EMPLOYMENT PRACTICES LIABILITY

KLT Risk Concepts

Finding opportunity in risk

Why buy Employment Practices Liability Insurance?

KLT Risk Concepts
Finding opportunity in risk

EEOC Statisitics

- 60% of women report experiencing unwanted sexual attention, sexual coercion, OR sexually crude conduct or sexist comments in the workplace
- Up to 58% of LGBT-identified individuals report having been harassed in the workplace or heard derogatory comments
- Up to 70% reported “racial and ethnic harassment”
- Up to 20% reported disability-based harassment
- Up to 25% over the age of 50 have experienced age-based harassment

Source: EEOC Task Report on the Study of Harassment in the Workplace

If an EPLI case isn't dismissed?

For businesses of all sizes:

- Average jury award is about $250,000
- If a case settles, the judgment averages $75,000.
- Cost of defense averages about $120,000 per claim.
- If a business loses its case, it must also pay for the claimant's legal fees – averaging $200,000.

Source: The Hartford Insurance

KLT Risk Concepts
Finding opportunity in risk

EPLI
Claim Trends

Thomson Reuters, *Employment Practice Liability: Jury Award Trends and Statistics, 2022 edition*.

YEAR	MEDIAN AWARD	PROBABILITY RANGE
2015	$83,000	$17,913 - $356,148
2016	124,224	25,000 - 450,000
2017	125,500	25,000 - 532,450
2018	181,369	32,334 - 542,444
2019	200,000	50,000 - 629,000
2020	171,980	78,099 - 297,419
2021	258,500	50,440 - 890,638
Overall	**$145,200**	**$27,426 - $500,000**

KLT Risk Concepts
Finding opportunity in risk

EEOC

Some 2022 EEOC Stats
Resolved over 65,000 charges of discrimination
$513 million in monetary benefits for victims of discrimination
3,000 free outreach events reaching almost 220,000 individuals
1,000 events for vulnerable workers – nearly 80,000 individuals
73,485 new discrimination charges – 20% > 2021
Over 475,000 calls – 18% > 2021

EEOC
South Carolina

2021 EEOC New Charges – South Carolina	
Total	1,007
Retaliation	574
Race	402
Disability	344
Sex	302
Age	176

KLT Risk Concepts
Finding opportunity in risk

EPLI Trend #1:

Retaliation Claims on the Rise

56% of EEOC claims filed in 2021 involved claims of retaliation.

Action plan for employers:

- Establish a policy against retaliation and educate teams
- Implement a confidential process for managing complaints and communicating the anti-retaliation policy to complaining employees
- Document everything

Source: AmTrust Financial

KLT Risk Concepts
Finding opportunity in risk

EPLI Trend #2:

#MeToo Movement Results in Spike in Sexual Harassment Claims

Sexual harassment claims represented roughly one-third (31.7%) of all EEOC claims filed. This includes LGBT-based sexual harassment charges, which have risen steadily for the past five years.

Action plan for employers:

- Develop clear policies against sexual harassment
- Provide training to prevent sexual harassment
- Create a company culture that does not support sexual harassment

Source: AmTrust Financial

KLT Risk Concepts
Finding opportunity in risk

EPLI Trend #3:

Gig Economy Leads to Increased Wage and Hour Litigation Threat

Fair Labor Standards Act (FLSA) lawsuits increased dramatically over the last decade. Many of these lawsuits involve worker classification disputes.

Action plan for employers:

- Be ready to prove that your workers are classified correctly
- Keep up with new laws, such as AB5 in California
- Use the FSLA Handy Reference Guide

Source: AmTrust Financial

KLT Risk Concepts
Finding opportunity in risk

EPLI Trend #4:

The Gender Pay Gap Remains

Full-time salaried women earned 84% of what men earned in Q1 2023, according to the U.S. Bureau of Labor Statistics.

Action plan for employers:

- Create policies that help women succeed, such as flexible hours and parental leave
- Develop mentorship opportunities for women
- Provide equal pay

Source: AmTrust Financial

KLT Risk Concepts
Finding opportunity in risk

EPLI Trend #5:

Marijuana Legalization Impacts the Workplace

As of January 2020, at least 11 states allow recreational marijuana usage and more allow medical marijuana.

Action plan for employers:

- Keep up with new legislation on marijuana usage in your state
- Review relevant laws before firing or not hiring workers over marijuana usage
- Create drug policies that focus on maintaining a safe workplace

Source: AmTrust Financial

KLT Risk Concepts
Finding opportunity in risk

So What Is Employment Practices Liability Insurance?

KLT Risk Concepts
Finding opportunity in risk

INSURING AGREEMENT

The Underwriter shall pay on behalf of the Insured, Loss from Claims made against the Insured during the Policy Period (or, if applicable, the Extended Reporting Period), and reported to the Underwriter pursuant to the terms of this Policy, for an Employment Practice Act.

