

# RISK MANAGER

## Employee Lawsuits Rising... Protect Your Practice!

**E**mployment Practices Liability (EPL) claims—such as those alleging sexual harassment, wrongful discharge, and discrimination—are on the rise. The number of EPL charges rose by one-third between 1989 and 1995, according to the EEOC. And surveys by Watson Wyatt indicate that 25 percent of claims against for-profit corporations are made by employees.

In fact, the Insurance Services Office, Inc., describes employment practices lawsuits as “one of the fastest growing litigation threats.” And not only are the numbers of employment-related claims increasing, but so is the potential financial risk to your medical practice.

### Awards Also Rising

The potential for a significant monetary damage award threatens your organization’s limited financial

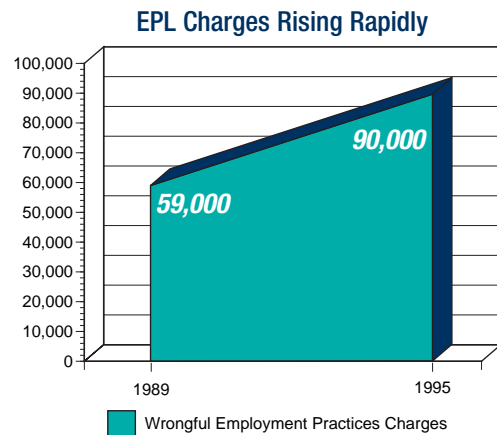
resources. The amount of EPL awards quadrupled between 1991 and 1996, according to the *Jury Verdict Award*. The average jury award almost doubled in recent years, increasing from \$168,000 in 1990 to \$299,000 in 1996. And defending a wrongful termination or discrimination claim, even if the claim is groundless or fraudulent, can be expensive.

### Healthcare Faces Unique Exposures

For those in the healthcare industry, there are some unique EPL risks. According to a report by the law firm of Sedgwick, Detert, Moran & Arnold, “Healthcare providers are subject to the same exposures as other large employers. In addition, they also face unique risks created by

the nature and structure of the healthcare industry.

“Peer review, for example, can expose the provider to claims for breach of contract, tortious interference with business relations, defamation, libel or slander, denial of due process and discrimination. Hospitals and other providers can also be exposed to liability for the failure to prevent harassment by



Source: EEOC

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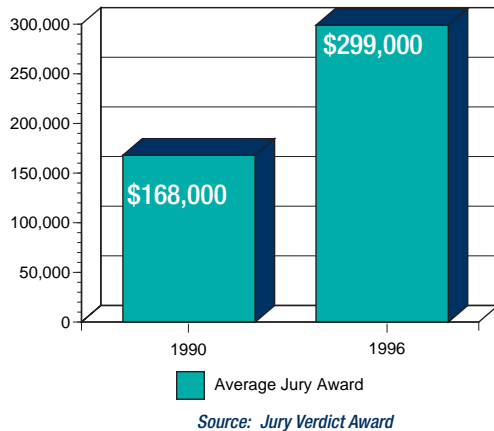
EPL Lawsuit Examples—  
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staff physicians or other professionals who are independent contractors.”

### Minimize Your Risks

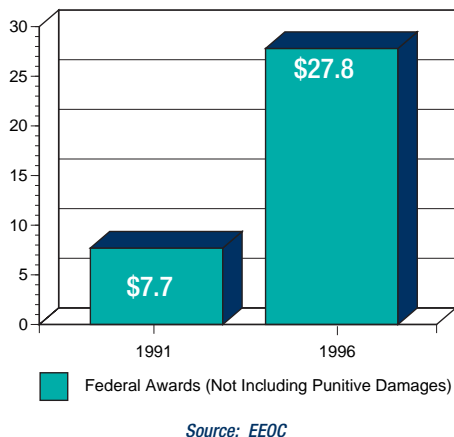
Even prudent healthcare employers may not be able to avoid EPL claims. However, steps can be taken to minimize the most severe risks. Key compo-

**Escalating Cost of Employment Claims**



nents of a risk management program include the development and consistent enforcement of clear policies and procedures for the hiring, training, discipline and discharge of employees and independent contractors. It is also essential that these policies and procedures be effectively communicated to employees and that all employment-related decisions are well-documented.

**EPL Awards Have Quadrupled**



The employer should inform the employees and independent contractors that it will not tolerate discrimination or harassment and should afford a viable means for an employee to complain about illegal and

improper conduct. To give meaning to these policies, employees must be educated so that they can recognize and avoid conduct which is discriminatory or constitutes sexual harassment.

### 10-Step Checklist Included

We suggest that an employers' personnel policies and procedures be developed and regularly reviewed by a human resources specialist in consultation with a lawyer specializing in employment law. We also suggest that contracts with independent contractors be reviewed by the same lawyers.

We have included in this newsletter a checklist of 10 steps to help reduce your EPL claim risk. For further information, call 800-282-4882 and ask for MAG Mutual's free *Risk Assessment Kit for Employment Practices Liability*.

