

Market Outlook

Amid difficult market conditions, the majority of employment practices liability (EPL) insurance policyholders encountered rate increases during 2022. These rate hikes varied based on sector, location, potential exposures and prior losses. Looking ahead to 2023, first-time policyholders may experience additional capacity difficulties as insurers focus on maintaining profitability among their existing customers. As a whole, rate increases and coverage limitations will likely persist for high-risk insureds for the foreseeable future.

Developments and Trends to Watch

- **Rising claim severity**—The U.S. Equal Employment Opportunity Commission (EEOC) reported that employment charges and related EPL claims have been on the decline since 2016. Yet, while charges have trended downward, their associated costs have done the opposite—thus elevating total EPL losses. Such increasing claim severity can be attributed to several factors, including social inflation issues driven by deteriorating public sentiment toward large corporations, subsequent nuclear verdicts (jury awards exceeding \$10 million) and a continuation of pandemic-related allegations regarding inadequate workplace accommodations.
- **Increased regulatory scrutiny**—President Joe Biden's administration and the EEOC have collaborated on various regulatory initiatives to fight systemic discrimination in the employment landscape. In a recent report, the EEOC shared that it has been leveraging both enforcement capabilities and education and outreach efforts to minimize discriminatory patterns in employment settings across industry lines and geographic areas. The Biden administration also announced plans to expand the EEOC's workforce to 2,300 employees by 2023, up from approximately 1,900 in 2020. This growth in employees could allow for even greater enforcement capabilities, litigation and associated EPL claims going forward.
- **Marijuana legalization consideration**—Although marijuana remains illegal at the federal level, many states have begun legalizing the substance. Such evolving legislation has created numerous challenges for businesses across industry lines—especially regarding EPL exposures. For instance, some states have enacted statutes that restrict employers' abilities to conduct drug tests for marijuana, while others have introduced laws prohibiting employers from refusing to hire or taking adverse action against workers who use the substance recreationally while off-duty. As this regulatory landscape continues to shift, businesses that fail to maintain compliance could face an increase in EPL claims.
- **Artificial intelligence (AI) concerns**—AI systems can help advertise companies' open positions, analyze resumes, test applicants during the hiring process and identify top-performing employees for promotion opportunities. According to industry data, more than one-third (35%) of businesses utilize AI systems. While these systems offer various benefits, such technology may also pose EPL exposures. Specifically, AI systems—although intended to provide impartial results—may contribute to discriminatory employment decisions if the algorithms and data sets entered into these systems end up being biased against specific groups.

Tips for Insurance Buyers

- Assess your employee handbook and related policies. Ensure you have all appropriate policies in place, including language on discrimination, harassment and retaliation.
- Review any state-specific legislation related to marijuana legalization. Consider revising procedures related to conducting workplace drug tests for marijuana or basing employment decisions on an employee's marijuana usage, as these practices could potentially contribute to EPL claims.
- Evaluate the algorithms and data sets for any AI systems utilized within recruitment and hiring processes to prevent discriminatory employment decisions and ensure compliance with applicable federal and EEOC guidance.

