

Employment Practices Liability Risks: Wage and Hour Lawsuits and Illegal Alien Investigations



Protect Your Business

While managing a business can be rewarding, there are many challenges that could threaten your success. Dramatic increases in wage and hour lawsuits and illegal alien investigations could jeopardize the profitability of your business.

Defending your business against these types of allegations can be expensive. The costs of legal defense against allegations of Fair Labor Standards Act (FLSA) violations or dealing with increasingly aggressive tactics by U.S. Immigration and Customs Enforcement (ICE) can add up quickly — attorney and court fees plus the costs of investigation and fact gathering. Even if the allegations prove to be false, defense costs can be high. Don't take the risk. Get the coverage before you need it.

The Solution is Here

Safeguard your business from the costly consequences of wage and hour lawsuits and illegal alien investigations. Monitor Liability Managers, LLC offers two important coverage enhancements, which are available by endorsement with Monitor's Employment Practices Liability (EPL) Insurance. EPL coverage provides protection for claims due to allegations of discrimination, harassment, retaliation, termination, failure to hire, negligent supervision and wrongful demotion.

EPL Policy Enhancements¹

- ▶ *Wage and Hour (FLSA) Costs of Defense Sublimit* — Provides up to \$100,000 to cover costs of defense related to claims alleging violation(s) of the Fair Labor Standards Act (FLSA).
- ▶ *Illegal Alien Investigation Proceeding Costs of Defense Sublimit* — Offers up to \$25,000 to cover costs of defense for criminal investigations brought by any government agency for alleged hiring or harboring of illegal aliens.

¹This coverage overview is not a part of an insurance contract and does not supersede the policy. Please read the policy form for complete terms, conditions and exclusions.



A Berkley Company

www.monitorliability.com (800) 446-2100

Wage and Hour Litigation on the Rise

Recent amendments made to the Fair Labor Standards Act (FLSA) have made it easier for employees to file wage and hour lawsuits against their employers. These claims are a major exposure for companies of all sizes.

The bulk of wage and hour lawsuits are based on the misclassification of employees as exempt and off-the-clock claims. In addition, with the current economic conditions, a wrongful termination case with little merit can easily turn into a wage and hour claim after the attorney contracts with a claimant.

The Risk is Real

- ▶ Wage and hour cases tend to be class actions and affect mostly small to midsize companies with an average defense that can cost as much as \$100,000 or more.
- ▶ Most wage and hour lawsuits are settled quickly as employers frequently lose at trial.
- ▶ In most cases, the employer is required to pay the employee's attorney fees plus its own defense costs. This amount averages more than \$60,000.
- ▶ In 2008, companies collectively paid out more than \$1 billion to resolve wage and hour litigation claims.

Mid-sized Restaurant Chain Sued for Overtime Pay

The following example illustrates the effects a wage and hour lawsuit can have on a business.

Assistant managers formerly employed by a local restaurant chain filed a class action lawsuit alleging they should have been given overtime pay. They reasoned that they were required to perform non-managerial tasks on occasion, such as bussing tables, running the cash register or serving customers.

Because they performed those tasks, the assistant managers asserted they should not have been classified as salaried employees. The restaurant chain knew it could face steep legal fees and an uncertain outcome if the case went to trial, so they settled. Defense costs amounted to \$80,000 with a settlement of \$20,000 each for the three managers.

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Immigration Litigation on the Rise

Employers are feeling the pressure as the U.S. Immigration and Customs Enforcement (ICE) expands its illegal immigration campaign with investigations and raids at businesses of all types. Even if you can prove that you are not employing or harboring illegal aliens, these investigations can be quite costly.

The Risk is Real

- In 2008, ICE secured nearly \$21 million in criminal fines and civil judgments.
- A small to midsize business can expect the costs of managing an ICE investigation to range from \$10,000 to \$20,000.
- In 2008, ICE increased arrests tied to worksite enforcement investigations by 27%, with 1,103 criminal arrests and 5,184 administrative arrests.
- In 2008, ICE issued 503 Notices of Inspection (NOIs). On July 1, 2009, ICE issued 652 NOIs in one day.

ICE Investigation Results in Raid of NY Bakery

The following example illustrates the effects an illegal alien investigation can have on a business.

An unsolicited tip resulted in an ICE investigation of a local bakery in New York City for allegedly hiring illegal aliens. The six-month investigation culminated in a worksite raid of the bakery, the arrest of three employees and federal charges of hiring unauthorized aliens. In the plea agreement, the bakery's two owners pleaded guilty to illegal hiring practices and agreed to pay a total fine of \$75,000. Costs of defense exceeded \$20,000.

About Monitor Liability Managers, LLC

For nearly two decades, Monitor has provided comprehensive executive and professional liability insurance at competitive prices. Our consistency of leadership, outstanding customer service and industry expertise enable us to provide insurance products unsurpassed in the marketplace.

Monitor is a member company of the W. R. Berkley Corporation with full underwriting and claims settlement authority for its insurance products.

A+ Rated Insurance Carriers

Admiral Insurance Company (Nonadmitted)
Berkley Insurance Company (Admitted)
Carolina Casualty Insurance Company (Admitted)

- A.M. Best Company rated: A+ (Superior)

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