

HR Management is Risk Management

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Overall Objectives

1. Encourage interaction – what HR risks are you observing
2. Discuss practical approaches to managing risk through HR management (*i.e. practical can mean inexpensive*)

Learning Objectives

1. HR management is risk management
2. Performing your own HR Audits
3. Looking at Employment Practices Liability Coverage

HR Management is Risk Management

- Changes in Workers' Compensation regulations
- Changing climates in State and Federal Courts
- Title VII
- American's with Disabilities Act (ADA) now also ADAA
- Equal Employment Opportunity (EEOC)
- Wrongful termination exposure
- Poor HR management leads to poor employee decision making – safety and liability issues

HR Management is Risk Management

- It isn't all about the financial risk, but then it is.
- 2007 DATA: 82,792 EEOC Charges
290.6 Million in damages
- Legal defense costs of EPLI \$250K
- Economic environment lends a hand
- Workers' Compensation loss trends

HR Management is Risk Management

- The New York State Department of Correctional Services will pay nearly \$1 million to settle a sex discrimination lawsuit filed by the U.S. Equal Employment Opportunity Commission (EEOC) and the U.S. Attorney for the Southern District of New York

HR Management is Risk Management

- Fort Wayne staffing company will settle an age, race and retaliation discrimination lawsuit brought by the U.S. Equal Employment Opportunity Commission (EEOC). Company will pay a total of \$580,000 and will also pay up to \$5,000 in settlement administrative expenses

HR In MT vs. Your State

- No “At Will” Employment in MT
- Termination requires “Just Cause”
- Small employers no dedicated HR staff
- State Supreme Court pro-employee
- Strong State Human Rights Bureau

HR In MT vs. Your State

- Strong History of Labor Movement
- *Confessions of a Union Rep Spouse* – Yes in Montana you can have an unlicensed handgun on company property, shoot holes in the company car, lie about it, cover it up, get caught, and still keep your job and receive back pay – *all Thanks to my wife....*

1. HR Management is Risk Management

HR Management is Risk Management

- New city employee put on 1967 street roller – roller has been without brakes for a decade
- Employee unaware that this roller is for use only on flat areas
- Looses control of roller while taking it down a hill – has to avoid several homes and then jump off roller

HR Management is Risk Management

- Runaway roller – perfect example where human resources, liability, property and workers' compensation intersect
- *Thoughts on how this could have been avoided?*

HR Management is Risk Management

- Diabetic municipal public works employee
- Running snow removal equipment on airport runway
- Drives plow onto active airport runway
- City Attorney calls for approval to terminate employee – too great a risk

HR Management is Risk Management

- Municipal employee with seizure disorder
- Wants accommodation to ensure safety of seizure dog which accompanies employee to work
- Seizure dog slipping on old tile floor... requests \$5,000 worth of carpeting
- Supervisor refuses accommodation

HR Management is Risk Management

- County Police Officer arrests City officer for domestic abuse
- On the way to the County detention center City Police Chief intercepts County Officer and takes custody of “his” officer
- On Tues. AM City hasn't heard from their Police Chief and his cruiser has been gone all weekend

HR Management is Risk Management

- Employee indicates they want all peanut products removed from office
- Supervisor – my staff have a right to eat peanut butter at work
- Accommodation made, then employee wants accommodation for cancer treatment – accommodation denied
- Employer sued under ADA for peanut allergy

HR In Montana

- Your HR Director thinks it's ok to bring home a dead mountain lion (found on the hwy) in the trunk of the company car....
- Because it would be a good science experiment for their kids

HR In Montana

- Your entire floor takes a sick day to participate in a company “sponsored” ice fishing derby.
- *And the HR Director isn't invited*
- WC Claims & sick leave increase coincide with start of hunting season

HR In Montana

- You know you are doing HR in Montana when a Mayor wants to get his Police Chief to actually wear a uniform.
- And by gosh she should be wearing a skirt cause she would look great in one.
- *Other Risk Management staff in your office agree, she would probably look great in a skirt.*

HR In Montana

- Off-duty law enforcement officer at scene of bar altercation involving ex-wife and new beau
- Officer instructed to stay outside by superior
- Officer enters bar and discharges OC spray in crowded bar
- Claims: Liability, EPLC, Property, WC

Risks vs. Exposures

- Exposures exist with personnel
- Risk can be managed – just need to decide at what degree to manage

HR In Montana

- Town Pop. 3,500
- Billy has just returned from college and is a lifeguard in the pool.
- Town wants to discipline him because he keeps “falling” out of his Speedo.
- Mom is our Mayor and Dad is the City Attorney.....Help!!!