KLT Risk Concepts
Finding opportunity in risk

INSURING AGREEMENT

The Underwriter shall pay on behalf of the Insured, Loss from Claims made against the Insured during the Policy Period (or, if applicable, the Extended Reporting Period), and reported to the Underwriter pursuant to the terms of this Policy, for an Employment Practice Act.

KLT Risk Concepts
Finding opportunity in risk

INSURING AGREEMENT

The Underwriter shall pay on behalf of the Insured, Loss from Claims made against the Insured during the Policy Period (or, if applicable, the Extended Reporting Period), and reported to the Underwriter pursuant to the terms of this Policy, for an Employment Practice Act.

KLT Risk Concepts
Finding opportunity in risk

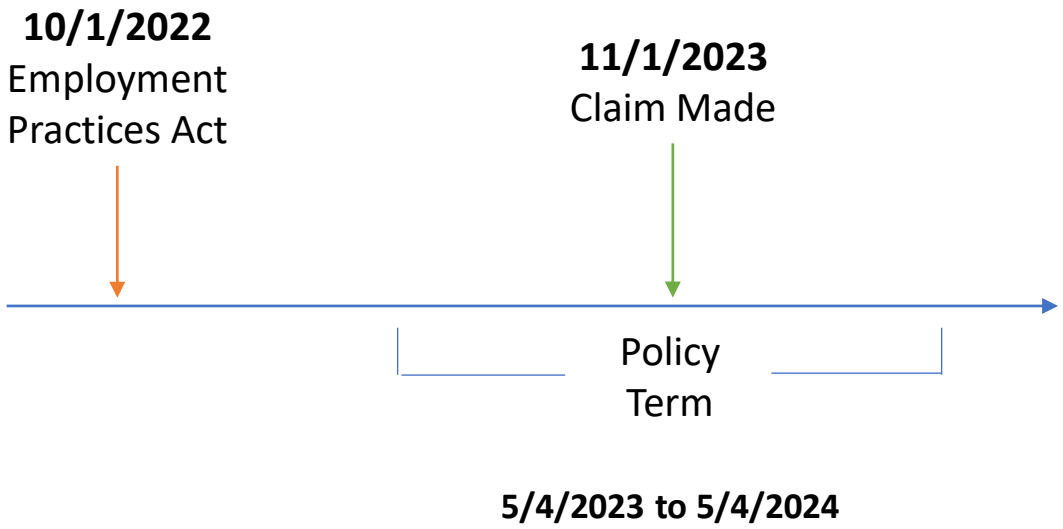
CLAIMS MADE

A claims-made policy provides coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place.

KLT Risk Concepts
Finding opportunity in risk

CLAIMS MADE

A claims-made policy provides coverage that is triggered when a claim is made against the insured during the policy period, *regardless of when the wrongful act that gave rise to the claim took place*.



