

WEBINAR SERIES

EPLI Best Practices for Protecting Your Business

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Today's Presenters



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Today's Agenda

- EPLI Basics
- The Big Five and Other Protected Categories
- Claim and Litigation Trends
- Strategic HR and Risk Mitigation
- What To Do If You Receive a Claim

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted Online at prestigepeo.com/webinars

EPLI Basics

EPLI Basics

- Employment Practices Liability Insurance (EPLI) is insurance for businesses that covers certain claims by workers alleging that their legal rights have been violated.
- Important protection for businesses in an increasingly litigious society.
- Covers: certain types of discrimination, harassment, retaliation, and other claims, depending on the policy.

- Claims come in various forms:
 - Demand Letter: Letter from a claimant or their counsel, usually demanding a sum of money or other relief for alleged violation(s) of employment law(s),
 - Charges of Discrimination: Claims filed with the EEOC or state or local agencies alleging violations of EEO laws, and
 - Lawsuit: Filed in state or federal courts outlining specific violations of law and demanding monetary or other relief.

The Big Five and Other Protected Categories

The Big Five: Title VII

Title VII of the Civil Rights Act of 1964 established that it is unlawful for employers to discriminate against these five protected classes:

- Race
- Color
- Sex
- Religion
- National Origin



Other Protected Classes

Not an all-inclusive list, but there are some other federally protected classes:

- Age under the Age Discrimination in Employment Act
- Pregnancy under the Pregnancy Discrimination Act
- Disability under the Americans with Disabilities Act
- Equal Pay under the Equal Pay Act
- Military Service under the Uniformed Services Employment and Reemployment Rights Act (USERRA)

State Protected Classes

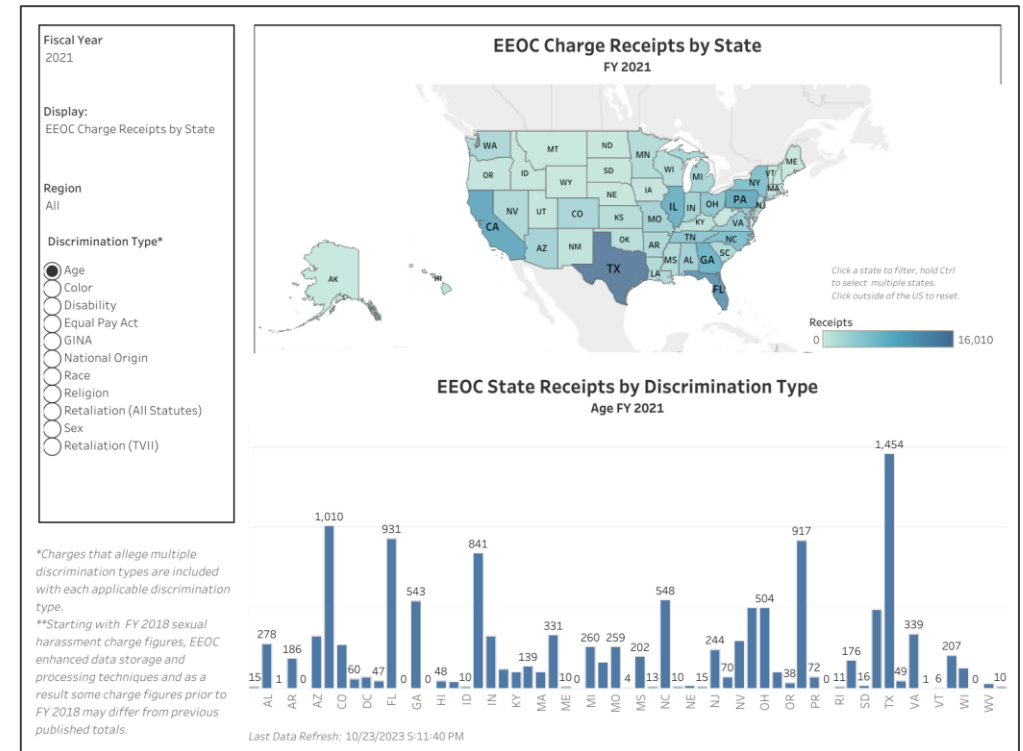
Some states have additional protections for employees. For example:

