



#METOO



Employment Practices Liability Insurance:

How to make sure your practice is protected in a #MeToo world.

By Tammi Arrington, Account Manager

The **#MeToo** movement may have started in Hollywood, but since the rise of this campaign, a spotlight has been placed on not only sexual harassment issues but also any form of harassment or discrimination. Because of the recent publicity surrounding the **#MeToo** movement, the insurance industry

is expecting an increase in Employment Practices Liability claims. In the past, retaliation or being “blackballed” in an industry was a huge fear of any person that came forward, but times have evolved, and it seems people have more courage to file complaints, regardless of the consequences.

According to the latest data on employment charge activity from the Equal Employment Opportunity Commission (EEOC), **one in 10** U.S. employers will have an employment charge filed against them. In 2017 alone, the EEOC received more than 84,000 charges of discrimination, harassment,

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and retaliation. Mississippi was listed in the top 20 states with EEOC charges filed. **Furthermore, healthcare was listed in the top four industries that are prone to employment practices related claims.**

What is Employment Practices Liability insurance?

Employment Practices Liability insurance, commonly referred to as EPL, is designed to protect businesses from the financial costs incurred from employment-related lawsuits filed for a range of reasons — from wrongful termination to harassment (sexual or other types such as workplace bullying) to discrimination and more. Employment discrimination charges can be based on race,

sex, disability, age, national origin, pregnancy, genetic information, and religion. EPL covers organizations and individuals for losses (damages and defense costs) that result from claims such as those listed above.

Why do you need EPL coverage?

No company is immune to this type of claim no matter how big or small. It's not just large corporations that are being hit with claims. Roughly 41.5 percent of employee lawsuits are brought against private companies with less than 100 employees. Basically, if you have employees, you have the potential to be sued for harassment and discrimination. Also, your liability is not limited to only employees. Third parties,

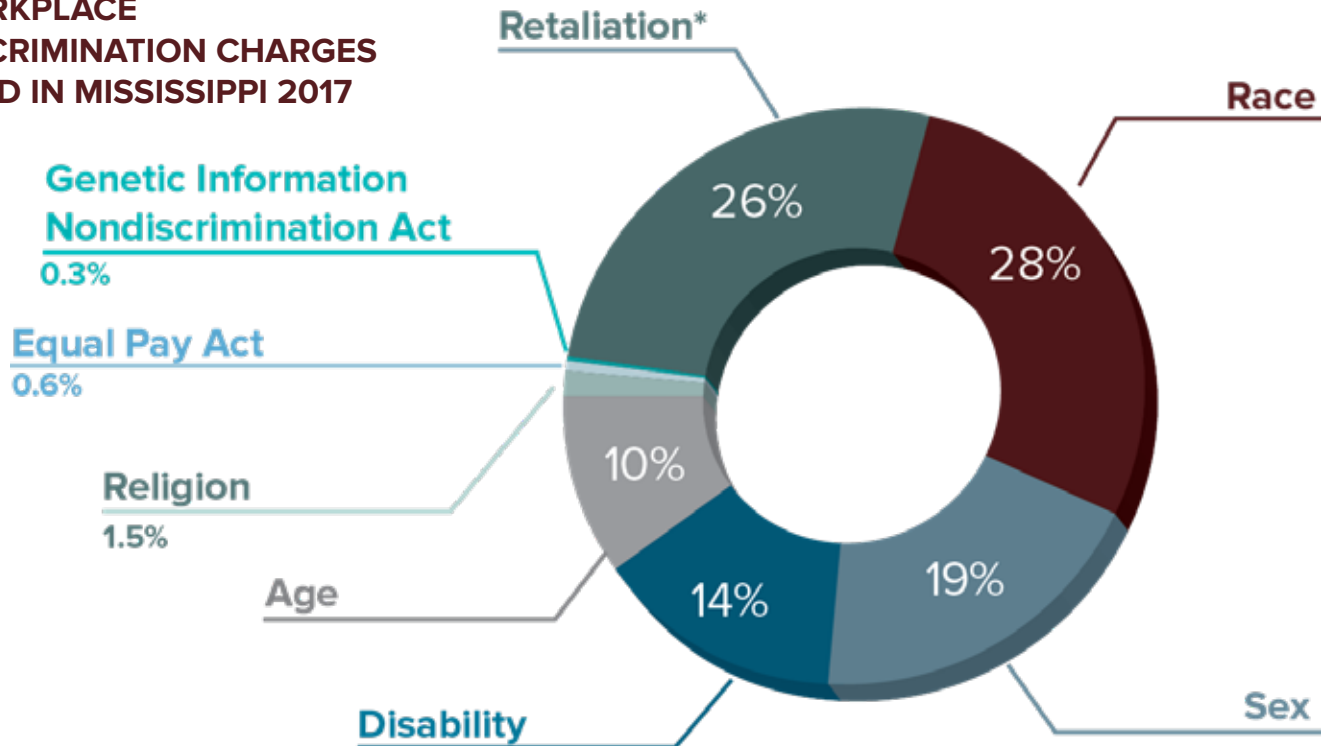
such as patients or vendors, can allege harassment or discrimination. Claims can also be brought by past, present, or potential employees.

