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RISK FINANCE | COVERAGE EDUCATION

The Wage and Hour Exclusion

Employment Practices Liability Insurance



Many businesses assume employment practices liability insurance (EPLI) covers any lawsuit filed by an employee. That assumption can leave a business without coverage at the exact moment it needs it most. Wage and hour claims, including unpaid overtime, employee misclassification and missed meal or rest breaks, are among the most common types of employment litigation businesses face. Yet most employment practices liability insurance policies specifically exclude these claims. This article examines why this gap exists and what options are available to help businesses avoid unexpected claims.

What Is the Wage and Hour Exclusion?

Employment practices liability insurance covers only the specific wrongful employment acts defined in the policy. Common covered acts include wrongful termination, discrimination, harassment and retaliation. Wage and hour claims fall under a different body of law, primarily the Fair Labor Standards Act (FLSA) and similar state statutes governing pay practices. These laws address how much employees must be paid, when they must be paid and how their work hours are tracked. Insurers generally exclude these claims because they involve wages an employer already owes, rather than damages from a wrongful act, although some insurers offer limited coverage through endorsements.

The exclusion generally applies to claims alleging violations of:

Overtime Requirements – Claims that a business failed to pay overtime to employees eligible to receive it.

Employee Classification – Claims that a business incorrectly classified a worker as exempt from overtime, or as an independent contractor rather than an employee.

Meal And Rest Break Laws – Claims that a business failed to provide legally required breaks.

Wage Payment Timing – Claims that a business failed to pay wages when due, including final paychecks after termination

Because these claims often involve groups of employees rather than a single plaintiff, they can carry a large price tag even when the per-employee amount at issue is modest.

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The Wage and Hour Endorsement

Some insurers offer an endorsement that adds limited wage and hour coverage to an employment practices liability insurance policy. Businesses should understand two important limitations before assuming this endorsement closes the coverage gap.

First, coverage is typically only for defense costs. It will pay to defend the business against the claim, but it will not pay a settlement, judgment or back wages owed to employees.

Second, this defense coverage usually carries its own sublimit, separate from and much lower than the policy's overall employment practices liability insurance limit. Once that sublimit is exhausted, the business is responsible for any remaining defense costs on its own.

The specific claims an endorsement covers and the state and local wage and hour laws it applies to can vary by insurer. Businesses should review the exact policy wording or ask their insurance advisor to explain it rather than assume standard coverage applies.

Standalone Wage and Hour Insurance

For larger employers, a small number of insurers offer standalone wage and hour insurance separate from employment practices liability insurance. Unlike the limited endorsement, these policies can include coverage for settlements and judgments, not just defense costs.

Standalone wage and hour policies typically carry high self-insured retentions, meaning the business pays a significant amount out of pocket before coverage applies. Insurers also tend to reserve this coverage for businesses with a favorable claims history and a large enough workforce to justify the underwriting. For many small and midsized businesses, this option may not be practical or available.

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Reducing Risk Before it Becomes a Claim

Because insurance coverage for wage and hour claims is limited, prevention is the primary tool businesses have to manage this exposure. Regular wage and hour audits, covering exempt and nonexempt classifications and independent contractor designations, can catch compliance issues before they become claims, since misclassification remains one of the most common litigation triggers. Consistent timekeeping practices, ideally supported by automated systems, create a clear record of hours worked and reduce the risk of disputes over off-the-clock activity, such as answering emails outside scheduled hours.

Frontline managers, not payroll staff, often make the day-to-day decisions that create wage and hour exposure, such as approving unpaid breaks or asking employees to work off the clock, which makes manager training an important part of any prevention strategy. Written pay policies, distributed to employees with signed acknowledgments on file, give a business a clear record of good-faith compliance if a claim is filed. Pay practices should be reassessed whenever the business changes in ways that could trigger new requirements, such as expanding into a new state, adding a job category or shifting to remote or hybrid work, rather than waiting for a scheduled review.

Conclusion

Employment practices liability insurance provides valuable protection against many employment-related claims, but wage and hour litigation generally falls outside its standard coverage. Understanding where employment practices liability insurance ends and where additional coverage or strong employment practices become essential can help businesses avoid unexpected uninsured losses.

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