

Employment Practices Liability Trends of 2021: What Business Owners Need to Know



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Introduction

Whether your business is large or small, if you have employees, you have employment practices liability (EPL) risks. Lawsuits, both individual and class-action, can devastate a business, even if you've done nothing wrong. Staying ahead of emerging EPL trends and making sure you have the correct insurance coverage can help you prepare pro-actively for the worst-case scenario. Here are the most important EPL trends to watch for in 2021, as well as proactive ways to manage your risk.

COVID-19

Like every other aspect of life, the pandemic has shifted the EPL landscape. According to USA Today, the pandemic spurred over 1,000 workplace-related lawsuits in 2020, both individual and class-action. Some experts estimate the number is actually higher, and it's just the beginning. This year will see even more suits filed. Some of the most common pandemic-related EPL claims fall in these categories:

- **Layoffs, firings, and furloughs** – Allegations of discrimination and not providing proper notice
- **Workplace safety** – Allegations of unsafe working conditions or lack of appropriate precautions causing sickness or death
- **Retaliation** – Allegations of retaliation after reporting unsafe conditions or workplace exposure
- **Remote work** – Allegations of disability discrimination for not providing accommodations

Reduce your risk: Document everything related to organizational changes. Review your practices to make sure you're complying with state and federal employment laws.

Social Movements

Social movements encourage people to speak out against injustices. This contributes to increased scrutiny and, inevitably, increased lawsuits. Here are a few to keep your eye on:

- **#MeToo** – While not new, the #MeToo movement gained attention on social media in 2017 and has been contributing to a rise in sexual harassment lawsuits over the past few years—50% more according to the U. S. Equal Employment Opportunity Commission (EEOC).
- **Black Lives Matter** – This racial justice movement surged in 2020 and has the potential to impact race-related discrimination and harassment lawsuits.
- **LGBTQ+ protections** – EEOC guidance, paired with a 2020 U.S. Supreme Court decision, protect gay and transgender employees in the workplace.
- **An aging workplace** – As the number of people in the workplace over 55 continues to rise, be aware of age discrimination risks.

Reduce your risk: Implement zero-tolerance policies for harassment and discrimination of any kind. Require awareness training courses. Create a diversity, equity, and inclusion program to help staff feel supported. Take any accusations seriously and respond appropriately.

Wages, Leave, and Salary History

Wage and hour laws vary by state and change regularly. Missing a change can make your business open to suits regarding minimum wage, employee classification, overtime pay, sick leave, and paid time off. Along the same lines, states have begun to prohibit employers from requesting salary histories from job seekers.

Reduce your risk: Keep your eye on changing laws in your state. Consult legal counsel to review your policies and provide wage, leave, and salary history guidance.

Marijuana Legalization

Medical marijuana is now legal in 36 states, and recreational usage is legal in 15 states and Washington, DC. As these laws change, your workplace policies regarding marijuana can quickly become outdated. Courts nationwide are increasingly siding with workers in EPL cases involving off-duty cannabis use and drug testing policies, so it's more important than ever for employers to ensure their company policies are up to date.

Reduce your risk: Take a hard look at your marijuana-related policies and consult legal counsel for compliance guidance in your state. It's vital to review your policies on a regular basis to ensure they always reflect the latest state and local laws.

The Good News

The EPL landscape is much easier to navigate with experts like VGM Insurance on your side. We can help make sure you have the right insurance coverage in place and provide guidance to help you manage your risk.

For more information and guidance, contact your VGM Insurance Account Manager or reach out to us today at info@vgminsurance.com or **800-362-3363**.

