controversial comments about gender identity on social media. In her posts, she publicized her employment with the insured. She also began an online argument with a client of the insured, in which the client alleged the executive made transphobic statements. The client also tagged the insured in its responses. The insured asked the executive to post a disclaimer, clarifying that her views were her own, not the company's. When she refused and continued posting on sensitive topics, the insured asked her to delete the offensive posts, publicly apologize, undergo sensitivity training, and move to an individual contributor role. The executive again refused, citing personal principles and the right to free speech, and was terminated. AIG worked closely with the insured to understand their decision to terminate the executive, and, while the insured felt their decision was the correct one, they agreed to settle the matter based on the unpredictability of a jury trial. The matter settled shortly after the suit was filed, and the AIG EPL policy paid defense and settlement costs of almost \$500,000 above the \$350,000 self-insured retention.

Financial Institution Settles Harassment Suit

Industry: Financial Services

Size: ~500 employees

After ten years of employment, an executive of an insured financial services company resigned, purportedly due to her objection to a newly implemented arbitration policy. She later sued the company for more than \$40 million, alleging that over the course of her employment she was subjected to harassment and discrimination by senior executives of the company. Upon receiving her complaint, the company ordered an investigation by an unaffiliated investigator, who was unable to corroborate the allegations. However, numerous co-workers volunteered as witnesses supporting her claims. AIG worked closely with the insured through the investigation and several mock juries, and together determined that settling would be the best course of action, notwithstanding a strong defense strategy. With AIG's experience in these types of claims, the matter settled. Including both settlement and defense costs, the AIG EPL policy paid \$2.8 million above the \$100,000 self-insured retention.



The AIG organization pioneered Employment Practices Liability Insurance decades ago and has steadfastly advanced coverage and services to protect our customers as exposures have increased and evolved across the country and around the world. Our extensive knowledge, resources, and data enable us to tailor solutions to our clients' individual needs. AIG's financial strength, integrated claims model, and proven claim expertise ensure that we are there, helping to drive the best possible outcomes for our clients.

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For more information, please contact your local Financial Lines underwriter or email FinancialLines@aig.com.



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