

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

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EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

THIS FORM PROVIDES CLAIMS-MADE AND REPORTED COVERAGE.
PLEASE READ THE ENTIRE FORM CAREFULLY.

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII - Definitions.

SECTION I - EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

1. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages because of a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "claim" that may result. But:

- a. The amount we will pay for damages and "defense expenses" is limited as described in Section III - Limit Of Insurance and in Section IV - Deductible; and
- b. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit of insurance for "defense expenses" or the payment of judgments or settlements.

No other obligation or liability to pay sums, such as civil or criminal fines, imposed on you or any other insured, or to perform acts or services is covered unless explicitly provided for under Supplementary Payments.

2. This insurance applies to "wrongful acts" only if:

- a. The "wrongful act" takes place in the "coverage territory";
- b. The "wrongful act" did not commence before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and
- c. A "claim" against any insured for damages because of the "wrongful act" is first made during the policy period or the Section VI - Extended Reporting Period, if provided, in accordance with Paragraphs 3. and 4. below.

3. A "claim" will be deemed to have been made at the earlier of the following times:

- a. When notice of such "claim", after being received by any insured, is reported to us in writing; or
- b. When a "claim" against an insured is made directly to us in writing.

A "claim" received by the insured during the policy period and reported to us within 30 days after the end of the policy period will be considered to have been reported within the policy period. However, this 30-day grace period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

4. If during the policy period you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" against any insured, you must provide notice to us in accordance with the provisions of Section V, Condition C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim. If such notice is provided, then any "claim" subsequently made against any insured arising out of that "wrongful act" shall be deemed under this policy to be a "claim" made during the policy period in which the "wrongful act" was first reported to us.

5. All "claims" for damages because of a "wrongful act" committed against the same person, including damages claimed by any person for care, loss of services or death resulting at any time from the "wrongful act", will be deemed to have been made at the time the first of such "claims" is made, regardless of the number of "claims" subsequently made.

B. Exclusions

This insurance does not apply to:

1. Criminal, Fraudulent Or Malicious Acts

An insured's liability arising out of criminal, fraudulent or malicious acts or omissions by that insured.

This exclusion does not affect our duty to defend, in accordance with Paragraph **A.1.** above, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal, fraudulent or malicious act or omission.

2. Contractual Liability

Any "wrongful act" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

3. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

4. Violation Of Laws Applicable To Employers

A violation of your responsibilities or duties required by any other federal, state or local statutes, rules or regulations, and any rules or regulations promulgated therefor or amendments thereto, except for the following, and including amendments thereto: Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform and Control Act of 1986, the Family and Medical Leave Act of 1993 and the Genetic Information Nondiscrimination Act of 2008 or any other similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

However, this insurance does not apply to a "wrongful act" arising out of your failure to comply with any of the accommodations for the disabled required of you by, or any expenses incurred as the result of physical modifications made to accommodate any person pursuant to, the Americans With Disabilities Act, or any amendments thereto, or any similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

This Exclusion **4.** does not apply to any "claim" for retaliatory treatment by an insured against any person making a "claim" pursuant to such person's rights under any statutes, rules or regulations.

5. Strikes And Lockouts

Any "wrongful act" committed against any striking or locked-out "employee", or to an "employee" who has been temporarily or permanently replaced due to any labor dispute.

6. Prior Or Pending Litigation

Any "claim" or "suit" against any insured which was pending on, or existed prior to, the applicable Pending or Prior Litigation Date shown in the Declarations, or any "claim" or "suit" arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or "suit".

7. Prior Notice

Any "wrongful act" alleged or contained in any "claim" which has been reported, or for which, in any circumstance, notice has been given, under any other prior insurance policy providing essentially the same type of coverage.

C. Supplementary Payments

We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:

1. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
2. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limit of insurance nor be subject to Section IV - Deductible.

SECTION II - WHO IS AN INSURED

- A. If you are designated in the Declarations as:
1. An individual, you and your spouse are insureds.
 2. A partnership or joint venture, you are an insured. Your partners or members are also insureds.
 3. A limited liability company, you are an insured. Your members and managers are also insureds.
 4. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are also insureds.
- B. Your "employees" are also insureds, unless otherwise excluded in this policy.
- C. Your former "employees" are also insureds, unless otherwise excluded in this policy, but only with respect to "wrongful acts" committed while in your employ.
- D. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. You must notify us of such acquisition or formation as soon as practicable. However, coverage under this provision:
1. Is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier; and
 2. Does not apply to a "wrongful act" committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

SECTION III - LIMIT OF INSURANCE

- A. The Limit of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. Insureds;
 2. "Claims" made or "suits" brought; or
 3. Persons, organizations or government agencies making "claims" or bringing "suits".
- B. The Limit of Insurance is the most we will pay for the sum of:
1. All damages; and

2. All "defense expenses"

because of all "wrongful acts" to which this insurance applies.

The Limit of Insurance of this Coverage Part applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

SECTION IV - DEDUCTIBLE

- A. We will not pay for our share of damages and "defense expenses" until the amount of damages and "defense expenses" exceeds the Deductible shown in the Declarations. We will then pay the amount of damages and "defense expenses" in excess of the Deductible, up to the limit of insurance.