HR In Montana

- Town Pop. 32,000
- New Mayor elected on a platform of change
- I don't care what the City Attorney says, I'm cleaning house (conflicting legal opinions)
- All employees serve at my pleasure
- Three employees terminated = cost to taxpayers 1.1 Million
- Multiple named defendants (law enforcement)

HR in Montana

- City Treasurer of 15 years is under suspicion because the Auditor has some questions.
- Treasurer sent home on paid leave so an investigation can be conducted.
- Treasurer commits suicide over the weekend

HR in Montana

- *My soapbox... Help good employees avoid making bad decisions through demonstrated oversight (checks / balances / policies procedures / enforcement)*

You know it's HR In Montana, when...

- You know you are doing HR in Montana when all of your staff want the day off to go to the “Vigilante Day Parade”.
- May 5th – highlights Ted Kaczynski's Cabin, Buffalo Jump, and Women's Boxing

You know it's HR In Montana, when...

- You know you are doing HR in Montana when time off with pay for “branding” season can still be found in some union contracts.

Underlying Themes

1. Human Resource Theory of Relativity
2. Setting Personnel Management up for Success & Profit
3. People, personalities and politics

Can there be practical solutions?

2. Human Resource Audit Minimize Risk & Add Value

Top 10 Uses for a Human Resource Professional

1. Piñata for the company picnic
2. Go to guy for the ordering the monthly birthday “donut” a Helena MT specialty
3. Resource for the best internet porn sites to *“avoid”*
4. HIPAA Violation Fall Guy

Top 10 Uses for a Human Resource Professional

5. The glare from Bill's new piercings are distracting me maybe the HR Dude can help
6. Since I just got accused of Sexual Harassment, I better go find out if I'm doing it right
7. Great place to cry because everyone is so mean to me and my tattoos

Top 10 Uses for a Human Resource Professional

8. I fired “....” on the spot today because he took my parking space – I probably need to tell someone
9. The guy to put on my reference page - because heaven forbid they call my actual supervisor
10. I need someone to make my employees wear their PPE, because they won't do what they are told

HR Risk Management

- Unfortunately HR Risk Management doesn't fall into this "Top 10" list and it probably should.
- You put internal controls on your money, you should also put them on the staff managing your personnel.
- One way is through an internal HR Audit

Human Resource Audit

- Financial Audits
- Safety Audits
- Personnel / HR Audits should not be that far of a stretch
- HR should be viewed as a profit center for an organization

Human Resource Audit

- A human resource audit reviews an organization's policies, procedures, job descriptions and personnel practices.
- Examines technical and practical dimensions of the HR function
- Examines vertical commitment to HR
- End result to create a system that min. risk & adds value

Audit as a Diagnostic Tool

- Not a “prescription” that fixes something
- Helps identify areas of concern & strength
- Organization must be ready to act on the findings of the audit
- Vertical acceptance of results (buy in)

Audit as a Diagnostic Tool

- **Who should conduct the Audit?**
- Internal vs. external team
- Staff vs. consultant
- 100 miles away \$100 an hour
- Knowledgeable about industry, State regs., Fed regs., and case law
- Define budget & deliverables
- Accountability

Human Resource Audit

- Identifying practices, procedures and policies that are missing or are not compliant with statute.
- Developing a culture of risk analysis and procedures to identify measure the success of the organization's HR function.
- Evaluate the effectiveness and efficiency of human resource practices in their integration with business planning and strategy.
- Establish a baseline to evaluate whether or not its HR function is having a proactive impact on the organization.

