



Issue 1
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Certificates of Insurance - A Prudent Means to Avoid Costly Claims

More and more companies are hiring independent contractors to handle not only administrative matters, such as benefits and human resources, but also sales and distribution. With this delegation of authority to third-party suppliers comes less direct control over these operations, and greater becomes the need for clients to demand that vendors provide them with timely Certificates of Insurance (COI).

The COI proves that the insured (the third party) has purchased the insurance coverages as required by the outsourcing client. But, the COI also states that the holder of the certificate has no legal right to be covered by the insurance described in the COI, nor does it amend, extend or alter the represented coverage. The COI only shows that the outside contractor has the insurance coverage as explained on the certificate. This protects the business that has contracted with the third party against liability for negligence caused by the independent contractor up to the limits of the policy.

It is the responsibility of the independent contractor to provide the COI to the client that has hired the firm. Usually a COI is prepared by an agent/broker with a copy sent to the insurance company and the client for whom the third party has contracted to perform certain functions.

The COI contains the name of the insured, the name of the insurance companies issuing the policies as stated on the COI, what specific coverages are contained in the insurance policies issued to the insured, and various descriptions of

normal policy terms, exclusions and conditions.

Most often COIs are obtained for commercial general liability to provide protection from liability arising out of the insured's premises or operations, products and completed operations. Usually, a general form will provide broad, standardized cov-



erage terms. In cases, where the coverage is more complex and of a higher risk, manuscript forms of a COI can be written specifically by or for an insurance company. These manuscript COIs should be reviewed carefully for the scope of coverage being provided.

There are two types of general liability forms -- claims-made and occurrence. The trigger that compels the policy to respond is the main difference between the two forms. In the occurrence

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Welcome to the Leap/Carpenter/Kemps Insurance Agency Newsletter!

It is with great satisfaction that we bring this newsletter to you. In this issue and in coming months, we will discuss pertinent risk management topics which may affect your organization.

We sincerely hope that you will find this newsletter informative and please do not hesitate to contact us should you have any questions or needs.



EPLI Coverage: Key to Protecting Your Company Against Costly Sexual Harassment Lawsuits

In today's business world, we all should know and understand that blatant sexual harassment is illegal. What you may not know is that two U. S. Supreme Court rulings in June 1998 broadened the view of what constitutes sexual harassment and a company's responsibility to provide an unhostile work environment. As a result, employers are responsible for employee behavior, and employees have greater recourse to take legal action with respect to sexual harassment. Plaintiffs no longer have to prove that the company bears responsibility or that their job suffered – either through lack of promotion, demotion or dismissal, for example.



Employment discrimination and harassment cases have steadily climbed since passage of the Civil Rights Act of 1991, which amended Title VII to permit jury trials as well as compensatory and punitive damages in discrimination cases. Between 1990 and 2000 the number of employment discrimination and harassment cases filed per year tripled, according to a U.S. Department of Justice study.

The cost to defend and/or settle a sexual harassment suit can be hefty. The average damage award in employment-related lawsuits is \$650,000. In addition, businesses face the loss of employees' work time, disruption in the work area and the specter of bad publicity.

Defining sexual harassment

Federal and state laws prohibit quid pro quo behavior that occurs when one employee who has power over another bases employment decisions or expectations on the subordinate's willingness or unwillingness to grant sexual favors. Examples include:

- Demanding sexual favors in exchange for a

promotion or raise;

- Disciplining or firing a subordinate who ends a romantic relationship; and
- Changing performance expectations after a subordinate refuses repeated requests for a date.

But sexual harassment does not have to involve a disparity of power. The offender may be a coworker, customer or vendor, man or woman, and the victim doesn't even have to be the person harassed. It can be anyone affected by the offensive behavior. As an example, if one employee is telling another a joke that neither finds offensive, is it sexual harassment? The answer could be yes, if a third employee in an adjoining cubicle overhears it and is offended.

Any behavior that creates a hostile environment for another employee – whether verbal, visual, written or physical – may constitute sexual harassment. These include behaviors that:

- Focus on the sexuality of another person or occur because of the person's gender;
- Are unwanted or unwelcome; and
- Are severe enough to affect the person's work environment.

Examples are telling off-color jokes, repeated teasing, displaying suggestive pictures or other objects, and continuing to send love letters or requesting dates when the other party has indicated no interest.

EPLI provides protection

Businesses can protect themselves from the economic impact of sexual harassment lawsuits with employment practices liability insurance (EPLI). It protects businesses against employee claims that their legal rights have been violated. Insurance contracts can vary by company.

