



Financial Lines

Increased Claims Activity - Employment Practices Liability Insurance



Increased Claims Activity - Employment Practices Liability Insurance

As a leading Employment Practices Liability (EPL) insurer in both the US and Europe, AIG sees trends in claims activity.

US Claims Trends

In the US we continue to see high claims activity in California but also an increasing amount of claims activity primarily in New York and New Jersey.

Many insurance companies nowadays struggle with profitability in California as the cost to defend, and the settlements and damages awarded, are increasing. The plaintiff's attorney's fees are approximately 30 % higher than in other states but also because California is employee friendly and the juries are very tough. With respect to the California exposed part of the EPL portfolio, **we need to consider possible adjustments in, first and foremost, capacity, retention and rate.**

The main drivers for the increased costs in California are:

- **Higher settlement levels** – 40 % of all settlements exceed \$1 million and 70 % exceed \$250 000.
- **Higher risk of being sued** - there is a 40 % higher risk of being sued in California compared to in other states.
- **Higher costs for defending** - plaintiffs' attorney's fees are increasing.

- **Recent large verdicts** – these verdicts are a driver for plaintiff demands and settlement expectations.
- **Punitive damages** - potentially very heavy punitive damages awarded by juries give the plaintiffs a lot of leverage in settlement discussions and drive plaintiff demands and settlement expectations.

Over 30 % of claims payments relating to the US EPL book are made in California whereas 15 % are made in New York. Since these two states account for roughly 45 % of total claims payments, they receive high underwriting attention and focus. **AIG is being more conscious and we make sure we understand the exposures of our insureds in these two states in particular.**

In both New York and New Jersey legislative changes such as the banning the use of non-disclosure agreement and of mandatory arbitration provisions in employment agreements will only make it more difficult to resolve these cases. Further to this, California, New York and New Jersey, among many other states, have recently passed new laws around sexual harassment. In California a company with five employees or more must provide mandatory sexual harassment prevention training once every two years, including to temporary and seasonal employees.



Sexual Harassment - #MeToo

Looking back at the last 10 years, wrongful termination is the most frequent type of claim in the US, but the most expensive claims are related to discrimination (particularly relating to gender, age and race). **The #MeToo movement, associated with high profile media personalities, has resulted in an increase in sexual harassment claims across all industries starting in the third quarter of 2017 and continuing throughout 2018.** These claims involve the reputation of insureds and juries' sympathies resulting in higher settlements. Against this background, AIG's underwriting process is nowadays even more focused on company culture, training and awareness around sexual harassment.

As a consequence of recent developments, sexual harassment matters dealt with by the Equal Employment Opportunity Commission (the EEOC) have skyrocketed:

- The EEOC filed 66 harassment lawsuits in 2018, including 41 that included allegations of sexual harassment. **This is a 50 % increase compared to in 2017.**
- Charges filed with the EEOC alleging sexual harassment also **increased by more than 12% compared to in 2017.**
- **The EEOC recovered nearly \$70 million for victims of sexual harassment** through administrative enforcement actions and litigation in 2018, which is up from \$47.5 million in 2017.

Overall, the EEOC has been very active in 2018 collecting over \$500 million and filing almost 200 more lawsuits. In 2018, the EEOC saw a significant increase in calls, emails and online inquiries concerning potential discrimination claims. One reason for this development is the launch of a nationwide online inquiry and appointment system as part of the EEOC's public portal. This resulted in a 30 % increase in inquiries and more than 40,000 intake interviews.

European Claims Trends

AIG's European EPL book consists of over 10,000 clients. During the past 3 to 5 years, **we have seen an increased claims activity also across Europe.** The majority of European insureds have a US exposure hence we will continue paying close attention to the developments in the US.

In Europe, we also see claims trends developing. In the UK, **40 % of the EPL claims in 2016 and 2017 were due to gender discrimination**, an increase compared to previous years. The change in law regarding gender pay gap reporting requirements and repeal of tribunal fees in the UK could further lead to increases in claims related to gender discrimination.

Industry Trends

There are a few industries that are driving the losses even though we see claims in a broad spectrum of industries. **In the US, 25 % of all claims are found within healthcare, education, retail and entertainment.** There are certain categories of claims driving the hazard, e.g. disability and race discrimination and wrongful termination.



Looking ahead

As a market leader on EPL insurance, AIG often sees the overall trends developing which gives us the ability to act accordingly. For AIG to remain a long term EPL insurance provider, we must respond to claims trends and work together with clients and brokers to find long term sustainable terms.

For example, a couple of years ago, insurers in the US introduced separate/minimum retentions for California domiciled claims. This is a strategy that AIG will look to deploy in Europe.

AIG is determined to continue providing insureds with the best claims experience and loss prevention services, such as the **EPL Risk Manager Tool**, where insureds can find best practices, claims trends, policies and guidelines with regard to EPL and get a two hour free walkthrough from a US law firm.

With our leading position and long history, we have all the experience needed to defend companies against claims, regardless of the complexity and size. To put this in context, **AIG handles over 5,000 EPL claims** in the US every year. With the increasing number and severity of employment related litigations, the need for experienced EPL claims handling is more important than ever.

Our extensive panel of law firms in the US, with expertise in handling different types of EPL claims, along with our dedicated EPL loss adjusters, are always at service to our clients.

It is vital to have **experienced defense counsel with strong knowledge of US employment law** when defending these types of claims. Going forward, we expect to see much more emphasis on the actual experience of the EPL insurer to defend the insureds in these types. Whereas EPL insurance has not received the same attention as other Financial Lines products (mainly D&O insurance) we also expect to see an overall increase in demand considering the increasing risk of large and complex lawsuits, both in Europe and the US.