Human Resource Audit

- **Personnel Policies**
- **Personnel Files Review**
- **Performance Appraisal**
- **Evaluation Processes**
- **Termination Processes**
- **Unlawful Harassment Compliance**
- **Hiring and Orientation Procedures**
- **Benefits and Compensation Review**
- **Employee Status and Classification**
- **Job Descriptions**
- **Exit Interviewing**

Ask Some Pointed Questions

- How does our organization ensure compliance with applicable state and federal employment laws, practices, and legal rulings?
- Does our organization track historical employment losses to measure the success of employment practices; similar to accident/injury rates and worker's compensation experience modifiers?

Ask Some Pointed Questions

- Does HR have a method of quantifying dollars of exposure the organization may have from wrongful employment practices?
- Is our organization able to trend past losses in order to predict possible future losses against some number that management can relate to, such as percent of gross revenue or profit.

Human Resource Audit

- Does the organization have up-to-date job descriptions?
- Does the organization have up-to-date personnel policies?
- Wage and hour compliance review
- Is there a clearly defined organizational structure and hierarchy?
- Is the organization's mission clearly stated and followed?
- Does the organization's goals and philosophy align with its compensation and benefit plans?

Human Resource Audit

- Has the organization established adequate lines and limits of authority?
- Are current communication channels effective?
- Does the organization have a corrective action / discipline policy (through termination) that adheres to applicable state and federal regulations.
- Does the organization effectively utilize a Human Resource Information System (HRIS)?
- Does the organization consistently conduct performance appraisals?

Human Resource Audit

- Do the organization's benefits help attract and retain qualified employees who fit the organizational culture?
- Have supervisors received training on organization policies and employment law?
- Does the organization have a culture of following unwritten policies and procedures?
- Have there been any employment claims filed against the organization in the past two years?
- Is there a routine process for discharging an employee?

Human Resource Audit

- Is the organization having difficulty finding and/or keeping good employees? COST OF TURNOVER.
- A thorough human resource audit will include interviews with key managers and employees. In addition, the process should include reviews of human resource record keeping systems, employee orientation procedures, discipline and grievance resolution procedures, and reviews of the organization's employment application, interview forms, employment tests, job descriptions, performance appraisal systems and personnel policy/procedures manuals.

Auditing Internal Human Resource Functions

Establishing Best Practices

Agent / Broker Checklist

- ***Establishing an official employee handbook***
- ***Enforcing a zero tolerance policy***
- ***Creating an open door policy***
- ***Conducting harassment training seminars***

Agent / Broker Checklist

- ***Setting up a company hotline for employees to report potential issues***
- ***Creating effective hiring and screening programs to avoid discrimination in hiring***
- ***Keeping documentation of any formal complaints made and noting steps the company is taking***

Agent / Broker Checklist

- ***New employee orientation programs***
- ***Employee equipment training programs***
- ***Formal exit interview programs. Keeping documentation of any formal complaints made and noting steps the company is taking***

The HR Foundation

- Personnel Policies and Procedures
- Job Description Development
- Performance Appraisals
- Corrective Action and Discipline
- HR relationship to WC & Liability claims / risks....

MMIA Risk Avoidance Program

- Developing work comp and liability best practices by municipal department
- Specifically claims driven – not OSHA
- Roll out voluntary adoption with possible movement to requirement to participate in the “pool”

MMIA Risk Avoidance Program

- Workers' Compensation and Liability losses tied to break down in personnel management – to varying degrees
- Voluntary adoption difficult
- Cost allocation back to departments
- Top down adoption will be required

PRIMEX DISC Testing

- Why do some employees seem to be more cognizant of risk management issues than others, why do some seem to work in a way that mitigates risk while others seem to throw caution to the wind.

PRIMEX DISC Testing

- Have you really appreciated the enormous risk management opportunity that the hiring process brings?

PRIMEX DISC Testing

- The results of a using a human factor assessment tool have often steered the hiring authority away from hiring an individual (risk mitigation) and toward hiring someone else (maximizing the potential of the hiring process)

PRIMEX DISC Testing

- *Supervisory training and development* - “good management is good risk management”. The better managed the organization the better its risk management performance ought to be.

PRIMEX DISC Testing

- A look at the supervisor's human factors can become a central component of supervisory training and development.
- Understand what makes them tick.

Why Create or Update our Personnel Policy Manual?

