



# Employment Practices Liability (EPL) Claims and EEOC Activity



AAHA Business Insurance Program  
866-380-AAHA (2242)

If an employee believes discrimination occurred in the workplace in regards to race, color, religion, sex, national origin, age, disability, or genetic information he or she can file a lawsuit as well as a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC). Consider these open and closed employment practices liability (EPL) claims filed by participants in the AAHA Business Insurance Program:

**Employee Alleges Age and Gender Discrimination:** Employee A was terminated due to documented performance issues and failure to clock in and out. Employee A hired an attorney and sent a letter to the practice alleging that the termination was due to age and gender discrimination and demanded compensation. Employee A later filed suit. The practice reported an EPL claim to CNA (the insurance carrier), which provided legal counsel. To date, \$2,170 has been paid in defense costs.

**Long-time Employee Alleges Wrongful Termination:** Employee B was terminated after working as the practice's office manager for thirteen years. The practice declared that the termination was executed to promote a friendlier working atmosphere; Employee B belittled coworkers and promoted gossip. Employee B filed a disability discrimination charge with the state's human rights council commission. The practice's insurance carrier provided defense counsel and investigated the allegation. The practice's defense counsel submitted

a position statement to the state's human rights council commission and is awaiting a response. To date, \$13,732 has been paid in legal defense costs.

**Employee Alleges Breach of Contract:** Employee C filed a wrongful termination suit against Dr. D's practice alleging breach of contract and unjust enrichment. After a claims investigation, Dr. D's insurance carrier offered the employee \$2,000 to settle the case. Employee C accepted and withdrew the lawsuit. Dr. D's defense costs (paid for by CNA, the insurance carrier) were \$11,000.

**Employee Fired After Workers' Compensation Claim:** Employee E filed a wrongful termination suit against Dr. F's practice alleging the termination was in retribution for filing a workers' compensation claim. Employee E was offered \$5,000 to settle the case and the offer was accepted. In addition to the settlement, the insurance carrier (CNA) paid nearly \$14,000 to defend Dr. F's practice.

**Disabled Former Employee Files EEOC Charge:** Dr. G's kennel assistant was injured while working at the clinic and had filed a workers' compensation claim. The employee never returned to work, later filing a disability discrimination charge with the EEOC alleging the clinic failed to accommodate the employee's new disabilities. Dr. G filed an EPL claim, and the insurance carrier found no validity for the allegations. To close the EEOC charge, Dr. G agreed to pay the kennel assistant \$1,500. The settlement

and legal fees for the carrier-assigned legal counsel did not exceed Dr. G's EPL policy retention of \$5,000.

**Employee Fired While on Leave:** Dr. H received a letter from Employee I, a former long-term employee alleging wrongful termination and breach of contract. While Employee I was on family medical leave, other employees alleged that Employee I created a negative working environment. Dr. H then terminated Employee I, while Employee I was still on family medical leave. CNA, Dr. H's EPL insurance carrier, negotiated a settlement with Employee I for \$7,000. Dr. H paid the EPL policy retention of \$5,000, and the insurance carrier paid the remaining \$2,000 of the settlement and \$11,234 in legal defense fees.

**Employee Fired While on Jury Duty:** Dr. J's practice hired a new employee who, prior to the start date, received a jury summons for a trial that started two weeks later. During the first two weeks of employment, the employee exhibited poor performance and did not meet the position expectations. While the employee was serving on jury duty, Dr. J terminated the employment. The employee then filed suit against Dr. J alleging wrongful termination for serving on a jury. Dr. J's insurance carrier investigated the case and determined the timing of termination would be difficult to defend. The carrier settled with the employee for \$23,000 in addition to paying \$24,219 in legal defense fees. Dr. J's practice paid its full policy retention of \$5,000 in additional defense costs.

## The EEOC and Your Practice—

### What You Need to Know

In 2010, 99,922 charges were filed against employers alleging the violation of the Federal laws prohibiting the discrimination of employees. If an employee believes discrimination occurred in the workplace in regards to race, color, religion, sex, national origin, age, disability, or genetic information they can file a Charge of Discrimination with the U.S. Equal Employment Opportunity Commission (EEOC).

Most employers with fifteen or more employees are covered by these Federal laws, which means that current, former, and prospective employees can file employment grievances with the EEOC for protection and enforcement of Federal anti-discrimination laws. The fact that the EEOC accepted a charge does not mean that the government accuses you of discrimination. The charging party has alleged that the employer has discriminated against him or her and it is the EEOC's responsibility to investigate the matter to determine whether there is reasonable cause for the accusation. If a charge is filed against you, you may be asked to submit a statement of position, provide requested information, permit an on-site visit, and have employees available for witness interviews.

### Mediation and Conciliation

The EEOC offers a mediation program in which a neutral third party assists the opposing parties to reach a voluntary, negotiated resolution of a charge of discrimination. The program is free, voluntary, and confidential. The process avoids lengthy and unnecessary litigation, and settlements reached are not admissions of a violation by the employer. If the charge is ineligible for mediation it will move

## EEOC Statistics

The number of employment-related charges reached a record high in 2010. The U.S. Equal Employment Opportunity Commission (EEOC) reported that 99,922 workplace discrimination charges were filed last year, beating 2008's previously held record of 95,402 charges. The commission offered some possible explanations for the increase in charges including the changing economic climate, demographic shifts in the labor force, employees' expanded understanding of employment laws and regulations, and the EEOC's accessibility to the public. It is important to recognize that as the frequency of the charges continue to rise, so does your susceptibility to them.

In addition, you need to be aware of the rising cost in settlement of these claims. The EEOC reported that in 2010 they secured more than \$404 million in monetary benefits from employers—surpassing all previous years' monetary relief totals. Of plaintiff verdicts that were collected from 2003 to 2009, those that were awarded over \$100,000 have risen from 66% to 75%<sup>1</sup>.

<sup>1</sup> Employment Practice Liability: Jury Award Trends and Statistics, 2010 Edition.

on to investigation, during which settlement can be reached at anytime. Finally, the EEOC offers conciliation as the last opportunity to resolve the charge informally. Conciliation is also a voluntary process, counter-offers may be presented during negotiations, and agreements reached will avoid the cost and animosity of litigation. The commission's investigations usually take up to six months to complete, but cases that go through mediation are completed in about three months. And when mediation, conciliation, and other informal methods do not produce a resolution, the EEOC may engage in litigation against the employer.

### EEOC Resources

The EEOC provides training, technical assistance, outreach and education programs as preventative measures to assist employers, employees, and stakeholder groups in understanding and preventing discrimination. Visit [www.eeoc.gov](http://www.eeoc.gov) for more information including recordkeeping requirements and ordering free posters.

Source: [www.eeoc.gov](http://www.eeoc.gov)

## The AAHA Business Insurance Program



These recent trends demonstrate that employment-related allegations are occurring more frequently and are increasingly more expensive to defend against. The AAHA Business Insurance Program offers a stand-alone employment practices liability (EPL) policy that will respond to employment-related claims you may face in the future. Resources included with your employment practices liability policy include employee training courses, news articles, and tips to improve your practice's written policies and enforcement. You will also have access to a toll-free helpline, where you can access advice regarding EPL issues from qualified attorneys.

**Contact the AAHA Business Insurance Program at 866-380-AAHA (2242) today for more information or a quotation.**