



## Corporate Exposure: General Liability v. Employer Liability

Harry P. Mirijanian

**Y**ou have only to pick up a newspaper or tune into a local talk show to see the growing number of discrimination claims that are being brought against employers by their employees. Many corporations seek relief for such claims under their general liability policy, which traditionally only covered bodily injury and property damage claims. Companies are trying to expand the definition to include harassment and related employer liability exposures. Unfortunately, as many insureds have learned, it is nearly impossible to get coverage for these types of claims under standard general liability policies.

Emotional injury does not qualify as bodily injury as currently defined in most general liability policies. An exception to this is when emotional distress or mental anguish is triggered by a physical injury. Some courts have maintained that policies should cover emotional distress claims under these circumstances.

But what about other situations? Let's briefly examine a typical policy. The policy will clearly state that physical injury must be caused by an accident. Most would agree that harassment and discrimination are deliberate acts, not accidents. In other words, no coverage. Likewise, wrongful termination claims are based on an intentional action; thus, they, too, warrant no coverage. Some insureds have sought coverage under the

"personal injury" provisions in their policy. The definition of personal injury is somewhat broader than bodily injury, and such a claim can be triggered if the insured commits an offense rather than an occurrence. The intent of personal injury coverage, however, is to provide protection for the insured arising from publications or libel/defamation suits. Since harassment or wrongful termination is usually between two parties and generally not publicized, the policy will not respond. The intent of this policy is to provide coverage for libelous or slanderous statements. One could argue that if harassment or discrimination was publicized, it could be covered under this provision.

—————  
*Don't assume  
that your  
general policy  
can protect you under  
all conditions.*  
—————

There is an even larger obstacle to overcome for those companies that still think they can get coverage under their general liability policy. Many carriers have now added specific exclusions to their policies. These exclusions affirm that there is no coverage for specified actions under the policy. They also exclude coverage for intentional acts. The rules are clear, concise, and unassailable.

The insurance industry has no desire

to run away from a business opportunity, however. A number of carriers offer policies specifically related to employment-related liability. Many of these policies, in fact, have been around for some years and are thus court-tested. Anyone seeking to purchase this sort of insurance must satisfy underwriting criteria, which varies by carrier. One requirement for all carriers is the requirement for a written employment-related policy/procedure document.

The issue goes beyond the carrier. Society should not tolerate insurance coverage for intentional discrimination or harassment claims. Insureds must run their companies in a manner that is fair and equitable for all employees. Of course, there are still some people who have difficulty with the concept of a diverse workplace. For those people, we suggest training and counseling. We also recommend that companies desiring employer liability coverage find a broker with recognized expertise in this field. Brokers should resist the temptation to push these policies, especially if they have little or no idea how they work.

The best advice? Treat your employees as you would want to be treated. If you can do that, you can enjoy the multiple benefits of a positive work force. ■

*Harry P. Mirijanian is president of Applied Risk, an independent risk management services firm established to assist the business community in reducing exposure to loss and insurance costs. He is a frequent speaker at AMA seminars.*



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