- NY: Sexual orientation, gender identity or expression, domestic violence victim status, arrest or conviction record, familial status
- CA: Sexual orientation, gender identity or expression, domestic violence/sexual assault/stalking victim status, arrest or conviction record, citizenship status, medical condition, genetic characteristics, AIDS/HIV status, political affiliation
- FL: Marital status, sickle-cell traits, domestic violence victim status, AIDS/HIV status

Claim and Litigation Trends

EEOC Charges

- On the federal level, employees can file Charges of Discrimination with the EEOC.
- In FY 2021 alone, there were:
 - 61,331 Charges filed.
 - Settlements totaled over \$350,000,000.
- In FY 2022 alone, there were:
 - 73,485 Charges filed.
 - Settlements totaled over \$342,000,000.
- EEOC has a state-by-state comparison website:
<https://www.eeoc.gov/data/enforcement-and-litigation-statistics-0>



EEOC Charges: New York

In FY 2021, 6,536 Charges* were filed in New York.

- Age: 504
- Sex: 905
- Disability: 928
- Race: 776
- Color: 213
- National Origin: 360
- Religion: 106
- Retaliation: 1,497

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.



EEOC Charges: California

In FY 2021, 9,809 Charges* were filed in California.

- Age: 1,010
- Sex: 1,130
- Disability: 1,381
- Race: 1,370
- Color: 272
- National Origin: 626
- Religion: 184
- Retaliation: 2,158

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.



EEOC Charges: Florida

In FY 2021, 12,431 Charges* were filed in Florida.

- Age: 931
- Sex: 1,502
- Disability: 1,986
- Race: 1,474
- Color: 333
- National Origin: 677
- Religion: 157
- Retaliation: 3,062

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.



EEOC Charges: Takeaways

- No matter which state - retaliation claims are high across the board.
- Disability claims have been on the rise.

Other Federal Trends

- According to LexisNexis research:
 - In 2022, 20,994 employment law cases were litigated in Federal District courts.
 - From 2020 through 2022, the most employment law cases were filed in the Southern District of New York.
 - Between 2020 and 2022, \$1.2 billion in total damages were awarded for class action settlement damages for employment law cases.

State and Local Claims

- Many states and localities also have legislative or statutory protections for workers (they cannot be more restrictive than federal law, and oftentimes, state and local jurisdictions significantly expand protections).
- Often, EEOC charges can be dual filed on the state level as well.
- Some states and localities also extend the timeframe in which employees can file a charge or complaint.

Strategic HR and Claims Mitigation

Strategic HR

- Handbook
- Training
- Discipline and Documentation
- Engaging in the Interactive Process (ADA)
- Investigating Complaints
- Employee Engagement and Workplace Culture

It's easy to look at the employment law landscape and think there's not much you can do as a business owner to protect yourself. But that is NOT true! There are important steps you can take to protect your business from claims and defend against claims.

Employee Handbook

Important Handbook Policies:

- Equal Employment Opportunity (EEO) Policy
 - Outlines organizations protection and equal opportunities for protected classes under federal and state law.
 - Memorializes organization's commitment to treating people fairly.
 - Provides process for reporting allegations of discriminatory or harassing behavior in the workplace.
- Sexual Harassment Policy
 - Outlines appropriate and inappropriate conduct in the workplace.
 - Provides process for reporting allegations of sexual harassment in the workplace.

EMPLOYEE HANDBOOK

Hello and Welcome to
"Our Company Guide"



Employee Handbook

Important Handbook Policies:

- Workplace Conduct Policy
 - Establishes expectations for behavior and conduct in the workplace.
- Progressive Discipline Policy
 - Establishes disciplinary process in the organization.
 - Provides consequences to employees for violations of employment policies
- At Will Employment Policy.
 - Establishes that any employee can quit or be terminated for any legal reason at any time.

Employee Handbook

A well-designed employee handbook sets an organization up for success.

- In the event of a Charge or Complaint, the employer can show:
 - They take all complaints seriously.
 - They have an established process for addressing concerns in the workplace.
 - Any legitimate action against the employee- such as termination- was appropriate under the company's policies and procedures and did not violate the law.
- Make sure you have proof (signed acknowledgment page) showing employee received the handbook.

