Warehouse Liability & Employment Practices
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Employment Practices Liability Coverage & Case Studies
Presented by: Paige Lowder, Lockton Companies
Are you prepared for customer claims?

Case Studies in Warehouse Law
<table>
<thead>
<tr>
<th>Claim Type</th>
<th>Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>Temperature Abuse</td>
<td>5</td>
</tr>
<tr>
<td>Contamination</td>
<td>1</td>
</tr>
<tr>
<td>Fire</td>
<td>1</td>
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<tr>
<td>NH3 Leak</td>
<td>1</td>
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<tr>
<td>Theft</td>
<td>1</td>
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<tr>
<td>Water Damage</td>
<td>1</td>
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<tr>
<td><strong>TOTAL</strong></td>
<td><strong>10</strong></td>
</tr>
</tbody>
</table>
Temperature Abuse #1

158,246 pounds of canned refrigerated crab meat
Claim Amount: $1,546,093

DECEMBER 2015
- 4 inspections by customer/its insurer
- 7 off condition cans
- 2 production plants
- Warehouse temperature records
- Storage Agreement
Temperature Abuse #2

Mexican Crabmeat
Claim Amount: \textit{In excess of} $700,000

SEPTEMBER 30, 2016
- Product shipped from warehouse on April 29, 2016
- Customer required temperature: 32°F to 38°F
- Warehouse stored at 38°F to 40°F
- Commodity Storage Manual
- Storage Agreement
Temperature Abuse #3

1,806 cases Frozen Pastry/Bread
Claim Amount: $31,454.28
32,322.38 weight of product

- Dropped trailer
- Warehouse started & set refer temperature
- Yard check OK
- Storage Agreement
Temperature Abuse #4

20,000 pounds Refrigerated Pork
Claim Amount: unknown

- Dropped trailer
- Reefer set at 36⁰F – must not exceed 40⁰F
- Reefer shut off for 11.5 hours
- 9 hours, 45 minutes over 40⁰F
- Dropped Trailer Agreement
Temperature Abuse #5

32,934 pounds Spanish Lemons
Claim amount $57,985.20

- Cold Treatment: 0°C
- US Customs inspection
- 6/23/15 to 6/29/15 - 0°C
- Delivery Receipt – set point / temperature -18°C
- Receiving talley - +31°F
- USDA: 26°F to 29°F
- Commodity storage manual freeze point
Fire/Smoke

Saturday Late

- Minor fire damage
- Smoke problem
- Remediation
Contamination

1,118,294 pounds Frozen Beef and Pork Trimmings
Claim Amount: $53,365.51

- “Just in Time” delivery
- Rejected – Styrofoam beads
- Expenses
NH3 Leak

No customer claims

- Fan blade broke
- Remediation
- CO2
- Likely cause
- Equipment breakdown policy
Theft

Trailer Load Lobster
Claim Amount: $300,000

- Warehouse released product to trucker
- Not delivered
Water Damage

Chia Seeds
Claim Amount: $80,330.25

- Wet test of sprinkler
- Storage Agreement Limitation
- Form Letter
Employment Practices Liability Coverage & Case Studies
Topics covered in today’s session:

• What is Employment Practices Liability Coverage?
• How can you protect your balance sheet from this risk?
• What are some claims examples for which this coverage would apply?
Employment Practices Liability policies (EPLI) provide coverage to employers against claims made by employees alleging discrimination, wrongful termination, harassment, and other employment related issues, such as failure to promote.
• Most large companies have substantial EPLI insurance coverage in place and are well prepared to deal with just about any employment lawsuit.

• Smaller companies or new businesses however, are often most vulnerable to these types of claims. This is often due to the lack of an in house legal department and/or detailed employee handbook containing policies and procedures that guide hiring, disciplining or terminating employees.
What can you do to ensure your company is covered?

• Review potential loss exposures with your insurance agent/broker and determine the proper amount of coverage necessary

• Develop an employee handbook detailing your company’s workplace policies and procedures, or review what is currently in place to make sure you are addressing attendance, discipline, and complaints procedures

• Create a job description for each position that is clear and concise, defining expectations of skills and performance

• Conduct performance reviews of employees

• Develop a screening and hiring program

• Conduct background checks on potential candidates

• Institute a zero tolerance policy regarding discrimination, substance abuse, and harassment

• Document employee issues as they arise and what the company did to resolve those issues
Two options for insurance coverage:

• Stand-alone EPLI Policy
  • Only covers employment practices liability exposures and policies of this type are usually written to cover large (i.e. firms with 500 or more employees) and/or publicly held organizations

