



EMPLOYMENT PRACTICES LIABILITY LEADING AGE WASHINGTON HR SUMMIT

USI Executive Professional Risk Services (EPS)
www.usi.com

List of Federal Employment Laws

Title VII of the Civil Rights Act:

Bars employers from discriminating against workers based on sex, race, religion, color, or national origin.

Pregnancy Discrimination Act:

Prevents employers from discriminating against a woman because of pregnancy or a related condition.

Equal Pay Act:

Requires employers to pay men and women the same wages if they perform equal work in the same workplace.

Age Discrimination in Employment Act:

Prohibits employers from discriminating against employees ages 40 or older based on their age.

Title I of Americans With Disabilities Act (ADA):

Prohibits discrimination against qualified employees who have a disability.



Hammer Clause


- Client does not want to settle, but carrier has authority.
- Copy cat and Knock on litigation considerations



Claim Reporting Requirement

- “As soon as practicable” but no later than 60 days after end of the policy period
 - 90 days? 180 days?
 - after what trigger date?
 - “receipt” of claim?
 - knowledge of HR, Risk Manager, GC?
- “so long as claim comes in within last 30 days”?
- No requirement to report EEOC notices?
- What info must be provided?
- “Bordereau” reporting
- Reporting “circumstances”



Renée Bordereau, probably 1814, 
copperplate engraving

EPLI: Other Coverages

- “Wage & Hour” Defense Costs
 - Does not cover settlements (wages owed)
 - Typically only small sublimits

- “Third Party” Coverage
 - Discrimination or harassment of a non-employee (e.g., customer or vendor)
 - Not always included

- Violations of immigration laws

Definition of Employment Claim

Employment Claim means:

1. a written demand for monetary damages or non-monetary relief;
2. a civil proceeding commenced by service of a complaint or similar pleading;
3. a criminal proceeding commenced by filing of charges;
4. a formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document, including a proceeding before the Equal Employment Opportunity Commission or any similar governmental agency; provided that in the context of an audit conducted by the Office of Federal Contract Compliance Programs, Employment Claim will be limited to a Notice of Violation or Order to Show Cause or written demand for monetary damages or non-monetary relief;
5. an arbitration, mediation or similar alternative dispute resolution proceeding if the Insured is obligated to participate in such proceeding or if the Insured agrees to participate in such proceeding, with the Company's written consent, such consent not to be unreasonably withheld; or
6. a written request to toll or waive a statute of limitations relating to a potential civil or administrative proceeding, against an Insured by or on behalf of or for the benefit of a Claimant, or against an Insured Person serving in an Outside Position by or on behalf of or for the benefit of an Outside Claimant, for a Wrongful Employment Practice; provided that Employment Claim does not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

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2. - 5. a civil, criminal, regulatory or ADR proceeding; or
6. request to toll a statute of limitations

against an Insured for a Wrongful Employment Practice;

Definition of Wrongful Employment Practice

Wrongful Employment Practice means:

- discrimination;
- retaliation;
- sexual harassment;
- wrongful termination;
- breach of employment agreement;
- violation of the FMLA
- wrongful discipline,
- wrongful demotion,
- denial of or negligent training,
- deprivation of career opportunity,
- failure to enforce adequate workplace policies and procedures,
- employment-related:
 - misrepresentation
 - defamation
 - infliction of emotional distress;
- negligent hiring
- negligent supervision

3 Risk Strategies for Organizations

- Risk Transfer - Insurance
- Risk Avoidance – do not hire or fire or work with people
- Risk Mitigation – Those activities that reduce the frequency and severity of employment related events.

Frequency versus Severity – what's my risk?

- Nuclear Verdicts
- Most Probable outcome
- In fiscal year 2023, the EEOC logged 2,812 discrimination charges originating in Washington
 - Retaliation 51% percent of filings, followed by disability, 33%, and sex-based discrimination, 29%.
 - Median employment practices claim settlement in Washington reached \$185,000 in 2023. Defense costs averaged \$73,000 per insured event.

EPLI Claim Outcomes

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Nuclear Verdicts

- Gratton v. United Parcel Service, Inc. (UPS) — race discrimination / retaliation / wrongful termination
Jury award: \$237.6 million (jury) — later reduced by a judge to \$39.6M (punitive portion struck); defendant sought a new trial and there have been subsequent post-trial rulings.
Why it's notable: single-plaintiff jury verdict that initially included a very large punitive damages award; later judicial rulings cut down the punitive amount and procedural post-trial motions continued.
- Bennett (Naomi Bennett) et al. v. Providence Health & Services — wage & hour class action (meal breaks, time-clock rounding)
Jury award: ~\$98.2–98.3M in compensatory damages to ~33,000 employees; a court ruling that the violations were willful means the statutory penalty doubles damages — bringing the total due (with statutory doubling + interest) to more than \$229M.
Why it's notable: one of the largest Washington wage-and-hour verdicts; significant implications for hospital/healthcare time-keeping and meal-break practices.
- Arbitration award: Newell v. Swedish Health Services / Providence (physician / neurosurgeon) — wrongful termination / retaliation / WLAD
Award confirmed: roughly \$16.5M (lost earnings) + \$1M (emotional distress) — total ~\$17.5M confirmed by Washington courts (arbitration award confirmed).
Why it's notable: large arbitration award for employment/retaliation claims involving a physician, later confirmed by court. (Arbitration awards can be enforced like jury verdicts once confirmed.)

Nuclear Verdicts

- Ellis (five Black UWPD officers) v. University of Washington Police Department — racial harassment / hostile work environment
Jury award: jury awarded over \$16M to five officers (press reports and firm press releases report ~\$16M+ total; later fees/costs/other relief increased the judgment).
Why it's notable: multi-plaintiff racial-harassment verdict against a public employer with extensive factual findings about long-term workplace racial abuse.
- Zachrisson & Lincoln v. Port of Seattle (Sea-Tac) — whistleblower / wrongful termination
Jury award: \$16,097,342 (jury verdict; later reported settlements/caps in coverage discussions).
Why it's notable: large whistleblower wrongful-termination award against a municipal entity (Port of Seattle).
- Kniffen (former utility field inspector) v. [Utility employer] — disability / termination after workplace injury
Jury award: \$5,000,000 (emotional damages reported after a federal jury found termination unlawfully motivated by medical restrictions).
Why it's notable: large individual plaintiff award for firing/retaliation after injury/medical restrictions — reported in Law360 and local press.

Nuclear Verdicts

- Tucker v. Senior Housing Assistance Group, et al. — hostile work environment / race discrimination / constructive discharge
Jury award: \$8,784,000 (TopVerdict entry listing this result among top WA verdicts in 2024).
Why it's notable: high-six/low-seven figure jury award for workplace race discrimination/hostile environment in Washington.
- Allen v. State of Washington — wrongful termination / whistleblower
Jury award: \$2,999,406 (TopVerdict list — wrongful termination / whistleblower retaliation).
Why it's notable: large award against the State for whistleblower/termination claims — appears on the 2024 TopVerdict Washington list

EPLI Claims: Working with the Insurance Company

- “Duty to Defend”
 - Insurance company chooses the defense attorney
 - Broad defense obligation
- Incident Hotlines
- Online library of sample policies and procedures

EPLI Claims: Resolution

- Alternative Dispute Resolution (ADR)
 - Mediation
 - Arbitration
- Trial
 - Bench Trial (before a judge but no jury: the judge decides all issues; or
 - Jury Trial (before a judge and jury: the jury decides what facts are true, and the judge decides all legal issues)
- Settlement

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