

E-Book

How to Get on EPLI Panels



Legal Expert Connections, Inc.

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Insurance Defense Marketing

How to Get on an EPLI Panel for Employment Practices Liability Insurance

By Margaret Grisdela

Highlights of this Article

- Employment defense law firms ask “How Can I Get on an EPLI Panel?”
- Proactive measures can protect your client relationship
- Average value of an employment-related claim is \$160,000

The Challenge of Employment Practices Liability Defense

Imagine not being able to defend your own client in a litigated matter. This is the situation many employment defense law firms find themselves in when one of their corporate clients, insured by an employment practices liability (EPL) policy, is named as a defendant in employment litigation.

The first reaction on the part of the law firm is likely to be surprise, or even disbelief.

How can this happen? Our law firm has a five year history of successful service with this employer. We certainly should be able to represent our client in an important employment litigation matter.

-- Typical response from a managing partner or practice group chair

Frequently, the insured employer is required under the EPLI policy to be represented by panel counsel. If the employer’s law firm of choice is not on the insurer’s EPLI panel of pre-approved defense counsel, the law firm may lose the right to represent their own client.

Since litigation is typically one of the most lucrative actions in employment law, the loss hurts financially. Additionally, it is embarrassing and frustrating for the employer’s firm to have to turn the matter over to a competing law firm that may not handle the case as well.

Seeking EPLI Panel Recognition

Being a pre-approved panel member with the carrier that provides EPLI coverage to a client is clearly an ideal situation. Getting on an employment practices liability panel can be quite difficult, however, and may or may not be an option.

One way to minimize this risk is to be named as counsel of choice in the client’s EPLI policy. This is frequently known as a choice of counsel endorsement and may require the insured to

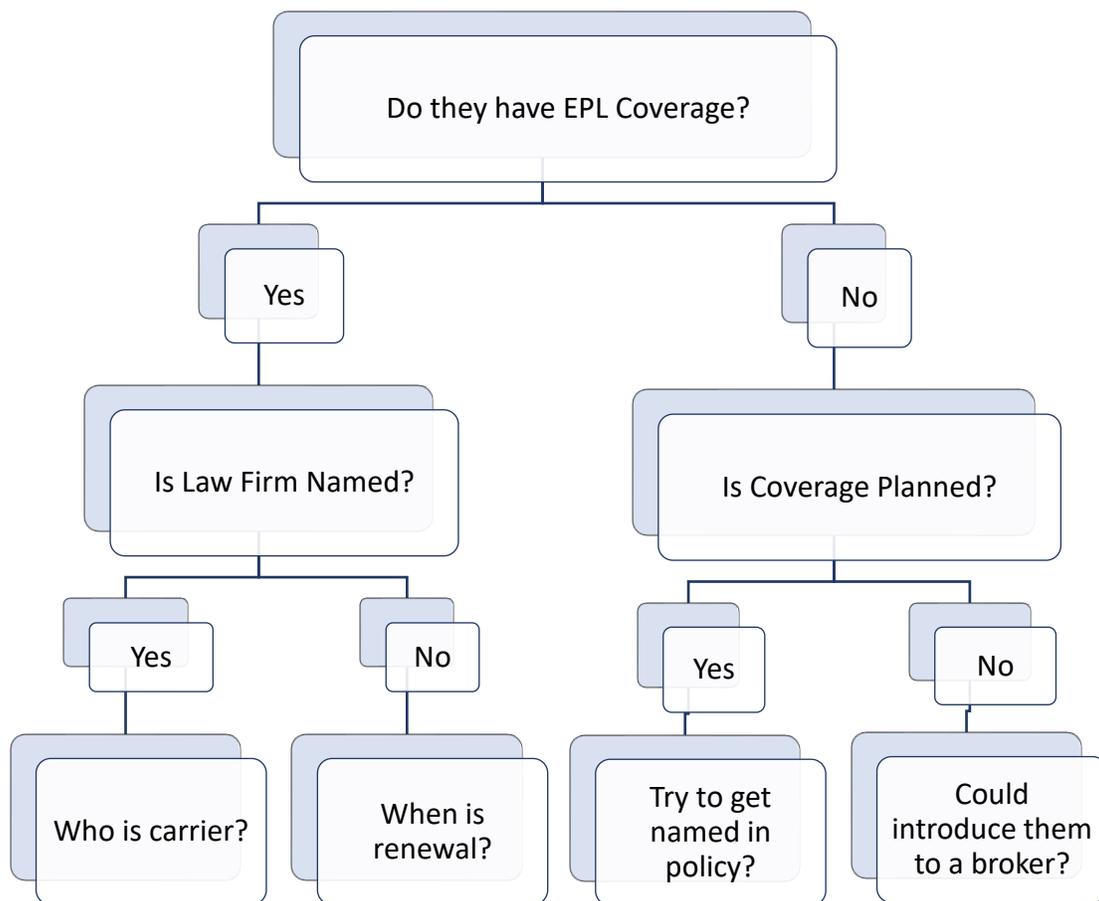
pay an additional fee. The benefit to the insured (the employer) is that they are then defended by the law firm that knows them well and understands their long-term strategies.

