



Addressing the Special Needs of the Independent Manufacturer

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Crime Insurance

Employment Practices Liability

Directors & Officers Liability

Is Crime Insurance Really Necessary?

- Fraud and embezzlement in the workplace are on the rise, occurring in even the best work environments.
- The downturn in the economy has employees having to find different sources of income to make ends meet.

Why Buy Crime Insurance?

- Employee theft losses are *EXCLUDED* under most commercial property policies.
- Many business insurance policies provide only nominal amounts of Crime coverage.
- Purchasing crime coverage can fill a coverage gap.
- The simple fact is, NO business is immune to employee fraud.

Who Are The Thieves?

- Employees 39.7%
- Managers 37.1%
- Owners/Executives 23.3%

How Much Are They Taking?

Median Loss, by Perpetrator Type

- Employees \$ 70,000.
- Managers \$ 150,000.
- Owners/Executives \$ 834,000.

What Are They Taking?

Breakdown of Asset Misappropriations by Frequency

- 83.7% Cash (Includes Checks and Money Orders). Median Corruption Loss \$375,000.
- 16.3% Non-Cash. Median Loss \$100,000.

What can employers do to help protect against this risk?

- Establish a good loss prevention and internal control program
- Screen employees; maintain strong hiring practices
- Be ever-vigilant
- Purchase crime insurance

Crime Coverages

- Coverage Form A – Employee Dishonesty
- Coverage Form B – Forgery or Alteration
- Coverage Form C – Theft, Disappearance & Destruction
- Coverage Form D – Robbery and Safe Burglary – Property Other Than Money and Securities
- Coverage Form F – Computer Fraud

Coverage A Employee Dishonesty

Covers loss of, and loss from damage to, Covered Property caused by the dishonest acts of all the insured's employee

■ **Covered Property**

- Money, securities and property other than money and securities

Coverage A Claim Example

Over a 3 ½ year time span, a restaurant manager stole approximately \$200,000 from his employer. The manager was improperly using the “delete” key when entering various servers’ post-shift reports into the system and taking the amount of cash which was “deleted”. This delete function was meant to be used only on rare occasions; such as when an improper order was placed.

Coverage Form B – Forgery or Alteration

Protects the Insured against loss as a result of forgery or alteration of any checks and drafts issued (*or alleged to have been issued*) by the Insured.

Covered instruments include: checks, drafts and promissory notes.

Facsimile signatures treated same as handwritten signatures.

Territory: Anywhere in the world (no territorial restriction)

Coverage Form B – Claim Example

A real estate developer issued a check dated 9/15. It was in the amount of \$744,232 to the U.S. Treasury as payment for estimated taxes. The check was intercepted by an outside source. The date was altered to 10/15 and the payee was changed to "company X" The insured's bank accepted the check and paid the check on 11/22 to company X.

Coverage C

Theft, Disappearance, and Destruction

Covers loss of Money and Securities

2 sections of coverage:

- Section 1 – Inside the Premises
- Section 2 – Outside the Premises

Cause of Loss – Theft, Disappearance, or Destruction

Coverage C

Theft, Disappearance, and Destruction

Section 1 – Inside the Premises

- Includes the building that the Insured occupies and the interior of any bank.

Section 2 – Outside the Premises

- Coverage is provided as long as the Money and Securities are in the care of a Messenger.

- Also provides Excess coverage for armored courier.

Coverage D

Robbery and Safe Burglary

Covers loss of Property other than Money and Securities due to robbery of a Custodian inside the Premises or a Messenger outside the Premises.

Section 1 – Inside the Premises

Section 2 – Outside the Premises

Cause of Loss – Actual or attempted robbery

Coverage F Computer Fraud

Covers: Money, Securities, as well as Property other than money and securities

Cause of Loss – Computer Fraud

Loss must involve the use of any computer to fraudulently cause a transfer from inside the premises, or banking premises, to a person or place outside of the premises.



**Employment
Practices Liability**

Is Employment Practices Liability Really Necessary?

In today work environment:

Employees are more aware to their right under Federal and State Statutes.

The workforce is aging and retirement plans having lost substantial value.

There are increasing EEOC initiatives.

Verdicts and settlements are increasing in size and cases receive greater coverage in the 24/7 news world.

Defense costs are significant.

What Are the Sources of Employment Practices Claims?

Based on 2009 industry statistics:

36% of claims are for race discrimination.

36% of claims are for retaliation.

30% of claims are for sex or gender discrimination.

23% of claims arise from various types of disabilities.

How Costly Are Employment Practices Claims?

Based on verdicts from 2002 through 2008:

35% of awards were under \$100,000.

46% of awards were between \$100,000 and \$749,000.

14% of awards were between \$750,000 and \$2,000,000.

7% of awards were greater than \$2,000,000.

What Industries Are The Biggest Targets?

Based on verdicts from 2002 through 2008:

Of various defendant types, manufacturing/industrial companies have the highest median award, \$229,658.

Manufacturing/industrial and service/retail companies accounted for 52% of all verdicts

Who Can Sue?

Current and former employees.

Leased workers or independent contractors.

Job applicants.

EEOC and various State equivalents.

Third party vendors delivering goods and services to your facilities.

