Employment Practices Liability
By Emily Loupee

Employment Practices Liability is in the spotlight as we enter into 2018 with a cultural shift emboldening victims to speak out, bringing a wave of public sexual harassment allegations. The headline allegations may lead to large loss payouts, and it is likely that there will be an increase in sexual harassment allegations at all companies, along with increased focus from management teams and regulators across the country. We anticipate that this new trend will increase claims frequency in 2018, leading to increased losses, less competition and eventually higher premiums. In the longer term, increased training and loss control should reduce claim frequency and severity.

Looking at claims frequency in 2016, the graph below shows the total EEOC charges trending up in 2016. The EEOC has not yet released 2017 data. The leading areas of discrimination charges according to the EEOC’s statistics continue to be retaliation, race, sex and disability. The next chart shows some of the largest settlements in 2017 according to Advisen, Ltd. Wage and hour claims are not typically covered by traditional EPL policies, but several insurers in London and Bermuda offer stand-alone policies for wage and hour exposures.

A counterbalance to increased exposure is abundant capacity in the marketplace. The most competitive insurers in the space vary based on size, industry and location. Among the top EPL insurers are Chubb, CNA, AIG, Travelers, Nationwide (ERISK) and Beazley. Insurers like Axis, Argo and Ironshore were quoting new EPL in 2017, increasing competition and lowering rates in some cases. In 2016, ACE purchased Chubb and the new Chubb adopted the EPL policies of the former ACE where there are no geographic or industry exclusions, and higher retentions are used to mitigate higher exposures.

Regarding policy terms, we expect to continue to see the trend of insurers, such as AIG, tightening their stance on panel firm policy requirements, which requires the insureds to pick a defense firm from a list of pre-approved counsel which has negotiated lower rates with the insurer for defense expenses. AIG and other insurers may allow insureds to use firms that are not on the panel, but it is recommended to request those additions at renewal, and prior to receiving a claim.

Another area of focus in the policy is coverage for claims brought by employees alleging privacy violations. The incidence of social engineering or phishing claims has skyrocketed and will continue to plague companies in 2018. When the fraudulent request is for employee data, such as W2 statements, then there may be coverage for the employee privacy claim under the EPL policy, warranting review of the retention levels and defense provisions under the EPL policy.

Overall, we anticipate premium in Employment Practices Liability policies to be flat to 10% increase for those companies operating in higher risk industry, or higher risk states. Retentions may continue to rise for those with higher risk factors, including companies with past claims history. Those companies with no losses or no large employee count increases should anticipate flat to 5% increase in premium in 2018.

Emily Loupee is a Vice President in Gallagher’s Management Liability Practice. This group focuses on providing insurance and risk management solutions related to executive and management liabilities. For additional information, please contact Emily at Emily_Loupee@ajg.com or visit www.ajg.com/mlp.

Important Note: This paper is not intended to offer legal advice. Any descriptions of insurance provided herein are not intended as interpretations of coverage. An actual insurance policy must be consulted for full coverage details.