- If PPM is more than 4 years old it should be reviewed
- Allows For Proactive Management
- Improves Employee Relations
- Helps Guide Your Supervisors
- Train to the PPM

Why Create or Update our Personnel Policy Manual?

- Assists in developing “Consistent” personnel management practices
- PPM meeting underwriting criteria may be required in order to attain Employment Practices Liability Coverage (EPLC)

Proactive Management & Employee Relations

- Policies are established in writing and address situations in a uniform and non-discriminatory manner
- Orients employees and assists them in understanding and following policies
- May assist with union relations
- Assists in making personnel actions defensible

Guiding Supervisors

- Provide guidelines to supervisors
- Reduce misunderstandings
- Increase consistency
- Support disciplinary action
- Avoid charges of discrimination and favoritism

Recruitment & Retention Tool

- Introduce your culture and environment and provide a clear understanding of policies and procedures
- Include a Welcome Letter, and your Vision, Mission, History of your city/town and an Organizational Chart
- Manual should be non-technical and accessible to a wide range of educational levels

Consistent Personnel Management

- Examine what is in writing vs. what actually happens “on the job”
- Consistency is key to employees adopting the guidelines
- Provide training to employees, supervisors, and Council Members
- Include *Employee Signature Receipt Page* with Policy Manual

Aren't We Safer Without Anything in Writing?

The Reason(s) to put policies and procedures in writing:

- Difficult to enforce unwritten policies and procedures (& lack of consistency)
- Court may decide based on past practices what your policies and procedures are
- Leads to unproductive disputes
- Charges are difficult to disprove

In General

1. PPM size will depend on the complexity of the Organization.
2. There is no “required” PPM – *Instead PPM should be designed to meet your needs*
3. Most do not need a 50 to 70 page PPM
4. Template available from www.mmia.net

“Essential” Personnel Policies

1. Probationary Period
2. Unlawful/Sexual Harassment
3. Corrective Action and Discipline
4. Complaint Resolution and Grievance
5. Equal Opportunity Statement

“Essential” Personnel Policies

6. Work Site Safety

7. Family Medical Leave Act: *public, state, & federal employers & private-employers who employed 50 or more employees in 20 or more workweeks*

8. Maternity Leave

9. Military Leave

“Essential” Personnel Policies

10. Reduction In Force (RIF) Policy

11. New Employee Orientation

12. Drug Free Workplace / Drug and Alcohol Testing

13. Receipt Page (signature page for employee)

Key Disclaimers

- The Personnel Policy Manual supersedes any previous written, or unwritten, personnel policies and/or manuals.
- The Personnel Policy Manual does not create a contract, express or implied, between the organization and the employee.
- The Personnel Policy Manual does not guarantee employment for any specific time period.

Key Disclaimers

- The PPM can only be changed in writing, by the governing body
- This PPM can be changed by the organization unilaterally, at any time.
- The PPM is not all-inclusive, and is only a set of employment guidelines.

I've put my manual together, now what?

- Train employees and supervisors
- Employees must acknowledge reading and understanding manual content
- Remember it is a “living” document subject to legislative rulings, industry norms, technological advancements, and changes in your city or town

Corrective Action and Discipline

- A properly designed Corrective Action and Discipline Policy will help ensure that all managers and supervisors follow the same course of action when working with employees.
- Discipline supervisors who don't follow PPM
- Key Areas: Timeliness, Consistency, Accuracy, and Documentation

Corrective Action

-Important Disclaimer-

- Each of the following disciplinary actions is independent of the other and will not necessarily be applied in the order listed. For example, depending on the severity of the offense, an employee may be terminated or suspended without having been warned or counseled, or may be terminated without having been placed on probation or suspended.

Corrective Action

For Non-Probationary Employees:

- Oral Reprimand
- Written Reprimand
- Suspension (with or without pay)
- Disciplinary Demotion (optional)
- Termination

Corrective Action

For Non-Probationary Employees:

- Another “Non Disciplinary” Option might include the use of *Administrative Leave*
- Similar in use to suspension, but has less disciplinary connotation

Corrective Action

As you enter into Corrective Action:

1. Clearly explain to the employee that this is a specific action in the City's Corrective Action/Disciplinary Policy
2. Clearly explain where they are at in the corrective action process
3. Do not label the Steps "Step 1..."