### Check Your Insurance Policies

And remember, most policies, such as general liability, umbrella coverage, and unendorsed directors and officers liability, do not cover EPL claims. Check with your insurance representative about coverage. ●

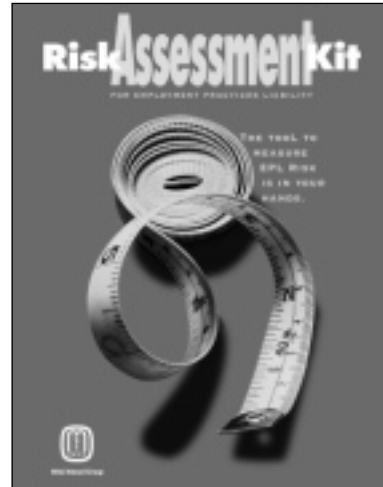
### Employment Claims Can Include...

- Failure to employ or promote,
- Wrongful discipline,
- Wrongful termination,
- Whistle blower claims,
- Failure to mentor/encourage development/ make a part of the team,
- Negligent employee evaluation,
- Discrimination based on age, gender, race, color, national origin, religion, sexual orientation,
- Sexual harassment,
- Slander, libel,
- Invasion of privacy,
- Mental anguish, infliction of emotional distress,
- Breach of employment contract, and more.

# How to Develop an Employment Practices Program

## 10 Steps to Reducing Your Risks for an EPL Lawsuit

1. Consolidate Human Resources/Personnel Department functions.
2. Perform a risk assessment of your medical practice and know where you currently are vulnerable for an EPL action or complaint.
3. Based on the findings of your assessment, thoroughly research all risk areas to pinpoint the best possible solution for your situation or organization and take the appropriate steps necessary to reduce your EPL risks.
4. Train all managers and supervisors on the steps and procedures needed to avoid common employment-related claims.
5. Prepare, distribute and clearly transmit to all personnel your employment policies and procedures through an employee handbook.
6. Consistently enforce written policies and procedures.
7. Review your employee handbook on at least an annual basis to ensure all policies comply with ever-changing federal, state and local laws, rules and regulations.



8. If an incident does occur, respond to it promptly and be sure to communicate immediately and honestly with employees about the situation and your stance on employment issues.
9. Reinforce or revise company policies and procedures to reduce risks of similar situations in the future.
10. Secure employment practices liability insurance coverage appropriate for your organization.

*Source: Risk Assessment Kit for Employment Practices Liability*

## Real Cases Show Effect of EPL Lawsuits

The following four examples strongly illustrate how easy it is to be sued—and lose—under an Employment Practices Liability claim.

### Physician Privileging and Peer Review:

A doctor, who was associated with a medical practice, alleged that he was promised a substantial raise in consideration of the way he performed administrative duties. The defendants later withdrew the

promise of enhanced compensation. The doctor brought a wrongful termination action against the practice and its principles.

The plaintiff doctor had control of the organization's payroll and allegedly issued checks to himself to reflect the promised higher salary. The plaintiff alleged that the defendants defamed him by telling other physicians that he had written unauthorized salary checks to himself. The plaintiff claimed that these statements and the defendants' actions to "black-ball" him at other area hospitals destroyed his surgical practice.

A \$250,000 verdict was entered in favor of the plaintiff against the entity only.

*Source: Jury Verdict Summary, 1997*

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## Age Discrimination:

A 59-year-old man, who had been employed by a hospital for 14 years as director of facilities, filed a claim for age discrimination and emotional distress after his employment was terminated just before his 60th birthday. He was told that he was being let go because his position was to be eliminated.

The plaintiff alleged that the hospital terminated two other employees who were also over age 59. The hospital's vice president, who was in his 30s, had allegedly maintained a list of employees who were to be terminated which referenced the age of the employees. The hospital denied age discrimination and asserted that the plaintiff's position had been eliminated as a result of "economic cutbacks."

The jury awarded over \$260,000 in past wages and future lost wages of approximately \$176,000. The award also included \$100,000 in damages for emotional distress.

*Source: Jury Verdict Summary, 1996*

## Retaliatory Discharge Following Workers' Compensation Claim:

A 42-year-old hospital security officer filed a workers' compensation claim for an injury he suffered on the job. His employment was terminated two months after he returned to work as a result of a poor performance evaluation.

The employee filed a claim against his employer, arguing that he was terminated in retaliation for filing the workers' compensation claim and because of his age. The hospital denied retaliation and asserted the officer's position had been eliminated to save costs.

The jury awarded the plaintiff \$710,789 in compensatory damages.

*Source: Jury Verdict Summary, 1996*

## Retaliatory Discharge Following Two Complaints:

A female nurse anesthetist reported sexual harassment to her employer. She alleged that instead of investigating her complaint the employer sent her a written warning to refrain from "policing co-workers."

In a separate incident, the same nurse filed a complaint with the Nebraska Department of Health regarding improper working conditions. The nurse was discharged a number of months after filing her claim with the Department of Health and was unable to find employment after her termination.

The evidence presented by the plaintiff in support of her complaint included the personnel file the hospital maintained regarding her employment record.

After trial, a jury awarded the plaintiff \$157,000 in past wages, \$1.2 million in future wages and \$39,375 for pain and suffering, for a total verdict of almost \$1.5 million.

*Source: Jury Verdict Summary, 1995*

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This publication is produced to inform you of issues relating to medical professional liability insurance and other matters of importance to hospitals. Material given in this newsletter does not constitute legal advice or opinion. If you have any questions in any of the areas discussed in this publication, you should seek a qualified legal opinion.

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P.O. Box 52979  
Atlanta, GA 30355-0979

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