Employee Handbook

Example:

Sam started with the company on September 15, 2023. Sam received the Company's handbook during her orientation and signed the employee acknowledgment form, which stated she received the handbook and understood its content. From the beginning of her employment, Sam was often late for work, did not turn in work assignments on time, and received multiple client complaints. Sam's employer decided to terminate Sam's employment on October 15, 2023, without documenting her poor performance. Sam files a Charge with the EEOC against her employer alleging that she complained of discrimination based on her sex. Sam's employer is shocked. Sam never made a discrimination complaint to anyone at the company before her termination.

In their response to Sam's charge, Sam's employer can use their handbook to show:

- Their company has a strong policy against discrimination in the workplace.
- Sam received a copy of that policy.
- Sam was aware of the company's procedures for reporting complaints.

The company can show Sam received their handbook and they are able to argue Sam did not follow their procedures for filing a complaint, they had no knowledge of any complaint, and their decision to terminate was based on a legitimate, non-discriminatory reason: Sam's failure to comply with their policies.

Discipline & Documentation

- Consistent enforcement of company policies
- Progressive (typically)
- Keep write-ups in the employee's file
- Internal witness to disciplinary action (preferably another manager or supervisor)

Discipline & Documentation

Example:

Sam was hired on September 15, 2023. From the beginning of her employment, Sam was often late for work, did not turn in work assignments on time, and received multiple client complaints. Sam's employer writes Sam up on September 28, 2023, October 5, 2023, and on October 15, 2023, Sam's employer gives Sam a final written warning. On October 23, 2023, Sam receives her third client complaint and is terminated.

Sam files a Charge with the EEOC against her employer alleging that she is being discriminated against based on her sex. Sam's employer is shocked. Sam never made a discrimination complaint to anyone at the company before her termination.

In their response to Sam's Charge, Sam's employer can use their discipline and documentation to show they had a legitimate, non-discriminatory reason for terminating Sam. They can also provide copies of Sam's disciplinary file to back up their decision to terminate her.

Employee Training

- Some states and localities mandate certain trainings. For example, New York and Illinois both have sexual harassment training requirements:
 - for new hires, and
 - on an annual basis.
- Chicago and New York City also have their own training requirements.
- California even requires sexual harassment training to be interactive and that the documentation of the training be kept for a minimum of two years.
- Required trainings typically have specific deadlines, and content requirements.

Employee Training

- Other important employee trainings:
 - Harassment & Discrimination Training for all employees
 - Harassment & Discrimination Training for supervisors
 - Discipline & Documentation Training for supervisors
- Always keep a log of who has attended training as part of your records (and it is strongly recommended that employees acknowledge and sign off on attending training(s)).

Employee Training

Example:

Dillon was hired on April 15, 2023. Dillon completed the company's mandatory sexual harassment training during his orientation. From the beginning of his employment, Dillon refused to do his job or attend company meetings. After dealing with Dillon's behavior for a few months, on October 23, 2023, Dillon is terminated.

Dillon files a Charge with the EEOC against his employer alleging that he complained of sexual harassment and was fired due to his complaint. Dillon never made a sexual harassment complaint to anyone at the company before his termination.

In their response to Dillon's Charge, Dillon's employer can use Dillon's attendance at this training to show Dillon was aware that they took sexual harassment claims seriously and that Dillon was trained on the company's sexual harassment policies and procedures. While they will still need to argue that Dillon did not make a complaint of sexual harassment, they can show that they take sexual harassment seriously and make sure all of their employees know the expectations for behavior in the workplace.

Engaging in the Interactive Process

As we've seen earlier, disability claims are on the rise:

- If an employee indicates that they have a disability that is impacting their ability to do their job, the employer has an obligation to engage in the interactive process.
- The interactive process is:
 - Request for an Accommodation
 - Engagement between Employer and Employee about the Request
 - Identifying Reasonable Accommodations
 - Providing a Reasonable Accommodation

Engaging in the Interactive Process

- Remember: the most important part is the back-and-forth discussion with the employee where you try to find an accommodation that works for both the employee and the employer.
- Employers should go above and beyond to try to find an accommodation that does not impose an undue burden on the employer.
- Agencies and Courts are going to view most accommodation requests as reasonable.
- The bar is high for employers.