What Might An Employee Request?

Front and back pay.

Reinstatement.

Damages for emotional distress and mental anguish.

Punitive damages.

Plaintiff's attorney fees.

Other legal and equitable relief.

Who Is Covered

Named Insured and subsidiaries including newly acquired or newly formed subsidiaries.

Past, present and future Directors and Officers.

Past, present and future employees.

Leased workers or independent contractors.

Volunteers.

Spouses, heirs, estates and legal representatives.

What Wrongful Acts Are Covered

Discrimination.

Sexual harassment.

Workplace harassment.

Employment related defamation or invasion of privacy.

Retaliation.

Violation of Family Medical Leave Act.

Wrongful termination.

Breach of employment agreement.

Negligent supervision/hiring/retention.

What Costs Are Covered

Judgments, awards and settlements.

Defense expenses.

Damages including:

- Compensatory damages including front/back pay.

- Punitive damages, where permitted by law.

- General damages – emotional distress.

- Liquidate damages under Equal Pay Act and Age Discrimination in Employment Act.

Real Life Employment Practices Claim

A former employee of 21 years sued a manufacturer claiming that his job was terminated without warning following a vacation and subsequent illness. The plaintiff further claimed he was terminated because the employer favored Caucasians and disliked Asians. The plaintiff laid out allegation that the insured had swindled its customers by substituting inferior materials for those called for in customers specifications, misstating shipping weights and placing new logos on old products. The case was settled for \$200,000 with an additional \$150,000 in defense costs.

Real Life Employment Practices Claim

A line worker at a bulk food packaging business filed a charge against his employer with the EEOC for sexual harassment and discrimination. The charge developed into a class-action suit brought against the insured directly by the EEOC. The suit contended that the insured had a pattern and practice of failing to respond to claims of harassment and discrimination. The case settled for \$350,000 with an additional \$100,000 in legal fees.



Directors & Officers Liability

Is Directors & Officers Liability Really Necessary?

In today's highly competitive and international market, there are a number of sources which could bring potential claims including:

- Class action claims.

- Shareholder actions.

- Employee claims.

- Merger and acquisition claims, including:

 - Inherent conflicts of interest.

 - Duty to shareholders to ensure fair/maximum share price.

 - Protect best interest of corporate entity.

 - Self-serving interest of preserving personal jobs.

Is Directors & Officers Liability Really Necessary?

In addition there is the possibility of third party claims from:

- Creditors.

- Customers.

- Vendors and suppliers.

- Various federal agencies.

- Competitors, involving

 - Deceptive trade practices and trade restraint.

 - Copyright and patent infringement.

Defense costs are extremely large.

Directors & Officers require protection of their personal assets.

Who Is Covered

Named Insured and subsidiaries including newly acquired or newly formed subsidiaries.

Past, present and future Directors and Officers.

Past, present and future people serving on advisory boards.

Spouses.

Heirs, estates and legal representatives.

What To Look For In Choosing Directors & Officers Coverage?

What is Covered

Loss resulting from claims against an Insured Person for loss for claims **other than** those for which the Insured has agreed to indemnify a Director or Officer.

Loss resulting from claims against an Insured Person for loss for claims for which the Insured has agreed to indemnify a Director or Officer.

Loss against the Insured Organization for a wrongful act.

What To Look For In Choosing Directors & Officers Coverage?

What Wrongful Acts Are Covered

Avoid a definition of wrongful acts which are on a named offense/peril.

Definition of wrongful act should include wording similar to “ any actual or alleged act, error or omission, misstatement, misleading statement or breach of fiduciary duty or other duty as an Insured Person in his/her capacity as an Insured Person.”

What To Look For In Choosing Directors & Officers Coverage?

What Costs are Covered

Judgments, awards and settlements.

Defense costs.

Pre-judgment interest.

Post judgment interest.

Punitive damages where permitted by law.

Real Life Directors & Officers Claim

After a manufacturer of corrugated piping filed Chapter 11 Bankruptcy, the Creditors' Committee filed a complaint against the company's directors and officers. The committee alleged that the insured's CEO has moved the company's operations to another country without its knowledge. The complaint further claimed that the CEO had improperly transferred assets, failed to properly protect the interests of creditors and failed to evaluate financial problems. A shareholder action soon followed alleging the CEO has transferred the assets to another company, in another country, without adequate compensation. The claim settled for over \$500,00 with another \$150,000 in defense costs.

Real Life Directors & Officers Claim

A competitor sued a manufacturer of parts used by power plants and in the mining companies, claiming interference with an employment contract containing a non-compete clause. The insured allegedly courted and hired a former employee of the plaintiff, an action that violated the employee's non-compete agreement. The plaintiff also contended that, by hiring the individual, the insured interfered with the plaintiff's business relationships. As a result, the plaintiff asserted its trade secrets were improperly taken. Defense costs in this case were over \$125,000.

Coverage Options

All of the coverages we have discussed today are available on an individual, stand alone policy. Several carriers have begun to issue on package policy that combines Crime Insurance, Employment Practices Liability and Directors & Officers or any combination thereof. The advantage of this approach is that individual policy minimum premiums are avoided and that overall pricing for all coverage selected is reduced.