Specifically, the healthcare industry employs clerical employees that may allege harassment, failure to promote, retaliatory discharge, or whistle blowing. At the other end, you have higher compensated employees—for example, physicians, nurses, etc.—who can demand large payouts for successful claims.

Claims, frivolous or not, can be very costly to your organization not only in regards to money but also in time and reputation. In addition to the cost and time it takes

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WORKPLACE DISCRIMINATION CHARGES FILED IN MISSISSIPPI 2017



*Includes charges filed because of retaliatory conduct alleged to be in response to initial complaint.

Source: U.S. Equal Employment Opportunity Commission

Employment Practices Liability Claim Files in Healthcare

CONSENSUAL RELATIONSHIP LEADS TO LAWSUIT

Cause of action:

Sexual Harassment

Type of Organization:

Partnership of Physicians

Number of employees:

Fewer than 25

DESCRIPTION OF EVENT

A female physician, who had been with the partnership for two years, received numerous patient complaints about her demeanor and failed to show up at her appointed rounds and office visits without prior notification. One of the managing partners set up a meeting with her to discuss the complaints and her failure to perform her duties, but she failed to show up. She did show up for a rescheduled meeting but had alcohol on her breath. She complained to the managing partner during the meeting that she faced continuous sexual harassment from one of the senior physician partners and that his unwanted advances had created a hostile work environment. The managing partner conducted an investigation and could not substantiate any of her complaints, but he offered to make sure to schedule her time in a way that would limit interaction with the senior physician. Nevertheless, she continued to fail to show up at her appointments and to do her assigned rounds. She was asked

to leave the partnership. The female physician sued, claiming sexual harassment and retaliation, and she sought \$6 million in damages. In her suit, she alleged that the senior physician had been sexually obsessed with her for nearly two years, had maintained an uncomfortable closeness with her in the workplace, and had continually harassed her with questions about her personal life. Subsequent interviews with physicians and other employees uncovered the fact that the female physician and the senior physician had been engaged in a consensual romantic relationship over the two-year period. The relationship apparently ended at about the time she began having problems making her appointments and receiving complaints about her performance.

RESOLUTION

After paying more than \$240,000 in defense expenses, the partnership settled for more than \$1 million.

“OLD” COMMENT AND TERMINATION RESULT IN LAWSUIT

Cause of action:

Disability Discrimination,
Age Discrimination,
Wrongful Termination

Type of Organization:

Physician Practice Group

Number of employees:

16

DESCRIPTION OF EVENT

A registered nurse with a long history of documented performance issues was terminated for smoking in a restricted area of the clinic where flammable chemicals were stored. The terminated nurse, who was 54 years old, responded by suing the clinic for wrongful termination. She alleged age discrimination under the Age Discrimination in Employment Act of 1967 (ADEA) on the basis of comments made by her supervisor (such as “you’re too old”) and disability discrimination under the Americans with Disabilities Act (ADA) because the clinic refused to make accommodations for her post-traumatic stress disorder

that was related to a prior sexual assault. She also alleged that the company handbook created a contractual relationship between her and the clinic and, therefore, she could only be terminated for good cause. The plaintiff sought back pay, front pay, punitive damages, liquidated damages, and attorney’s fees.

RESOLUTION

The clinic settled with the nurse, paying approximately \$250,000, but not before it had paid more than \$125,000 in defense costs.

Do you know all the products offered by MACM Insurance Services?

Did you know?

MACM Insurance Services is dedicated to meeting the insurance needs of healthcare providers and organizations. From solo practitioners to integrated health systems, MACM Insurance Services has strategically positioned itself to help its customers manage risk. Following are the products available:

Cyber Liability Protection

The fastest growing liability exposure in the healthcare industry is cyber liability. Our comprehensive solution provides coverage for breach response, customer notification, and business interruption. The policy even indemnifies customers for any regulatory fines and penalties assessed during an investigation. Don't let an accidental data breach or a computer hacker close the doors. Allow MACM Insurance Services to provide the needed protection.