KLT Risk Concepts
Finding opportunity in risk

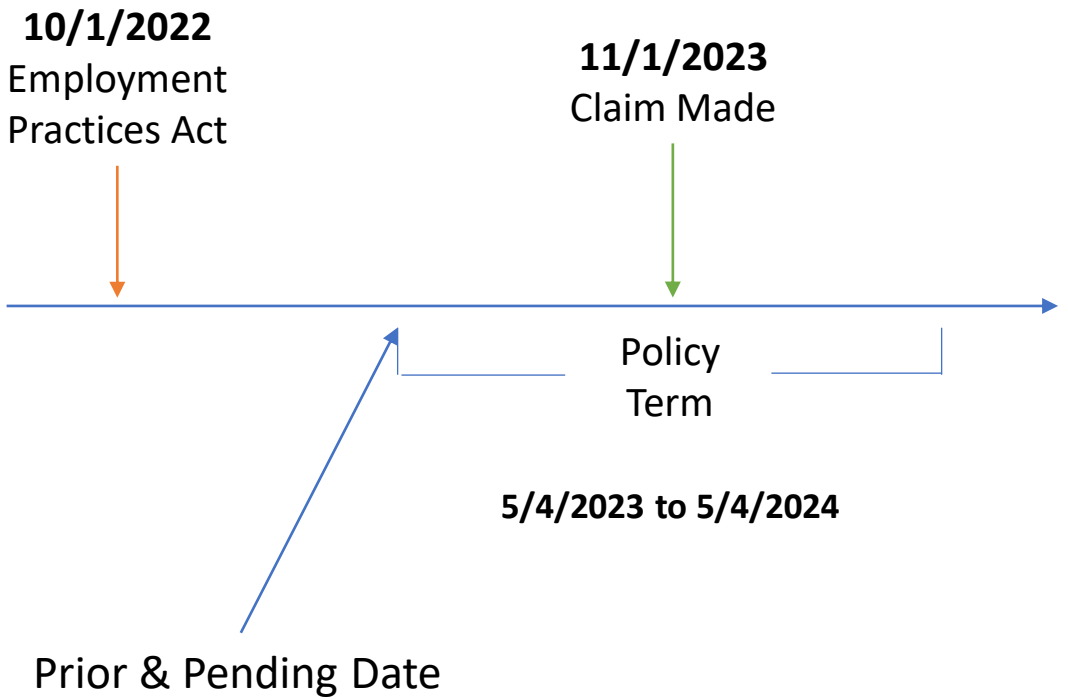
INSURING AGREEMENT

The Underwriter shall pay on behalf of the Insured, Loss from Claims made against the Insured during the Policy Period (or, if applicable, the Extended Reporting Period), and reported to the Underwriter pursuant to the terms of this Policy, for an Employment Practice Act.

KLT Risk Concepts
Finding opportunity in risk

CLAIMS MADE

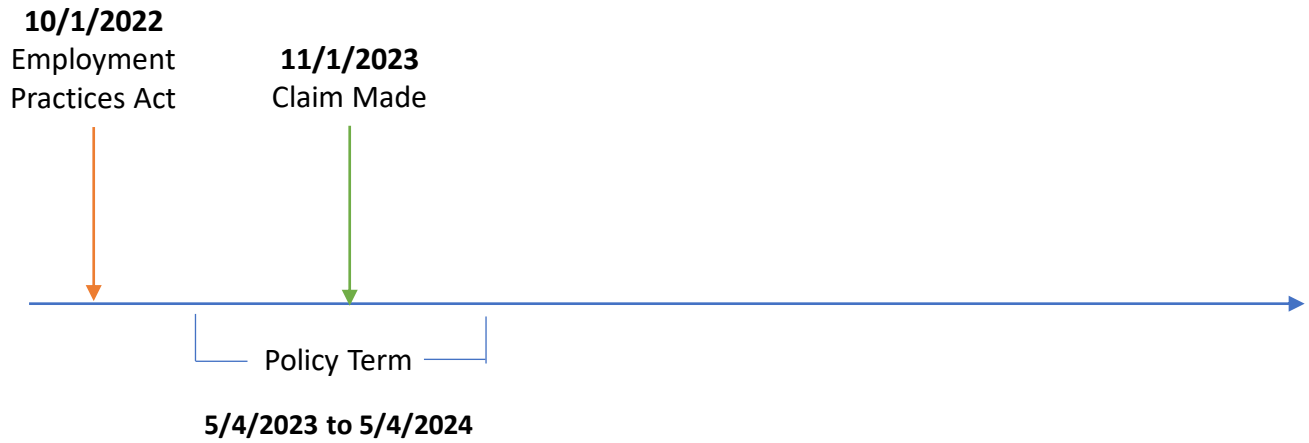
A claims-made policy provides coverage that is triggered when a claim is made against the insured during the policy period, *regardless of when the wrongful act that gave rise to the claim took place*.



KLT Risk Concepts
Finding opportunity in risk

CLAIMS MADE

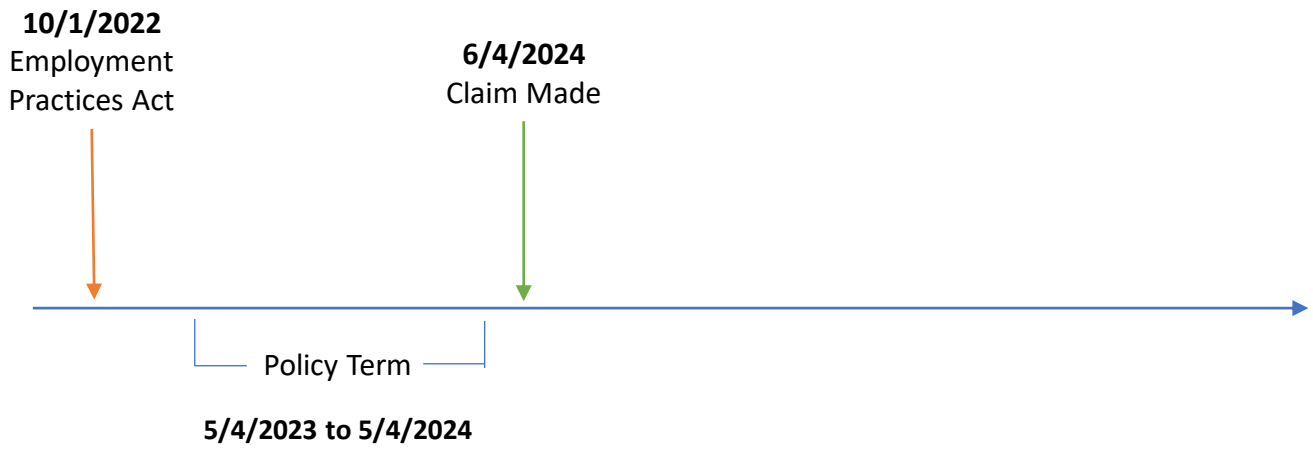
A claims-made policy provides coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place.