Corrective Action

- An Oral Reprimand may be given to employee for job-related reason
- Fully explain and discuss the nature of the problem
- Provide a plan of improvement.
- Document, file, and provide a copy for the employee

Corrective Action

- Written Reprimand is similar to the verbal warning and must contain a description of the specific conduct for which the employee is being warned, how to correct the problem, and consequences if problem is not corrected
- Document, file, and provide a copy for the employee

Corrective Action

- Suspension may be with or without pay and may result in dismissal or reinstatement with or without back pay; however, exempt employees may be suspended without pay only for a period of one or more weeks.
- Provide an opportunity to conduct an investigation.

Corrective Action

- Disciplinary demotion for job-related reasons. The terms of a disciplinary demotion must be in writing, and must contain a description of the specific conduct or reasons for which the employee is being demoted. If appropriate, a disciplinary demotion may include a plan of improvement.

Corrective Action

- An employee may be terminated for job-related reasons. Notice of a termination must be in writing and must contain a statement of the reasons for the termination. A copy of the notice must be given to the employee, and will be placed in the employee's personnel file.
- Provide employee with copy of Grievance Policy.

Corrective Action

- Examples from your community?
- Job Performance...
- Always late to work...
- Frequently absent...
- Verbally abusive...
- Physical altercation...
- Drug and/or alcohol use...
- Off the job behavior...
- Stealing...
- Others...

Job Description Development

- Accurate Job Descriptions are critical to the success of a Organization.
- Oftentimes Job Descriptions are left undone, or become quickly outdated.
- Becomes hard to identify truly what a person does – or is supposed to do.
- How to start – Template and then do a Job Analysis.

What is a Job Analysis?

- Process to identify and determine in detail the particular job duties and requirements and the relative importance of these duties
- Analysis is conducted of the job, not the person
- End product is a job description not a description of the person

What Aspects of a Job Are Analyzed?

- Relationships/Supervision given and received
- Exempt vs. Non-exempt
- Duties and tasks
- Environment
- Tools and Equipment
- Knowledge Skills Abilities (KSA's)
- Essential functions and/or duties

How are these aspects analyzed?

Methods of Job Analysis

- Observation
- Desk Audits
- Individual or group interviews
- Questionnaire
- Employee logs
- Revising/reviewing existing job descriptions

Job Descriptions Are Useful Because....

- Identifying training needs
- Recruitment & Selection
- Compensation
- Performance Evaluation
- Corrective Action / Discipline
- Organizational redesign/staffing issues
- Strategic Planning
- Describe physical needs of various positions to avoid discrimination complaints
- WC Relationship

Why Supervisors Should Care

- Faster resolution of employee problems
- Chance to identify misunderstandings
- Communicate expectations to employees and update job descriptions
- Opportunity for employee to ask questions/for manager to ask employee questions
- Easier corrective action

Performance Evaluation Documents Should....

- Use plain non-technical language
- Be performed consistently
- Record important facts clearly and objectively
- Memorialize the basis for the employment decision
- Avoid extreme or conclusory language

Performance Evaluation Documents Should....

- Be specific and based on verifiable facts or measurable goals
- Be dated and clearly identify the author
- Be signed and dated by the employee
- Be based on an accurate Job description
- Set a path for the future

Performance Evaluations Make Corrective Actions Easier

- Improves managers recollection of the events
- Enhances managers credibility for accuracy
- Provides confidence that the manager is organized, responsible and fair
- Objective evidence of performance problems

Performance Evaluations Make Corrective Action Easier

- Non-discriminatory, business-related concern
- Employee may self-select and resign
- Documentation deters litigation
- Employee know you have evidence to help win a case
- Less attractive for plaintiff's counsel to accept a contingent fee case

In Summary: Evaluations are Your Greatest Defense When:

- They offer clear documentation of performance
 - written proof of logic, business necessity and equity
- They are consistent
 - use both mitigating or enhancing criteria
- They are candid and truthful
 - Jensen v. Hewlett-Packard (1993)

3. EPLC – Selection and/or Design of Coverage

EPLC Design Considerations

- **A good EPLC can supplement other liability policies**
- Providing additional coverage for discrimination, sexual harassment and wrongful discharge. Organizations also should seek a policy that covers claims for breach of express and implied employment contracts. They also should ensure that written demands and EEOC charges are claims that are included within the policy.

