

# EPL Insurance

Due to challenging market conditions, most employment practices liability (EPL) insurance policyholders have experienced ongoing rate jumps, underwriting scrutiny and limited capacity over the last several years. Fortunately, these conditions slightly cooled in 2023, evidenced by the majority of insureds encountering modest premium hikes ranging between 3% and 7% throughout the year, according to industry data. These softening conditions have persisted so far in 2024, with industry experts confirming that average rate increases fell to 1% in the first quarter of the year. For the remainder of 2024, most policyholders can expect another round of slight premium jumps, whereas those with poor loss history or operating in certain states and industries may face larger rate hikes.

## Developments and Trends to Watch

- **Evolving regulatory initiatives and discrimination laws**—The White House and the U.S. Equal Employment Opportunity Commission (EEOC) have recently collaborated on various regulatory initiatives to fight systemic discrimination in the employment landscape. Such discrimination refers to workplace policies that can place underserved groups at a disadvantage. According to the EEOC's latest report, the agency filed 143 new discrimination-related employment lawsuits during fiscal year 2023, representing more than a 50% increase from the prior year. In the first few months of 2024, the EEOC also released new enforcement guidance on preventing in-person and online workplace harassment. Businesses that neglect to address these regulatory initiatives and adopt more inclusive policies could be more susceptible to employment lawsuits going forward, prompting an increase in EPL losses. Evolving legislation related to pregnancy discrimination and pay equity has also contributed to rising EPL exposures. In particular, the federal government implemented two new pregnancy discrimination laws in 2023: the Pregnant Workers Fairness Act and the Providing Urgent Maternal Protections for Nursing Mothers Act. These laws offer additional support and accommodations to pregnant and nursing employees nationwide. Additionally, the EEOC's launch of its new REACH initiative includes "doubling down" on minimizing gender- and race-related pay inequities. Several states have even taken this topic into their own hands by introducing new wage discrimination laws in the first quarter of 2024, with more states expected to follow suit in the near future. Looking ahead, legal experts anticipate these legislative trends to press on, placing noncompliant companies at risk of facing legal penalties and subsequent EPL losses.
- **Generative artificial intelligence (AI) concerns**—Generative AI systems can leverage programmed algorithms to deliver automated employment decisions. While these systems may offer various benefits to businesses, such technology may also pose EPL exposures. For instance, generative AI tools could produce discriminatory employment decisions if the algorithms entered into these tools are biased toward specific groups. In 2023, the EEOC released guidance to help companies using generative AI technology comply with fair employment laws. Along with other federal agencies, the EEOC also recently issued a joint pledge to vigorously enforce antidiscrimination laws as the utilization of this technology grows. What's more, 2023 saw the EEOC's first AI-based discrimination settlement take place, in which a company in New York agreed to pay \$365,000 after a lawsuit filed on behalf of more than 200 job applicants alleged that the company's AI-powered hiring system was set up to reject candidates above a certain age automatically. In 2024 thus far, several states have also developed their own AI-related discrimination laws. As it stands, one state has enacted and five states have proposed laws addressing algorithmic discrimination, which refers to any situation involving the utilization of generative AI systems that leads to unfavorable treatment of an individual due to a protected characteristic (e.g., age, race, sex, religion or disability). These laws call for businesses to take "reasonable care" in reducing the risk of algorithmic discrimination and follow more advanced reporting requirements regarding their use of generative AI tools. More states will likely implement similar laws in the latter half of 2024 and beyond. As such, it's imperative for employers to assess their AI technology for possible biases and mitigate EPL losses.

## Tips for Insurance Buyers

- Promote diversity and inclusion in the workplace through effective policies and routine employee training.
- Take reports of discrimination and harassment seriously and prohibit managers from engaging in retaliation.
- Assess the algorithms for generative AI systems used in employment processes to avoid discriminatory actions. Consult legal counsel to ensure compliance with all applicable algorithmic discrimination laws.