• Component of a management/executive liability package policy
  • EPLI can also be provided as part of a package policy that typically includes D&O (Directors and Officers) and Fiduciary Liability coverage.
Claim Example #1: Bad Employees.. Just Get Worse

• Cause of Action: Wrongful Termination
• Type of Organization: Private, 40 Employees, Annual Revenue of $3.7M

Event: A mid-level supervisor with a long history of documented performance issues was terminated for smoking in a restricted area of the company’s building where flammable chemicals were stored. The terminated employee, who was 54 years old, responded by suing the company for wrongful termination. He alleged age discrimination on the basis of comments made by his supervisor (such as “You’re too old”) and disability discrimination because the company refused to make accommodations for his high blood pressure. He also alleged he could only be terminated for good cause. The plaintiff sought back pay, front pay, special damages, and attorneys fees totaling an estimated $275,000, in addition to punitive damages.

Resolution: Company settled with former employee, paying $350,000, but not before it had paid $130,000 in defense costs.
Claim Example #2: Discrimination.. Doesn’t Get Better With Age

• Cause of Action: Age Discrimination

• Type of Organization: Private, 120 Employees, Annual Revenue of $18M

Event: Company terminated a long-time manager for alienating employees and customers and disinterest in his job. The manager was 59 years old when the termination took place, and the company checked off “other” instead of “poor performance” on the termination form as the reason for the termination. The manager filed a charge of discrimination with the EEOC, alleging he was terminated because of his age. In his charge, he stated that he had always received regular merit pay increases, was replaced by a worker in his 30s, and that some members of senior management had made comments about needing to “get rid of the old guys.” The manager filed a lawsuit against the company seeking two years of lost wages and benefits, as well as compensation for emotional distress.

Resolution: Company believed they were innocent of the allegations but determined defending against the lawsuit would be costly. Case eventually settled out of court for $250,000, while expenses totaled more than $60,000.
Claim Example #3: Inappropriate Jokes.. The Punchline is Not Funny

• Cause of Action: Sexual Harassment

• Type of Organization: Private, 145 Employees, Annual Revenue of $37M

Event: According to a female employee, a supervisor allegedly made abusive and sexually explicit comments to her and several coworkers. The supervisor also made sexual advances toward the employee, who rebuffed these advances. Shortly after, the employee was terminated as part of a wider company reduction in force. This employee brought suit against the company and two managers, alleging sexual harassment, intentional infliction of emotional distress, wrongful termination, retaliation, and sex discrimination. She sought $275K in addition to legal fees. Employer responded with a defense stating that the employees file showed tardiness for work, conflicts with managers, and poor performance. Records indicated she had been a problem employee and had frequently talked about her sex life and made vulgar comments at work. However, it also came to light that management had tolerated sexual jokes around the office but assumed no one was offended.

Resolution: Court panel ruled against the company, ordering it to pay the plaintiff $100,000 plus her legal fees. In addition, the company accrued $31K in defense costs.
Claim Example #4: Office Love.. Can Lead to Corporate Heartbreak

• Cause of Action: Sexual Harassment
• Type of Organization: Private, 242 Employees, Annual Revenue of $210M

Event: A female employee, who had been with the company for 2 years, exhibited a sudden drop off in her work performance. Her supervisor set up a meeting with her to discuss her performance, but she failed to show up. She did show up for a rescheduled meeting, but she had alcohol on her breath. She complained during the meeting that she faced continuous sexual harassment from a senior manager and that his actions created a hostile work environment. Her supervisor suggested she take another position in the company at a different location, which she agreed to do. After failing to show up for work at the new location and skipping several additional meetings with her supervisor she was terminated. She filed a lawsuit seeing $1M in damages. In her suit, she alleged that a senior manager had been obsessed with her for two years, had maintained an uncomfortable closeness at work, and continually harassed her with questions about her personal life. In subsequent interviews with employees it was discovered that the female employee and the senior manager were engaged in a consensual romantic relationship over the 2 year period.

Resolution: The company determined that it would rather settle than go to court. After paying more than $120K in defense costs, the company settled with the former employee for $250K
To Wrap-Up:

• The 2016 fiscal year saw 91,503 charges filed with the EEOC, making it the second year in a row this number as grown.

• Primary reasons for the growth of EEOC filings are the sizeable increase in retaliation, disability, and age discrimination claims.

• These types of claims are increasing in frequency and severity and it has never been more important to evaluate your exposure to EPLI claims, and to take a look at EPLI coverage options for you.
Questions?