

Employment Practices Liability Coverage Experience



OUR EXPERIENCE

For nearly 30 years, the lawyers of K&L Gates have been developing and implementing innovative legal strategies to assist businesses in obtaining insurance coverage for a wide range of liabilities and losses. Nearly 100 of the firm's lawyers practice in what has become one of the world's largest policyholder-side insurance-coverage groups, according to an issue of *Business Insurance*. Our insurance-coverage practice has been recognized by *U.S. News & World Report* "Best Law Firm" rankings as a national first-tier insurance law practice.

K&L Gates has broad and deep experience with employment practices liability insurance ("EPLI"). The variety of forms for EPLI, the willingness of insurers to negotiate the terms of EPLI, and the aggressiveness of the plaintiffs' employment bar in filing and litigating employment-related claims, all suggest that corporate policyholders should review the terms of their policies to better understand their available coverage for employee and non-employee third-party lawsuits and class actions. K&L Gates has the experience to help policyholders obtain the appropriate coverage under their EPLI policies. K&L Gates has represented numerous types of companies in reviewing and negotiating the terms of their EPLI policies, including banks, broker-dealers, and other financial institutions; high-technology companies; steel manufacturers; distributors; and paper-products manufacturers.

Below is a non-exhaustive list of engagements in which K&L Gates successfully negotiated or litigated positive results for our clients under EPLI policies or other types of policies providing coverage for employment-related claims:

- K&L Gates represented one of the country's largest financial institutions in a lawsuit seeking insurance coverage for a gender-discrimination class action brought on behalf of more than 900 current and former employees. In defeating the lead insurers' *forum non conveniens* motion to have the action dismissed by the New Jersey state court in favor of the insurers' second-filed New York coverage action, K&L Gates persuaded the New Jersey court to enjoin the insurers from prosecuting their New York action. K&L Gates also persuaded the New Jersey court to adopt a pro-policyholder choice-of-law ruling based on the lead insurers' prior course of dealings in handling the policyholder's claims. This decision is the seminal choice-of-law ruling in a coverage action based on a prior course of dealings and section 187 of the Restatement (Second) of Conflicts of Laws. The case was successfully resolved.
- K&L Gates represented one of the country's largest distributors of electrical equipment and supplies in several employment-related coverage matters arising under EPLI policies. These matters included negotiating with the carrier to secure defense and indemnity coverage, without litigation, for a class action brought under the Fair Labor Standards Act, which included claims that the carrier contended were excluded.

- K&L Gates represented a major steel manufacturer in securing coverage under EPLI policies for several claims brought by employees alleging bodily injuries compensable outside the workers' compensation system. Through a combination of litigation and negotiations, K&L Gates secured coverage through a coverage-in-place agreement and other arrangements.
- K&L Gates successfully represented a large industrial manufacturer in connection with the resolution of a claim regarding an underlying employment-discrimination class-action suit in which one of the named plaintiffs had filed an Equal Employment Opportunity Commission charge before the inception of the EPLI policy at issue. Through extended negotiations with the carrier, the manufacturer successfully resolved the coverage dispute.
- K&L Gates counseled a foreign policyholder with domestic operations on EPLI coverage for Fair Labor Standards Act claims, related state law claims, and retaliation claims brought by independent contractors who alleged that they were employees. Negotiations with the carrier resulted in a funding agreement for the claims.
- K&L Gates successfully represented a national temporary-employment agency seeking EPLI defense and indemnity coverage for a class action alleging violations of the Illinois Day and Temporary Labor Services Act.
- K&L Gates successfully represented the US subsidiary of an international military-aircraft-equipment manufacturer in a retaliation and whistleblowing suit, and then recovered defense and indemnity costs related to this suit from the manufacturer's insurance carrier under the EPLI policy after the carrier initially denied all coverage.
- K&L Gates' experience also includes counseling, negotiating, or litigating on behalf of: a West Coast financial institution in a wrongful-termination coverage action; another West Coast financial institution facing multiple claims of sexual harassment, hostile work environment, and retaliation; a mid-Atlantic manufacturer in a racial-discrimination action; a Midwest wholesale food distributor facing various employment claims; a large Western paper products manufacturer facing multiple claims of gender discrimination; a Northeastern computer software company facing claims of religious discrimination; a corporate policyholder in a confidential London-seated arbitration under Bermuda-form EPLI policies; and a Texas-based food service company facing claims of racial discrimination.