Engaging in the Interactive Process

Example:

Everly was hired on June 1, 2023, for a full-time on-site job in New York for an employer based entirely in New York. A few weeks into her employment, Everly disclosed she had MS and finds it difficult to come into the office. She requested to work from home in Oregon where her extended family lives. Everly's employer asked Everly to come up with some solutions that did not involve her moving to Oregon where the company did not have any business dealings or locations.

Everly insisted that she needed to move to Oregon. Everly's employer offered to let her work from home in New York as needed. Everly rejects the NY work-from-home accommodation. Everly quits her job and files a Charge based on disability discrimination.

In their response to Everly's Charge, Everly's employer can show that they engaged in the interactive process. While they did not ultimately grant Everly's request, they can show that they took her request for an accommodation seriously and that they tried to work with her to find a solution that worked for both parties.

Investigating Complaints

- If an employee brings a complaint of harassment, discrimination, or other violation of law to your attention, you have a duty to investigate that complaint.
- Even if you don't think the complaint has merit, it's important to take all complaints seriously.
- If you receive a complaint, PrestigePEO can help:
 - Report the complaint to us.
 - If you would like, we can investigate the allegations and speak with any witnesses.
 - We are happy to provide practical advice on how to address the allegations and help you identify any corrective action you might need to take, if needed.
 - You should advise the complainant that you've investigated their allegations and taken corrective action. They don't need to know what action you've taken, but they should know you took their concerns seriously and did not ignore them.

Investigating Complaints

Example:

Dillon was hired on April 15, 2023. Dillon completed the company's mandatory sexual harassment training during his orientation. From the beginning of his employment, Dillon refused to do his job or attend company meetings. Dillon's co-worker tells him an inappropriate joke in the workplace. Dillon complains of sexual harassment in June 2023. The company takes Dillon's concerns seriously. The company investigates his complaints and disciplines the coworker.

Dillon continues to refuse to do his job. After dealing with Dillon's behavior for a few months, on October 23, 2023, Dillon is terminated. Dillon files a Charge with the EEOC against his employer alleging that he complained of sexual harassment and was fired due to his complaint.

In their response to Dillon's Charge, Dillon's employer can show they took Dillon's sexual harassment claims seriously and took corrective action. They can then argue that they had a legitimate, non-discriminatory reason for terminating his employment that had nothing to do with his complaint.

Employee Engagement and Workplace Culture

- It's important to have a workplace where employees are comfortable bringing forward complaints.
 - Open door policies
 - Require all managers and supervisors to treat all employees with respect
 - Make sure all employees are aware of who they can report complaints to
 - Prestige HRBP is a resource here for all Prestige clients.
 - Behavior starts at the top - all upper management should be held to the highest standards.

Employee Engagement and Workplace Culture

Let's talk about retaliation:

- As we discussed earlier, retaliation claims are currently the most frequently filed types of claims.
- It's easy for employees to show retaliation, because often it's human nature to feel offended or wronged by another's complaint or to react negatively to complaints in the workplace.
- A lot of times problem employees are also the ones making a variety of complaints in the workplace that may or may not have merit.
- When you have a healthy workplace culture and are willing to engage with employees regarding their concerns, you reduce the potential for an EPLI claim.

Employee Engagement and Workplace Culture

Example:

Judy and Christina are hired as receptionists on January 15, 2023. Judy works at the Company's Melville office. Christina works at the Company's Garden City location. They are both terrible at their jobs. In June 2023, the regional manager, Anthony, sexually harasses both employees. Judy and Christina complain to their supervisors about the behavior. The complaints are investigated, and Anthony is terminated.

Judy's supervisor is annoyed that she has more work now that Anthony is gone and starts making snide comments to Judy about the situation. Christina's supervisor is supportive of Christina and continues to treat her the same. Both Judy and Christina continue to be terrible at their jobs and by the end of September 2023, both employees are terminated for poor performance.

