

**EMPLOYMENT PRACTICES LIABILITY
COVERAGE PART**

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EMPLOYMENT PRACTICES LIABILITY

COVERAGE PART

1. INSURING AGREEMENTS

A. Employment Practices Liability

The **Insurer** shall pay **Loss** on behalf of the **Insureds** resulting from a **Claim** by or on behalf of an **Employee**, applicant for employment, governmental agency, or **Independent Contractor** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**.

B. Third Party Liability

If Third Party Liability coverage is elected in Item 6 of the Declarations, the **Insurer** shall pay **Loss** on behalf of the **Insureds** resulting from a **Claim** by or on behalf of a **Third Party** first made against the **Insureds** during the **Policy Period** or Extended Reporting Period, if applicable, for a **Wrongful Act** by the **Insureds**.

This Insuring Agreement shall be subject to the Third Party Coverage Sublimit of Liability, Deductible, and Pending and Prior Litigation Date specified in Item 6 of the Declarations. Such Sublimit of Liability shall be the maximum aggregate amount that the **Insurer** shall pay under this Insuring Agreement. Such Sublimit of Liability shall be part of, and not in addition to, the Limit of Liability applicable to this **Liability Coverage Part**.

2. DEFINITIONS

Whether used in the singular or plural, the following terms shall have the meanings specified below:

- A. “**Benefits**” means all compensation other than salary, wages, bonuses, and **Stock Benefits**. **Benefits** include, without limitation, retirement benefits, perquisites, vacation and sick days, medical or insurance benefits, and deferred compensation.
- B. “**Claim**” means any:
1. written demand for monetary or non – monetary relief commenced by the **Insured’s** receipt of such demand;
 2. civil proceeding commenced by the service upon the **Insured** of a complaint or similar pleading;
 3. formal administrative or regulatory proceeding commenced by the filing of a notice of charges or any similar document, including, without limitation, proceedings before the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Program;
 4. formal administrative or regulatory investigation commenced by the service upon or other receipt by an **Insured** of a written notice from an investigating authority identifying the **Insured** as a target against whom an administrative or regulatory proceeding may be commenced; or

5. written request to an **Insured** to toll or waive a statute of limitations regarding a potential **Claim** as described above, commenced by the **Insured's** receipt of such request.

Notwithstanding the above, **Claim** shall not include any labor or grievance proceeding initiated pursuant to any collective bargaining agreement.

C. "Employee" means any natural person whose labor or service was, is or shall be engaged and directed by any **Insured Organization**, including fulltime, part-time, seasonal, leased and temporary employees as well as volunteers. **Employee** shall not include any **Independent Contractor**.

D. "Executive" means any natural person who was, is or shall be a duly elected or appointed:

1. director, officer, or member of the board of managers or management committee of an **Insured Organization**;
2. in-house general counsel of an **Insured Organization**; or
3. manager of an **Insured Organization** organized outside the United States of America if such position is equivalent to those specified in 1 or 2 above.

E. "Insured Person" means any:

1. **Executive**;
2. **Employee**; or
3. **Independent Contractor**, but only if an **Insured Organization** agrees in writing within 30 days of the making of a **Claim** to provide indemnification to such **Independent Contractor** for any **Loss** arising out of such **Claim**.

F. "Insureds" means any:

1. **Insured Organization**; or
2. **Insured Person**.

G. "Loss" means the amount that the **Insureds** are legally obligated to pay resulting from a **Claim**, including, without limitation, damages (including front pay and back pay), settlements, judgments, pre- and post-judgment interest, and **Defense Costs**.

Loss shall include: (i) punitive, exemplary and multiple damages; and (ii) liquidated damages awarded pursuant to the Age Discrimination in Employment Act or Equal Pay Act, where insurable by law. The insurability of such damages shall be governed by the laws of any applicable jurisdiction that permits coverage of such damages.

Loss shall exclude any:

1. taxes, fines or penalties imposed by law;
2. matters that are uninsurable under the law pursuant to which this Policy shall be construed;

3. amount for which the **Insureds** are not financially liable or for which the claimants are without legal recourse to the **Insureds**;
 4. non-monetary relief;
 5. future compensation of a claimant who was, is or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of a **Claim**;
 6. **Stock Benefits**; or
 7. compensation earned by or due to the claimant in the course of employment but not paid by an **Insured Organization**, other than back pay or front pay.
- H. **“Retaliation”** means any actual or alleged negative treatment of any **Executive, Employee, or Independent Contractor** by any **Insured Persons** in their capacity as such or by any **Insured Organization** in response to any such person:
1. exercising any rights granted under law, including, without limitation, rights under any workers compensation laws, the Family and Medical Leave Act, or the Americans with Disabilities Act;
 2. refusing to violate any law;
 3. assisting, testifying in, or cooperating with, a proceeding or investigation regarding violations of law by any **Insured Organization**;
 4. disclosing or threatening to disclose any violations of law to a superior or any governmental agency; or
 5. filing any claim against any **Insured Organization** under the Federal False Claims Act or any similar law protecting “whistleblowers”.
- I. **“Stock Benefits”** means any offering, plan or agreement between any **Insured Organization** and any **Insured Person** granting stock, stock options or stock appreciation rights in any **Insured Organization** to such **Insured Person**, including, without limitation, restricted stock or any other stock grant. Notwithstanding the foregoing, **Stock Benefits** shall not include employee stock ownership plans or employee stock purchase plans.
- J. **“Third Party”** means any natural person who is a customer, vendor, service provider or other business invitee of any **Insured Organization**. **Third Party** shall not include **Employees**.
- K. **“Wrongful Act”** means:
1. regarding Insuring Agreement A, any actual or alleged:
 - a. wrongful dismissal, discharge or termination of employment, including constructive dismissal, discharge, or termination;
 - b. employment discrimination based on age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, health status, military or veteran status, or any other protected status specified under federal, state or local law;