PDRMA HELP Program

- PDRMA's H.E.L.P. Program contains three major components that combine to serve your current and future human resource needs. These include:
 - Comprehensive and industry specific training and education programs
 - Telephone HELPLine for timely legal consultation

PDRMA HELP Program

- PDRMA's H.E.L.P. Program contains three major components that combine
- A human resource and employment practices resource center for
- written materials
- The HELP Program assists with the related Article 13 of their EPLI Coverage

PDRMA Article 13

Employment Liability And Duty To Cooperate:

- Contact us before taking action involving a past, present or prospective employee that could reasonably be expected to give rise to a claim or allegation of Unfair Employment Practices;

PDRMA Article 13

- Notify us the next business day after you have been informed, either formally or informally, of a potential claim of Unfair Employment Practices by a past, present or prospective employee or their legal representative;

2007 Untimely Notice Case

- American Ctr. For Int'l 04-01523 Labor v. Federal Insurance Co.,
- Ruling Employer cannot recover for its insurance co the costs of defense and settlement related to a discrimination claim when employer failed to timely notify their insurance company.

PDRMA Article 13

- Not intend to and/or knowingly engage in Unfair Employment Practices;
- Provide us all information, documents, correspondence and any other materials relating to a claim or allegation of Unfair Employment Practices;

PDRMA Article 13

- Follow specific recommendations made by your corporate counsel, our defense counsel or defense counsel retained by us, that will assist us in preventing and/or defending a claim or allegation of Unfair Employment Practices;
- Failure may result in declination of coverage.

EPLC Design Considerations

- **MMIA's Design --- Defense cost only --
-- and only after good HR Management
Practices are in place.**

EPLC Design Considerations

- **Examine the Coverage Provided**
- Examine whether the policy provides defense-only coverage or both defense and indemnity coverage. In a defense-only policy, the insurer pays for all or part of the cost of defending a claim, but does not pay for any settlement or judgment. Indemnity coverage includes the coverage.

EPLC Design Considerations

- **Examine Application & Disclosure Forms**
- Application may contain questions regarding an organization's policies and procedures, including past claims, and facts known at the time that the app is signed which may lead to a claim. Failure to make disclosures can jeopardize the insurance.
- *Generally, claims disclosed on the application will not be covered by a new policy.*

EPLC Design Considerations

- **Policy and Procedure Establishment:** Some EPLC apps will require the org to meet specific underwriting criteria.
- **Legal Council Selection:** Orgs should consider obtaining a "special handling" endorsement offered by many insurance organizations. Such an endorsement allows organizations to choose their own defense counsel. Without such an endorsement, all control over the defense of employment claims rests with the insurer.
- *But will the insurer allow this?*

EPLC Design Considerations

- **Coverage Period:** Most EPLC policies cover only those claims first asserted during the policy period and reported to the insurer pursuant to the policy's "notice" requirements. Timely notice is a condition precedent to coverage, and failure to comply with the policy's notice requirement may jeopardize coverage altogether.
- *The org should clarify if the policy is set up on a claims made or per occurrence basis.*
- *Almost always claims made.*

EPLC Design Considerations

- **Deductible or Self-Insured Retention:**
Some organizations may wish to manage small claims themselves. A self-insured retention can be an effective tool for price containment. Generally, an insurer will want to see that an insured has effective controls and protocols in place for management of claims within a deductible or SIR.

EPLC Design Considerations

- Organizations with larger self Insured layers can face challenges
- How are risks / claims managed in this layer
- Does control get lost when claims moves to legal dept.
- Does feedback occur & is there accountability
- Are underwriting criteria followed in this layer
- *Other thoughts or comments you might have*

EPLC Design Considerations

- **Review EPLC for Exclusions**
- Review the EPLC policy to confirm that it does not contain exclusions for certain categories of potential federal and state law employment claims. It is not uncommon for EPL policies to exclude coverage for claims of assault and battery arising in the harassment context, sexual harassment filed by non-employees, retaliation and negligent hiring, and training and supervision

EPLC Design Considerations

- **Review EPLC for Exclusions**
- In addition review EPLC for exclusions based on violations of such laws as the Family and Medical Leave Act ("FMLA"), the Worker Adjustment and Retraining Notification Act ("WARN"), the National Labor Relations Act ("NLRA"), the Fair Labor Standards Act ("FLSA"), and the Occupational Safety and Health Act of 1970 ("OSHA").