Christina accepts that she was terminated due to her poor performance, and since she felt she was treated fairly by her supervisor, she does not file a claim. However, Judy is hurt and embarrassed by her supervisor's poor treatment. Judy decides to file a complaint with the EEOC for retaliation.

The company is going to argue that they terminated Judy due to a legitimate, non-discriminatory reason. However, Judy's supervisor has exposed the company to this retaliation claim by treating her differently than she did before Judy complained.

What to Do If You Receive A Claim

What to Do If You Receive a Claim:

- All claims and potential claims must be reported to PrestigePEO within 2 business days.
- Report them to your HRBP and provide a copy of the claim.
- We need to involve the carrier as quickly as possible so we can mitigate the claim.
- Once a claim is submitted to the carrier and they determine that it is a covered claim, coverage counsel is assigned to assist the client in defense and resolution.
- The carrier, PrestigePEO, and you will work together to defend and resolve the claim.
- All clients with EPLI coverage are required to cooperate in the claims process.

What to Do If You Receive a Claim

- What is a potential claim?
 - Allegations of harassment or discrimination in the workplace
 - Threats to file a charge or sue you, your company or other employees
- Example #1 of a potential claim: Maya complains she is being discriminated against due to her race.
- Example #2 of a potential claim: Maya is terminated and threatens to sue the company due to unlawful termination.

What to Do If You Receive a Claim

- If you don't timely report a claim, there is a chance that the EPLI carrier may deny the claim.
- If you suspect you might have a claim or think one might be coming, you must report it immediately!!
- Why do we require immediate reporting?
 - We want to help you mitigate any potential claim as quickly as we can.
 - Time is always of the essence in responding to and defending EPLI claims.

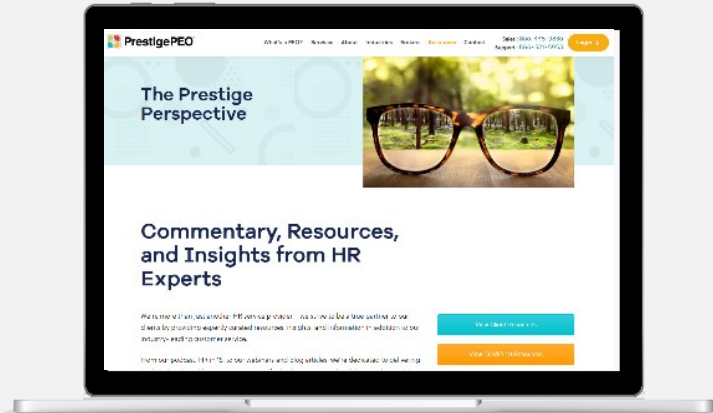
What to Do If You Receive a Claim

- Another important obligation is cooperation.
 - You have a duty to cooperate with us and the carrier in the resolution of the claim. Cooperation is a requirement to have coverage under our policy.
- Failure to cooperate can lead to a denial of coverage!
- Remember: We want to help you resolve issues in the workplace quickly, so you don't have claims.
- If you do receive a claim, we aren't looking to blame you, we are looking to help you resolve it!

Need Help?

- **Handbooks:**
 - PrestigePEO clients have access to PrestigePEO's federal handbook with state addenda.
 - If your organization does not have a handbook, please reach out to your HRBP.
- **HRBP Assistance**
 - Every client has an assigned HRBP to help provide HR guidance for issues in the workplace
 - HRBPs can provide guidance on disciplinary issues in the workplace.
- **Trainings**
 - PrestigePEO has an LMS platform with a variety of trainings.
- **Compliance Guidance**
 - PrestigePEO has a Compliance Updates and other resources for managers on our website.

Questions / Comments / Discussion?

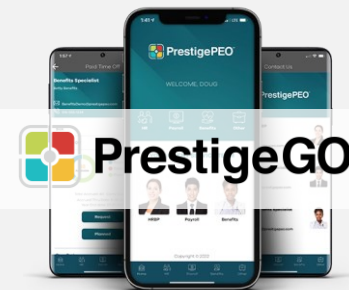


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Human Resources, Employee Benefits, and Payroll Simplified

You started your business because you had a great idea. We started our business to handle the rest.