If a choice of counsel endorsement is not in place, the employer can also ask the insurer to appoint their employment defense law firm for a specific claim. This is often known as an “accommodation” and may be facilitated by the insurance agent or broker. Approval of an accommodation is at the discretion of the insurer, and may be granted inconsistently. If an accommodation is approved, it is not the same as being on the EPLI panel.

The best time to be named in a client’s EPLI policy is: a) when the policy is initially bound, or b) when the policy is up for renewal.

The worst time to seek panel appointment is after litigation has been initiated. Starting the request for approval process in advance of a claim gives the carrier sufficient time to review law firm credentials and educate the firm on applicable litigation guidelines.

Employment defense law firms are advised to informally survey all employer clients to identify the status of EPLI coverage.



Flow Chart: How to Track Status of an Employer’s EPLI Coverage

Create a simple Excel file that lists all your employment clients, and record if they have insurance (see Table 1 below). If they do have an EPLI policy, record the name of the carrier and the policy renewal date. Record notes to help you track the next steps relevant to each client.

Table 1. Sample Analysis of Client EPLI Coverage

| Client | EPL Yes/No | Policy Start | Policy Renewal | Carrier | Broker | Note |
|---------|------------|--------------|----------------|---------|----------------------|-----------------------------|
| ABC Co. | Yes | 1/1/2013 | 1/1/2014 | CNA | City Insurance Group | Try to get named in renewal |
| XYZ Co. | No | NA | NA | -- | -- | May purchase in 2013 |

In the author’s experience, very few employment defense law firms track the EPLI policies either in force or planned at employer clients. This back-door route to EPLI policy inclusion can be time consuming but effective.

The primary reason law firms don’t track this data may be simple lack of organization or focus. In fairness, it can be a tedious process. A complicating factor can be that the person or department who purchases insurance within the client organization is removed from the law firm’s contacts within the HR department. For example, a chief financial officer (CFO) or risk manager may coordinate insurance coverage without much input from the HR director and/or the law firm. Another challenge occurs if and when the employer changes their EPLI carrier.

Starting to track client EPLI policies early can help a law firm to maximize EPLI representation opportunities within the client firm over time. Legal Expert Connections, Inc. is available to assist employment defense law firms and practice groups with this process. Contact Margaret Grisdela for details.

Traditional Legal Marketing Channels for EPLI Visibility

Insurance defense law firms that demonstrate thought leadership on topics and situations that might trigger an EPLI claim may strengthen their chances for panel approval. Successful marketing campaigns can include:

- Article publication
- Blog posts
- Client alerts and newsletters
- Continuing education seminars
- Social media visibility (especially LinkedIn)
- Speaking engagements
- Videos
- Webinars
- Website content



As you survey clients about their EPLI carriers and brokers, patterns will begin to emerge in regard to the leading local providers. Use the insight you gain to seek out EPLI seminar partners from local insurance carriers and/or agencies.

On a related note, you can also partner with a local accounting firm to offer their corporate clients educational seminars on employment-related legal issues.

Average Employment-Related Claim is \$160,000

Hiscox reports that the average cost of all types of employment-related cases resulting in a payment was \$160,000 in 2017. This number is up by \$35,000 since 2015. Hiscox also revealed that the average employment-related case takes nearly a year to resolve. With an average deductible of \$50,000, these companies saved \$110,000 by purchasing EPL insurance.

Similarly, Chubb reports that the average EPLI loss is \$102,915. These averages differ due to variation in exactly how a claim is measured, whether defense costs are included, and other factors.

According to the [Chubb 2018 Private Company Survey](#), the majority of all employment-related claims stem from harassment, bullying, retaliation, and discrimination. Between 2015 and 2018, more than a quarter of respondents experienced an EPL loss, with sexual harassment being the most common issue. While 65% of respondents are covered by EPL insurance, 1/3 of those companies that were not covered incorrectly assumed their other insurance policies covered such claims.

According to EEOC data reviewed by the [2017 Hiscox Guide to Employment Lawsuits](#), charges of retaliation are made in half of all cases for sexual harassment or discrimination on some other basis, and retaliation is the most common finding of discrimination. More than 75 percent of all claims are unfounded and result in no payment by the insurance company. However, competent and careful representation is necessary to adequately help companies successfully reach the determination that a case is baseless.



An [EEOC analysis](#) underscores the magnitude and frequency of employment claims. The agency received 84,254 private sector workplace discrimination charges during fiscal year 2017. The EEOC obtained \$355.6 million in settlements from private sector and state and local government employers in 2017.

Large Sexual Harassment / Discrimination Settlements and Judgments

USA Today published a list of some of [the most expensive sexual harassment cases](#) in recent history in an October 25, 2017 article titled, "Sexual harassment: Here are some of the biggest cases."

Based on this information, notable examples of the costliest discrimination settlements and judgments of all time are listed below.