Example No. 1

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$75,000

The Deductible will be subtracted from the amount of damages and "defense expenses" in calculating the amount payable:

$\$75,000 - \$5,000 = \$70,000$ Amount Payable

Example No. 2

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$120,000

The Deductible will be subtracted from the amount of damages and "defense expenses" ($\$120,000 - \$5,000 = \$115,000$). Since the amount of the damages and "defense expenses" minus the Deductible exceeds the Limit of Insurance, the policy will pay the full Limit of Insurance (\$100,000).

- B. The Deductible amount shown in the Declarations applies to all "claims" arising out of:
1. The same "wrongful acts"; or
 2. A series of incidents, circumstances or behaviors which arise from a common cause
- regardless of the number of persons, organizations or government agencies making such "claims".
- C. We may pay any part or all of the Deductible amount to effect settlement of any "claim" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible amount as has been paid by us.

SECTION V - CONDITIONS

A. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

B. Consent To Settle

If we recommend a settlement to you which is acceptable to the claimant, but to which you do not consent, the most we will pay as damages in the event of any later settlement or judgment is the amount for which the "claim" could have been settled, to which you did not give consent, less any deductible.

C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim

1. If a "claim" is received by any insured, you must:
 - a. Immediately record the specifics of the "claim" and the date received; and
 - b. Notify us, in writing, as soon as practicable.
2. You and any other involved insured must:
 - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
 - b. Authorize us to obtain records and other information;
 - c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
 - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of a "wrongful act" to which this insurance may also apply.
3. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.
4. If you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" and for which a "claim" has not yet been received, you must notify us, in writing, as soon as practicable. Such notice must provide:
 - a. The description of the "wrongful act", including all relevant dates;
 - b. The names of the persons involved in the "wrongful act", including names of the potential claimants;

- c. Particulars as to the reasons why you became aware of and reasonably expect a "claim" which may result from such "wrongful act";

- d. The nature of the alleged or potential damages arising from such "wrongful act"; and

- e. The circumstances by which the insured first became aware of the "wrongful act".

D. Legal Action Against Us

No person or organization has a right under this policy:

1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
2. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

We will also not be liable for the insured's share of any payment due because of a settlement or judgment for which the insured is responsible under Section IV - Deductible.

E. Other Insurance

If other valid and collectible insurance is available to the insured, our obligations are limited as follows:

1. Primary Insurance

This insurance is primary. We will not seek contribution from any other insurance available to you or the involved insured unless the other insurance is specifically designed to provide coverage because of liability arising out of a "wrongful act". Then we will share with that other insurance by the method described below.

2. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the liability remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

The method chosen for the handling of other valid insurance will not affect your responsibility to share with us as specified under Section **IV** - Deductible.

F. Premium Audit

1. We will compute all premiums for this policy in accordance with our rules and rates.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.
4. We will waive the premium audit only with your consent.

G. Representations

By accepting this policy, you agree that:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

H. Separation Of Insureds

Except with respect to the Limit of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom "claim" is made.

I. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

J. If You Are Permitted To Select Defense Counsel

If, by mutual agreement or court order, the insured is given the right to select defense counsel and the Limit of Insurance has not been used up, the following provisions apply:

1. We retain the right, at our discretion, to:
 - a. Settle, approve or disapprove the settlement of any "claim"; and
 - b. Appeal any judgment, award or ruling at our expense.
2. You and any other involved insured must:
 - a. Continue to comply with Section **V** - Paragraph **C**. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim Condition as well as the other provisions of this policy; and
 - b. Direct defense counsel of the insured to:
 - (1) Furnish us with the information we may request to evaluate those "suits" for coverage under this policy; and
 - (2) Cooperate with any counsel we may select to monitor or associate in the defense of those "suits".
3. If we defend you under a reservation of rights, both your and our counsel will be required to maintain records pertinent to your "defense expenses". These records will be used to determine the allocation of any "defense expenses" for which you may be solely responsible, including defense of an allegation not covered by this insurance.

K. Transfer Of Duties When Limit Of Insurance Is Used Up

1. If we conclude that, based on "claims" which have been reported to us and to which this insurance may apply, the Limit of Insurance is likely to be used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will notify the first Named Insured, in writing, to that effect.

2. When the Limit of Insurance has actually been used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will:
 - a. Notify the first Named Insured in writing, as soon as practicable, that such a limit has actually been used up, and that our duty to defend the insured against "suits" seeking damages subject to that limit has also ended;
 - b. Initiate, and cooperate in, the transfer of control, to any appropriate insured, of all "suits" for which the duty to defend has ended for the reason described in Paragraph 2.a. above and which are reported to us before that duty to defend ended; and
 - c. Take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.
3. When 2.a. above has occurred, the first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must:
 - a. Cooperate in the transfer of control of "suits"; and
 - b. Arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
4. We will take no action with respect to defense for any "claim" if such "claim" is reported to us after the applicable limit of insurance has been used up. It becomes the responsibility of the first Named Insured, and any other insured involved in such a "claim", to arrange defense for such "claim".
5. The first Named Insured will reimburse us as soon as practicable for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 2. above.
6. The exhaustion of the applicable limit of insurance and the resulting end of our duty to defend will not be affected by our failure to comply with any of the provisions of this Condition.

