

Addressing Sexual Misconduct Allegations with Insurance

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Allegations of sexual misconduct against politicians, celebrities and other public figures have become increasingly common in recent years. In fact, social movements and a strong public outcry have led to a marked increase in sexual harassment claims—claims that can be incredibly damaging for organizations themselves.

When these claims arise, organizations are expected to handle them quickly and tactfully, while respecting the weight of the situation and the wishes of the alleged victim. What's more, alleged sexual misconduct, regardless of whether it is against an executive or employee, can result in a wide variety of claims against a company and lead to serious reputational damages.

As such, companies need to handle these situations with great care and be prepared with the proper insurance. Because no single insurance policy provides coverage for every type of claim that may result from misconduct allegations, policyholders should examine a variety of coverages to ensure they have protection when they need it most.

Employment Practices Liability (EPL) Insurance

When it comes to protecting your organization against alleged sexual misconduct claims brought about by employees, EPL insurance is often the best source of coverage. Specifically, EPL insurance can provide protection for employment-related misconduct claims.

Most policies cover claims for sexual harassment, wrongful termination, discrimination and retaliation. In

some cases, policies can provide coverage for additional employment-related claims, including defamation. EPL insurance can also protect against claims made by non-employees, like vendors or customers.

It should be noted that EPL insurance often excludes claims that allege bodily injury. Therefore, in the event that a claimant alleges both verbal and physical harassment, an EPL policy may only provide partial coverage.

General Liability Insurance

General liability policies are designed to protect businesses from claims related to bodily injury or property damage for which your business is found to be legally liable. In some situations, general liability policies can be used in sexual harassment claims. Specifically, general liability insurance can provide coverage for claims alleging personal injury and defamation, which is useful in some misconduct lawsuits.

However, general liability policies have their drawbacks when it comes to defending sexual harassment claims. Often, unfair or discriminatory employment practices are not covered, which can include claims related to hiring and termination, demotion, reassignment, employee evaluations, discipline and harassment.

Essentially, if an employee alleges he or she was treated unfairly or that you acted illegally, a general liability policy will usually not respond.

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Directors and Officers (D&O) Insurance

Most directors and officers are surprised to learn that their own employees are one of the most common sources of D&O claims. In fact, if employees are mistreated during any phase of their employment, they may bring their concerns to the organization's management team. If employees feel that their concerns have not been addressed in a satisfactory manner, they may seek legal action as a means of resolving their grievances.

Some of the most common employment practices claims against directors and officers include discrimination and sexual harassment.

It's important to keep in mind that D&O coverage for sexual misconduct claims is limited by standard exclusions for bodily injury, which may extend to claims for mental anguish, humiliation and emotional distress, and wilful or intentional misconduct.

Crisis Management or Reputation Risk Insurance

In some cases, reputational fallout from a sexual harassment allegation can be more costly than litigation itself. Even if an allegation is handled gracefully, organizations can lose favour in the public eye, sometimes indefinitely.

Crisis management insurance and reputation risk insurance are two newer forms of coverage that can address the risks of negative publicity. In a basic sense, these policies provide the following:

- **Crisis management insurance**—When a triggering event occurs, crisis management insurance often covers the costs of hiring of a public relations firm.

- **Reputation risk insurance**—Reputation risk insurance generally provides coverage for actual business losses sustained as the result of a negative publicity event.

It should be noted that policy language for crisis management and reputation risk management insurance can vary widely. Depending on the type of coverage purchased, sexual misconduct-related events may or may not be covered, so it's important to be specific and ask questions during the underwriting process.

A Layered Approach to Addressing Sexual Misconduct Allegations

Organizations are expected to take sexual misconduct claims seriously and examine their internal policies. In addition to securing the right coverage, it's critical for companies to encourage a positive corporate culture and address sexual assault, harassment and discrimination claims directly.

Again, no one policy provides organizations with ample protection against sexual misconduct allegations. In order to remain protected, companies need to take a layered approach when it comes to insuring their business.

To learn more about the policies mentioned in this Coverage Insights and other effective risk management strategies, contact Megson FitzPatrick Insurance Services today.