- c. sexual or other workplace harassment, including, without limitation, hostile work environment;
- d. employment-related misrepresentation;
- e. wrongful deprivation of a career opportunity, demotion, failure to employ or promote, discipline of employees or failure to grant tenure;
- f. breach of any oral, written, or implied employment contract or agreement including, without limitation, any obligation arising out of any employee manual, handbook, or policy statement;
- g. **Retaliation**;
- h. negligent evaluation of employees;
- i. employment-related libel, slander, defamation, or invasion of privacy, including the giving of negative or defamatory statements in connection with an employee reference;
- j. violation of the Family and Medical Leave Act; or
- k. infliction of emotional distress or mental anguish, failure to provide or enforce adequate or consistent corporate employment policies and procedures, or negligent hiring, retention, supervision or training of **Employees**, if such conduct relates to matters described in paragraphs a through j above;

but only if the **Wrongful Act** described in 1.a through 1.k above is committed or attempted: (i) against an **Employee**, applicant for employment with any **Insured Organization**, or **Independent Contractor**; and (ii) by any **Insured Persons** in their capacity as such or by any **Insured Organization**; or

- 2. regarding Insuring Agreement B, any actual or alleged discrimination, sexual harassment, or violation of a **Third Party's** civil rights relating to such discrimination or sexual harassment, by any **Insured Persons** in their capacity as such or by any **Insured Organization**.

3. **EXCLUSIONS**

A. The **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:

- 1. arising from, based upon, or attributable to any fact, circumstance or situation that, before the inception date of this Policy, was the subject of any notice given under any other insurance policy;
- 2. arising from, based upon, or attributable to any:
 - a. demand, suit or proceeding, or any audit by the Office of Federal Contract Compliance Programs, made or initiated against any **Insured** on or prior to the applicable Pending and Prior Litigation Date in Item 6 of the Declarations; or
 - b. any **Wrongful Act** alleged in any such demand, suit, proceeding, or audit or any **Interrelated Wrongful Acts** thereto;

3. for bodily injury, sickness, disease, or death of any person, or damage to or destruction of any tangible property, including loss of use thereof; provided that this exclusion shall not apply to any **Claim** for emotional distress or mental anguish;
4. arising from, based upon, or attributable to any:
 - a. discharge, dispersal, release, escape, seepage, migration or disposal of **Pollutants**, nuclear material or nuclear waste or any threat of such discharge, dispersal, release, escape, seepage, migration or disposal; or
 - b. direction, request or voluntary decision to test for, abate, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, nuclear material or nuclear waste,

provided that this exclusion shall not apply to any **Claim for Retaliation**;

5. for any violation of: (i) any law governing workers' compensation, unemployment insurance, social security, disability or pension benefits laws; (ii) **ERISA** (except Section 510 thereof); (iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act; or (viii) any similar laws to those mentioned in (i) through (vii) above; provided that this exclusion shall not apply to any **Claim for Retaliation**;
6. arising from, based upon, or attributable to any liability of others assumed by any **Insured** under any contract or agreement, provided that this exclusion shall not apply to the extent that liability would have been incurred in the absence of such contract or agreement; or
7. arising from, based upon, or attributable to any breach of contract or agreement specifying the terms of an **Insured Organization's** engagement of an **Independent Contractor**.

B. Other than **Defense Costs, the **Insurer** shall not pay **Loss** for any **Claim** against an **Insured**:**

1. for costs of any accommodation required by the Americans with Disabilities Act or any similar law;
2. for employment termination severance payments, provided that this exclusion shall not apply to any payments negotiated with and consented to by the **Insurer** as part of a settlement;
3. for **Benefits** or their equivalent value, provided that this exclusion shall not apply to any **Claim** for wrongful dismissal, discharge or termination of employment; or
4. arising from, based upon, or attributable to any breach of any written employment contract or agreement, provided that this exclusion shall not apply to any liability that would have been incurred in the absence of such written employment contract or agreement.

C. Regarding Insuring Agreement B, the **Insurer shall not pay **Loss** for any **Claim** against an **Insured** arising from, based upon, or attributable to any price discrimination or violation of any anti-trust or other law designed to protect competition or prevent unfair trade practices.**

4. **OTHER INSURANCE**

A. To the extent that any **Claim** is covered under this **Liability Coverage Part** and any other insurance, the coverage provided under this **Liability Coverage Part** shall be primary.

B. Notwithstanding the above:

1. regarding any **Claim** made against a leased or temporary **Employee** or an **Independent Contractor**, coverage under this **Liability Coverage Part** shall be excess of, and not contribute with, any applicable insurance insuring the employee leasing company, temporary employee agency, or **Independent Contractor**; and
2. regarding any **Claim** made by or on behalf of a **Third Party**, coverage under this **Liability Coverage Part** shall be excess of, and not contribute with, any other applicable insurance insuring the **Insureds** on a duty to defend basis,

regardless of whether such other insurance is stated to be excess, contributory, contingent or otherwise, unless such other insurance is written specifically excess of this Policy by reference in such other insurance to this Policy's Policy Number.

SAMPLE