Generally EPLI covers legal costs, judgments and settlements that arise not only from sexual harassment charges but from discrimination, wrongful termination, breach of employment contracts, negligent evaluation, failure to employ or promote, wrong discipline, deprivation of career opportunity, wrongful infliction of emotional distress and mismanagement of employee benefit plans. However, policies usually do not cover punitive damages or civil and criminal penalties.

When purchasing a policy, determine who will be covered – company officers, all full-time employees, part-time employees and independent contractors should be considered. Companies should also ensure that all divisions and subsidiaries are included under the policy.

Employers are required to report incidents as soon as prac-

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Effective Employee Communication: A Must to Ensure Understanding of Health Insurance Rate Changes

Ensuring employee understanding of benefit plan changes and rate changes can be difficult, at best. When working to inform your employees of changes in their benefit packages - be it coverage changes, rate increases, or just additional information regarding their benefits - experts advise keeping communications simple, straightforward, and focused.

Start by scheduling a mandatory employee meeting, or series of meetings. Accurately and completely convey the necessary information, then follow-up all meetings with a handout of matching written materials that serve to reiterate the pertinent information discussed in the meeting.

Invite the experts. Employees like the opportunity to meet the company health insurance representative or 401(k) provider. When benefits change, call in the people responsible for the change and give them the chance to meet and talk to your employees. More often than not, they will have better, more informed answers for your employees, as this is their job. Just as important, it takes you out of the hot seat.

Also, provide a single person or point of contact for employees to go to with questions and concerns after the meetings. Your best option may be to have all personal communications directed to your agent/broker or insurance company representative. Many employees do not feel comfortable discussing their personal situations with other company employees. Therefore, providing them with a single contact person outside of the company will effectively alleviate much unnecessary



employee concern and help you as the employer adhere to the recently enacted HIPAA privacy laws. Remember that you never want to receive Protected Health Information (PHI) from your employees.

Keep meetings friendly and informative. This is not the place for confrontation. The atmosphere should be somewhat casual, with a comfortable business tone. Take the time to open the meeting with news that serves to heighten employee awareness by engaging in friendly communication that accurately conveys the investment you make in your employees and your employee programs. Let them know you care and be honest about what prompted these benefit changes.

Aside from handouts that serve to reiterate the meeting discussions, have copies of any necessary booklets, pamphlets, and worksheets for all employees. Be prepared. This is not the time to ask employees to share information. Doing so will only serve to heighten employee anxiety about any changes being discussed.

Perhaps the most important thing to remember is to treat your employees like you would want to be treated. Be honest, open, and willing to take the time necessary to explain the changes to them. Be prepared to have even your best efforts met with frustration and concern. This is to be expected and can be kept at a minimum by keeping communications simple, straightforward, and focused.

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ticable. However, Extended Reporting Period (ERP) protection is available. The length and cost of this feature varies among carriers. In addition, many policies now include Prior Acts in their standard coverage.

Cost has been a barrier to some smaller companies. However, rate increases in 2004 leveled off somewhat; some carriers' rates remained the same or decreased. The cost of EPLI coverage is based on a number of factors. These include your type of business, number of employees and whether your company has previously been involved in an employment practices lawsuit.

Prevention is key to avoiding sexual harassment lawsuits.

Employers should take the following steps:

- Establish and communicate to managers and employees a no-tolerance policy for sexual harassment in the workplace.
- Create an effective complaint and grievance process.
- Take immediate and appropriate action if a sexual harassment complaint is made.
- Document complaints and follow-up actions.
- Report the incident to your EPLI insurance carrier as soon as possible.



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policy, occurrences are covered that take place during the policy period, no matter when a claim is reported. A claims-made policy requires that the occurrence take place during the policy period and the claim be reported during the policy period. Most COIs use the occurrence form for all independent contractors as claims-made policies limit coverage.

But simply having a COI in hand does not always mean that the independent contractor has the insurance coverage. A prudent practice is to have a system to audit, review and correct the certificates to reflect the provisions in the contracts. Some clients establish an auditing program in house, while others have the insurance agent or broker manage the program as part of their fee arrangement. This cost depends greatly on the workload.

The consequences of not monitoring COIs of a third party can be costly for the firm that hired the contractor. Consider this sobering example. A business hired an independent

contractor to provide distribution service for the company. An employee of the vendor had a serious car accident, and soon afterwards, the contractor ceased business. When the employee began submitting workers' compensation claims, there was no coverage -- the contractor had never maintained that insurance. Unfortunately, the company had not insisted on a COI from the independent contractor to verify this coverage. Casting about for payment of the claim, the court ruled that the vendor's employee was a statutory employee of the company that hired the contractor. The workers' compensation claims have totaled more than \$100,000 with more to come.

This is just one of many chilling cases of companies that have been caught with unexpected losses that came from not requiring proper COIs from independent contractors and auditing them to make sure they remain current and reflect the actual coverages held by the insured.



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