EPLC Design Considerations

- **Review EPLC for Exclusions**
- *Many employers purchase EPL coverage without realizing that the policy provides limited protection and leaves employers vulnerable to a variety of significant employment claims.*

EPLC Design Considerations

- **Reserve the right to control settlement of matters.**
- Employers may want to negotiate with the insurance carrier to include a "consent to settle" provision in the EPLC policy, to prevent the carrier from imposing a settlement without the employer's consent.
- *May not be available – but worth asking.*

EPLC Design Considerations

- **Make sure the policy covers all appropriate entities and individuals.**
- If an employer is comprised of several different business units or entities, it is important to ensure that the EPLC policy covers all appropriate entities.
- This is especially significant since individuals filing suit against employers often identify the business unit or entity incorrectly in court documents, which can result in protracted disputes regarding coverage.

MMIA's Concept of EPLC

- Only available to those in Liability Program
- Underwriting criteria must be met (set renewal schedule)
- Coverage pays defense costs only – *no golden parachute*
- No additional premium for coverage
- Claims covered on an occurrence basis

MMIA's Concept of EPLC

- *Who in the room utilizes or provides EPLC?*
- *Underwriting Criteria?*
- *Your concepts of EPLC or coverage design that you would like to share*

MMIA's Concept of EPLC

- MMIA's Memorandum of Liability Coverage excludes certain employment practices.
- The EPLC endorses the liability coverage back in to include defense costs for wrongful employment practices claims.

Wrongful Employment

- Includes wrongful employment termination, unlawful discrimination, sexual harassment, Civil Rights violation, and/or workplace torts.
- Excludes indemnification or penalties under State or Federal provisions and does not include collective bargaining or Union grievance procedure issues, including union negotiations.

The EPLC Underwriting Process

- IS a labor intensive undertaking for both MMIA and the Municipality
- “From Scratch” time period from EPLC Underwriting review to submission of EPLC Application 5 - 8 months
- *AND if you throw in an election or change in municipal employees...*

The EPLC Underwriting Process

- Review personnel policy/procedures manual, job descriptions, and employment application against underwriting criteria (*provided*).
- MMIA provides a formal review letter indicating what items may need to be updated and/or edited and provide samples (mandatory vs. optional)

The EPLC Underwriting Process

- Process often includes on-site meetings with staff and Council Members to explain coverage and the process
- Underwriting Criteria does not “require” specific policies, procedures, job descriptions
- Municipalities expected to customize
- Participation and review from municipal legal council encouraged

Barriers to EPLC Coverage

- Educating members as to the need
- Unaware of exposure associated with employment related claims
- Prioritizing the need for coverage
- Meeting the underwriting criteria
- If we don't put something in writing, we can't get in trouble for not following it
- Changes to municipal personnel

On-going EPLC Support

- Key aspect of EPLC is on-going support.
- HR support provided to all members regardless of EPLC coverage
- Templates, Review, Consultation, On-Site Training
- Requirement to be re-reviewed for underwriting criteria every 3 years
- “Call Before You Dig”

- *What support activities do you or your EPLC Provide*

Thank You & References

- Gen Re a Berkshire Hathaway Company
EPLI research - Libby Benet
- Park Districts Risk Management Agency
(PDRMA) - Brett Davis
- Primex - Nick Manolis
- MMIA website for copies of materials
www.mmia.net
- jcummings@mmia.net

Handouts

- WWW.mmia.net
- PRIMA - HR Risk Management Article
- MMIA's - EPLC Underwriting Checklist
- MMIA - Sample EPLC Endorsement
- Template - HR Auditing Tool
- Template - Personnel File Auditing Tool
- Performance Appraisal Tool
- MMIA Safety Audit Tools & MMIA Risk Avoidance Programs call 800-635-3089