

Employment Practices Liability Claim Scenarios for Professional Firms

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MANAGEMENT LIABILITY

Please consider these claim scenarios in your firm. While they may seem extreme, claims such as these are a reality. Employment practices coverage* offered by OneBeacon Management Liability® can protect professional firms from a wide range of employment exposures.

Harassment & Emotional Distress

Damages Sought: \$250,000

After a few glasses of wine at a firm picnic, one of the firm's partners made derogatory racial remarks toward an invited guest of one of the firm's summer associates. As the associate tried to remove himself and his date from the situation, the partner continued his loud commentary. Several other firm partners were in close proximity, yet did nothing to assist the summer associate or his guest, who were noticeably uncomfortable. A few weeks later, when the associate returned to school, the firm received a demand letter from an employment attorney on behalf of the summer associate and his date, alleging harassment and seeking emotional distress damages from the partner for his behavior at the picnic and from the firm for aiding and abetting the harassment.

Discrimination on the Basis of Sexual Orientation

Settlement: \$600,000

A seventh-year litigation associate in a law firm used his vacation time for his same-sex marriage and honeymoon with his longtime partner. After displaying photos from the ceremony in his office, the associate noticed that fewer people spoke to him in the firm's hallways and his case assignments were dwindling. When he asked one of the firm's partners if something was wrong, the partner replied that she didn't think the associate was "tough enough" for the firm and perhaps he would be better suited to working in public interest law. After experiencing the "silent treatment" for another few weeks and having prime litigation assignments taken away from him, the associate left the firm and filed a claim with the state human rights agency against the firm for discrimination on the basis of sexual orientation.

Hostile Work Environment

Defense and Settlement: \$320,000

A married partner at an accounting firm had a romantic affair over several months with a younger associate who worked in the same practice group. During this time, the partner asked her assistant to reserve hotel rooms for "private lunches" with the associate and to purchase personal gifts for him. Sometimes, the partner would tell her assistant about her romantic trysts with the associate in great detail, boasting about her ability to attract a younger man. The assistant complained to the firm's human resource department about her work environment and exposure to all of the details of the partner's romantic affair. Subsequently, the assistant was terminated for being "unreliable" and for spreading gossip about the partner and the associate. The assistant then filed an EEOC charge against the firm and the partner, alleging a hostile work environment and retaliation.

Age Discrimination Class Action

Damages Alleged: \$4.5 million

A firm's recently elected management committee decided to reduce the compensation of several senior partners and change their status with the firm to "of counsel" in an effort to improve the firm's bottom line, and give some of the other partners a higher profile in the firm. While the firm's partnership agreement enabled the management committee to take this action upon a 66⅔ percent vote of the committee, the firm had never previously exercised this provision of the partnership agreement and customarily had allowed attorneys to remain active partners well into their eighties. Two partners, fearing the effect this change in income would have on their lifestyles, filed a class action complaint on behalf of the de-equitized group of partners, seeking relief under the Age Discrimination in Employment Act.

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**Coverages may be underwritten by one of the following insurance companies: Atlantic Specialty Insurance Company, Homeland Insurance Company of New York, Homeland Insurance Company of Delaware, OBI America Insurance Company and OBI National Insurance Company.*

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Discrimination on the Basis of Genetic Information

Defense Costs to Date: \$120,000

A long standing architecture firm in a small town allowed one of its female partners to take a paid leave of absence following the deaths of her mother and sister only a few weeks apart, both from breast cancer. The partner was diligent about her medical care and after having certain tests, was considering breast removal surgery. During an annual review of the firm's benefit plans, the human resource director noted to the firm's managing partner that the firm's health insurance costs had risen quite dramatically and speculated that the increase was because of the female partner's extensive medical testing. When the female partner returned from her leave of absence, the managing partner recommended that she become a contract partner to afford her additional time to handle her loss and allow flexibility in her schedule. Communications broke down between the partners, and the female partner filed a complaint with the EEOC against the firm and the managing partner for discrimination on the basis of genetic information. She subsequently amended her complaint to add a count for discrimination under Section 510 of ERISA.

Religious Discrimination

Damages Alleged: \$850,000

A successful litigator was recently hired by a law firm to be lead defense counsel in a complicated antitrust action against its client biotech company. The litigator was of Indian descent and wore the customary dress of those practicing the Sikh religion. As the case approached trial, the biotech company's president pulled co-defense counsel aside after a strategy meeting and inquired whether he, and not lead counsel, could argue the next motion in court. When co-defense counsel asked why, the client replied that he was uncomfortable with the lead counsel's personal style and thought that a "clean-cut" attorney might appeal better to the judge. The firm did not honor the client's request but also did not intervene when the client failed to return lead counsel's telephone calls and began to communicate only with co-defense counsel about case strategy. After the antitrust case settled, the lead counsel left the firm and through an employment attorney, sent a demand letter to the firm alleging that the firm's tolerance of the client's bigotry created a hostile work environment at the firm on the basis of religion.

Pregnancy Discrimination

Settlement: \$275,000

After her law firm became aware of her pregnancy, a third year associate noticed that she was not invited to a client breakfast and golf outing; and that, unlike the previous year, she was not offered basketball tickets for the firm's box seats to entertain clients when the tickets were distributed to other attorneys at a firm meeting. When she asked her supervisory attorney why, her supervisor replied that the associate had looked tired recently and the senior attorneys had assumed she wouldn't be interested in extracurricular events now that she was focusing on having a family. After a lesser-experienced attorney was assigned to replace her on a merger transaction for an insurance company client, and she received a much smaller bonus than in previous years, the associate filed a claim for pregnancy discrimination with the EEOC.

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