1. Former Fox News host Gretchen Carlson received a \$20 million settlement after filing a sexual harassment claim against the company's CEO, Roger Ailes, in 2016.
2. Less than a year later in October 2017, Fox News host Bill O'Reilly reportedly paid an employee a \$32 million settlement for sexual harassment on his part.
3. In 2017, a jury awarded \$51 million to a man who had worked for Lockheed Martin for 17 years but was laid off at the age of 66 without being given a specific reason. He was the oldest person in his work group and the only one who was fired.

4. In 2016, Dollar General was forced to pay a teenage employee \$277,566 for disability discrimination, after the company fired the employee for drinking a bottle of orange juice without first paying \$1.69 for the item that she used to prevent an impending diabetic attack.
5. After eight years in the courts including two appeals to the Supreme Court, Merrill Lynch settled a racial discrimination lawsuit for \$160 million in 2013.
6. Less than a month later, the same company settled a gender bias lawsuit for \$39 million.
7. In 2012, a jury awarded \$168 million to a physician assistant of Mercy General Hospital. The award is believed to be the largest for a sexual harassment case brought by a single victim.
8. A jury awarded an AT&T employee \$5 million for religious discrimination she faced after converting from Christianity to Islam in 2012.
9. In 2011, an Aaron's Rents employee won a \$95 million verdict after being sexually harassed and assaulted by a manager. After the company moved to have the verdict reconsidered, it reached a reported \$6 million settlement with the employee.
10. In 2007, an NBA executive received a \$11.5 million settlement after claiming she was fired for complaining about sexual harassment.

Background on the Insured Market for EPLI Coverage

Employee-intensive industries are most likely to purchase EPLI policies, including:

- Construction
- Hotels
- Manufacturers
- Medical groups
- PEOs and employee leasing firms
- Professional services (law, accounting, etc.)
- Restaurants
- Staffing agencies
- Transportation



Some industry sectors—such as gambling casinos, churches, or schools—may be excluded from EPLI coverage offered by certain carriers.

Research conducted by Legal Expert Connections, Inc. indicates that more than 100 insurance carriers offer some form of employment practices liability insurance. Many of these include the expected national multi-line carriers, but regional and niche-oriented insurers also offer some form of EPLI coverage.

Contact Margaret Grisdela at Legal Expert Connections, Inc. to discuss an EPLI panel counsel campaign for your market.

Common Causes of EPLI Claims

EPLI coverage protects an employer from claims filed by a current, past, or prospective employee. Situations that typically trigger an EPLI claim include but are not limited to:

- Breach of an employment agreement
- Discrimination (see below)
- Failure or refusal to create or enforce adequate employment policies
- Negligent hiring, supervision, training, or retention
- Retaliation
- Sexual harassment
- Violation of the Family Medical Leave Act (FMLA)
- Workplace harassment
- Wrongful termination, discipline, or demotion

Discrimination claims can cover a wide variety of actions, including those listed below:

- Age (over age 40)
- Disability
- Equal pay / compensation
- Genetic information
- Harassment
- National origin
- Pregnancy
- Race / color
- Religion
- Retaliation
- Sex
- Sexual harassment



Directors and officers are often included under an EPLI policy, recognizing that this remains separate from D&O coverage. Features can vary however, and every employer (and employment defense law firm) should understand what is included or excluded in a particular policy.

EPLI claims can come in the form of a letter from an employee to the company, an EEOC or state agency action, or notification of a lawsuit.

In Summary

Start early. Marketing for insurance defense success is a long-term process that benefits from a continuous focus on high visibility business development campaigns.

The current administration is moving aggressively to update major aspects of labor, employment and workplace law as of 2018. The Office of Federal Contract Compliance, for example, recently replaced long-standing guidelines with a more expansive view of pay discrimination actions. Employment defense law firms that are serious about growing market share will want to get ahead of these regulatory trends.

EPLI Insurance Panel Strategies

Courtesy of Legal Expert Connections, Inc.

About the Author: Insurance defense marketing consultant Margaret Grisdela is president of [Legal Expert Connections, Inc.](#) and the author of [Courting Your Clients: the Essential Guide to Legal Marketing](#).

EPLI and Insurance Defense Marketing Consultant for Law Firms

Legal Expert Connections, Inc. is a national legal marketing agency focused on business development. Our services include insurance defense marketing, employment defense marketing, outsourced legal marketing management, EPLI panel counsel campaigns, and more.

If your insurance defense law firm is asking how you can get on more insurance panels, give us a call. We have helped approximately 150 defense law firms pursue new insurance panel clients.

Legal Expert Connections, Inc. offers three key benefits to insurance defense law firms nationwide:

1. **We are the leading U.S. legal marketing agency specializing in the insurance defense market.** We know the panel counsel process and can accelerate your business development efforts by identifying who you need to contact.
2. **You get a structured business development process.** We guide your law firm through a proven three-step campaign that brings discipline, focus, and productivity to your marketing efforts.
3. **Increase revenue with professional, Bar-compliant legal marketing campaigns.** We do the research to identify insurance panel managers, so you can focus your time on the business development process.

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Visit our Websites

www.EmploymentLawMarketing.com
www.InsuranceDefenseMarketing.com
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Remember, never stop marketing! The author invites your questions and comments. She can be reached at mg@legalexpertconnections.com. *August 2018*