KLT Risk Concepts
Finding opportunity in risk

CLAIMS MADE

A claims-made policy provides coverage that is triggered when a claim is made against the insured during the policy period, *regardless of when the wrongful act that gave rise to the claim took place.*



What happens if a claim is made after the policy expires?

1) Renewal or New Policy
2) Automatic Extended Reporting Period
3) Purchased Extended Reporting Period

KLT Risk Concepts
Finding opportunity in risk

INSURING AGREEMENT

The Underwriter shall pay on behalf of the Insured, Loss from Claims made against the Insured during the Policy Period (or, if applicable, the Extended Reporting Period), and reported to the Underwriter pursuant to the terms of this Policy, for an Employment Practice Act.

KLT Risk Concepts
Finding opportunity in risk

What are the major types of covered claims?

- Wrongful Termination
- Discrimination
- Workplace Harassment and Retaliation

KLT Risk Concepts
Finding opportunity in risk

KLT Risk Concepts
Finding opportunity in risk

EMPLOYMENT PRACTICES ACT

Employment Practice Act means any actual or alleged:

1. wrongful dismissal, discharge or termination of employment;
2. breach of a written or oral employment contract or implied employment contract;
3. employment related misrepresentation;
4. wrongful failure to promote;
5. violation of employment discrimination laws (including harassment);
6. wrongful deprivation of a career opportunity;
7. employment related wrongful discipline;
8. negligent employee evaluation;
9. employment related invasion of privacy;
10. employment related defamation (including libel and slander);
11. sexual or workplace harassment of any kind;
12. constructive discharge of employment;
13. employment related **Retaliation**;
14. employment related humiliation;
15. wrongful demotion;
16. negligent reassignment;
17. violation of any federal, state or local civil rights laws;

Source: Philadelphia Indemnity Insurance Company

Some Key Policy Terms

- Who is Insured?
  - The organization.
  - Executives and employees of the organization.
  - May insure Independent Contractors within scope of duty
- What is covered?
  - Defense costs
  - Judgements / settlements
  - Punitive Damages – maybe where insurable under law
  - Third Party Claims – maybe (claims brought by a customer, vendor, service provider and other business invitee for discrimination or harassment).

KLT Risk Concepts
Finding opportunity in risk

Claim Scenarios

Age Discrimination

An age discrimination lawsuit was brought by a highly paid 62 year old sales representative who was employed by the Insured. He was terminated for not meeting his sales quotas. Despite layoffs and cutbacks at the company, there was no documentation that showed the plaintiff was a poor performer. A settlement of $540,000 was reached.

Sexual Harassment and Wrongful Termination

Several female employees at a company complained that the CEO was sexually harassing them. As required by law, the President proceeded to investigate the complaints. Within one month of the start of the investigation and without apparent backing of the board of directors, the President was terminated by the CEO under the pretext of performance issues. This was despite the fact that he was given a raise a few months earlier. The President filed a separate wrongful termination suit due to the conflict between the Board of Directors and the CEO. The settlement and Defense Cost exceeded the policy's Limit of Liability.

Racial Discrimination

A group of Indian descent applicants sued a private retail store for ethnic and racial discrimination after learning they had all been denied employment strictly based on their race and ethnic background. The Defense Cost and settlement was over $200,000.

Retaliation

The Executive Assistant to the Chief Financial Officer was terminated for divulging confidential information to staff regarding impending company layoffs. A suit was brought by the assistant for retaliation and sexual harassment as she claimed the CFO always made suggestive comments and improperly touched her. Defending the CFO cost over $150,000.

Disability Discrimination

An employee went out on medical leave for treatment of an illness. When he was ready to return to work the Insured told him his position had been filled by someone else and his job was no longer available. He filed suit for lost wages, emotional distress, and violation of disability discrimination statutes. The Defense Cost and settlement was greater than $100,000.

Importance of Policies & Procedures

- Is your policy up to date?
- Investigations – do you have a policy?
- Can investigator be impartial?
- What if they have to testify?
- Credibility assessments.
- What to do with reports?
- Effective discipline.
- Responding to the public.
- Preventing retaliation.

Kent Tuten
KLT Risk Concepts

864-643-9269
kent.tuten@kltrisk.com
www.kltrisk.com

KLT Risk Concepts
Finding opportunity in risk