Employment Practices Liability

Like other industries, the healthcare arena must be conscious of risks associated with handling personnel issues. Coverage is provided for the entity when claims are brought by past, present, and potential employees. Third-party coverage is also available. The policy is designed to protect against these common allegations: discrimination in the hiring process, sexual harassment, failure to promote, and wrongful termination.

Physician Regulatory Liability Insurance (*Billing Errors & Omissions*)

Whether it is Medicare billing or HIPAA, enforcement activity for non-compliance is an additional challenge for physician practices. Billing errors are a prime target for federal regulators. Now, rules governing the restricted use of patient information are in place, creating additional liability exposure for healthcare providers.

Our Physician Regulatory Liability Insurance provides protection for these types of allegations. The policy includes coverage for defense costs, auditing fees, and civil fines and penalties. Fraudulent acts are not covered by this type of policy.

Physician Professional Liability

MACM Insurance Services has access to over 20 companies currently writing professional liability business in Mississippi. An assessment of the practice and coverage needs will be done to determine which option is right for you.

Business Owners Policy (*BOP*)

The BOP combines commercial property, business equipment, and general liability coverage into one package policy. BOP policies are designed to help small businesses and clinics protect against claims involving bodily injury sustained on the premises, stolen or damaged property, personal and advertising injury, and more.

In addition, MACM Insurance Services can combine a commercial auto policy with the BOP policy to receive a multi-policy discount.

Directors and Officers Liability

Individuals who serve on a Board of Directors or as a corporate officer risk their personal assets while attempting to uphold their fiduciary duty to the organization. Both individual personal assets and those of the organization can be protected by a Directors and Officers Liability policy, if properly tailored to meet the needs.

This coverage functions as liability insurance in the event of management errors and omissions. This claims made policy includes coverage for allegations of breach of fiduciary duties, negligent credentialing, and employment-related issues.

Workers' Compensation

Regardless of the number of employees, MACM Insurance Services can offer a competitive and flexible Workers' Compensation product to protect employees injured on the job. While coverages vary, our companies work hard to ensure that employees are reimbursed for medical expenses and lost wages and return to work in a timely manner.

This information is for general purposes only without any warranties of any kind. The brief descriptions do not offer, alter, or expand any available coverages. If interested in a particular product, you should contact MACM Insurance Services, Inc. to determine whether that product is available and to request a copy of the applicable policy or other documents for a complete description of the product. All coverages are subject to the terms, conditions, and exclusions of the actual policy issued.

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MACM, in partnership with our cyber risk experts, NAS Insurance, brings you CyberNET® - the most advanced cyber risk management solution, as part of your medical professional liability policy.

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- Introduction to Breaches
- Password Best Practices
- PCI Training
- Privacy Basics for Healthcare
- Social Engineering Attacks
- Ransomware

Risk Management

Guidance to implement preventative measures:

- Best Practices Guidelines
- Risk Assessment & Fitness Checklist
- Incident Response Planning
- Sample Policies and Vendor Agreements

Compliance Material

Keeping your organization up to date:

- State and Federal, Industry Specific
- Data Protection Guidelines
- Links to government sites



Getting There is Easy:

From the MACM home page:

- 1 Click **MEMBER LOG IN** at top right
- 2 Log into your account
- 3 Choose "Cyber Liability Compliance" from top menu

Cyber Expertise Anytime, Anywhere

Information and support brought to you when and where you need it most:

- Downloadable templates, guides, and training posters
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For more information about **CyberNET®** or to report a claim, contact:

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to work through a claim, the process can take a toll on the productivity and morale of your personnel. This is where your EPL carrier can assist in managing each claim effectively and help you resolve each claim as efficiently as possible.

Potential Claims

Common types of EPL claims include the following:

- Wrongful termination
- Sexual harassment
- Disability discrimination/ADA
- Third party discrimination/harassment
- Age discrimination
- Racial discrimination
- Religious discrimination
- Gender discrimination
- Retaliation

How can MACM Insurance Services help?

MACM Insurance Services offers stand-alone Employment Practices Liability insurance as well as package policies that include Directors & Officers Liability insurance. This coverage may also be included with a Business Owners Policy (BOP) that MACM Insurance Services can provide to your organization.

Employment Practices Liability insurance will easily pay for itself if you are sued even once. Call the staff of MACM Insurance Services today to get your policy and protect you and your practice!

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