L. When We Do Not Renew

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal at least 30 days before the end of the policy period, or earlier if required by the state law or regulation controlling the application of this Coverage Part.

If notice is mailed, proof of mailing will be sufficient proof of notice.

SECTION VI - EXTENDED REPORTING PERIOD

- A. You will have the right to purchase an Extended Reporting Period from us if:
 1. This Coverage Part is cancelled or not renewed for any reason; or
 2. We renew or replace this Coverage Part with insurance that:
 - a. Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
 - b. Does not apply to "wrongful acts" on a claims-made basis.
- B. An Extended Reporting Period, as specified in Paragraph A. above, lasts three years and is available only by endorsement and for an additional charge.
- C. The Extended Reporting Period starts with the end of the policy period. It does not extend the policy period or change the scope of coverage provided. It applies only to "claims" to which the following applies:
 1. The "claim" is first made during the Extended Reporting Period;
 2. The "wrongful act" occurs before the end of the policy period; and
 3. The "wrongful act" did not commence before the Retroactive Date, if any.
- D. You must give us a written request for the Extended Reporting Period Endorsement within 30 days after the end of the policy period or the effective date of cancellation, whichever comes first.
- E. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due and any premium or deductible you owe us for coverage provided under this policy. Once in effect, the Extended Reporting Period may not be cancelled.

F. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

1. The exposures insured;
2. Previous types and amounts of insurance;
3. Limit of Insurance available under this policy for future payment of damages; and
4. Other related factors.

The additional premium will not exceed 200% of the annual premium for this policy.

G. When the Extended Reporting Period Endorsement is in effect, we will provide a Supplemental Limit of Insurance for any "claim" first made during the Extended Reporting Period.

The Supplemental Limit of Insurance will be equal to the dollar amount shown in the Declarations in effect at the end of the policy period.

Paragraph B. of Section III - Limit Of Insurance will be amended accordingly.

SECTION VII - DEFINITIONS

A. "Claim" means a "suit" or demand made by or for a current, former or prospective "employee" for damages because of an alleged "wrongful act".

B. "Coverage territory" means:

1. The United States of America (including its territories or possessions) and Puerto Rico; or
2. All parts of the world if the insured's responsibility to pay damages is determined in a "suit" on the merits brought in the territory described in Paragraph 1. above or in a settlement we agree to.

C. "Defense expenses" means payments allocated to a specific "claim" we investigate, settle or defend, for its investigation, settlement or defense, including:

1. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
2. Fees of attorneys the insured retains when, by our mutual agreement or court order (or when required by administrative hearing or proceeding), the insured is given the right to retain defense counsel to defend against a "claim".
3. All other litigation or administrative hearing expenses, including fees or expenses of expert witnesses hired either by us or by the defense attorney retained by an insured.
4. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$250 a day because of time off from work.

5. Costs taxed against the insured in the "suit".

"Defense expenses" does not include salaries and expenses of our "employees" or the insured's "employees" (other than those described in Paragraphs 1. and 4. above).

D. "Discrimination" means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations.

E. "Employee" includes a "leased worker" and a "temporary worker" but does not include an independent contractor.

F. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

G. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

H. "Suit" means a civil proceeding in which damages because of a "wrongful act" to which this insurance applies are alleged, including:

1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
3. Any administrative proceeding or hearing conducted by a governmental agency (federal, state or local) having the proper legal authority over the matter in which such damages are claimed.

I. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

J. "Wrongful act" means one or more of the following offenses, but only when they are employment-related:

1. Wrongful demotion or failure to promote, negative evaluation, reassignment or discipline of your current "employee" or wrongful refusal to employ;
2. Wrongful termination, meaning the actual or constructive termination of an "employee":
 - a. In violation or breach of applicable law or public policy; or

- b.** Which is determined to be in violation of a contract or agreement, other than any employment contract or agreement, whether written, oral or implied, which stipulates financial consideration if such financial consideration is due as the result of a breach of the contract;
- 3.** Wrongful denial of training, wrongful deprivation of career opportunity or breach of employment contract;
- 4.** Negligent hiring or supervision which results in any of the other offenses listed in this definition;
- 5.** Retaliatory action against an "employee" because the "employee" has:
 - a.** Declined to perform an illegal or unethical act;
 - b.** Filed a complaint with a governmental authority or a "suit" against you or any other insured in which damages are claimed;
 - c.** Testified against you or any other insured at a legal proceeding; or
 - d.** Notified a proper authority of any aspect of your business operation which is illegal;
- 6.** Coercing an "employee" to commit an unlawful act or omission within the scope of that person's employment;
- 7.** Harassment;
- 8.** Libel, slander, invasion of privacy, defamation or humiliation; or
- 9.** Verbal, physical, mental or emotional abuse arising from "discrimination".