

Employment Practices Liability Survey Findings

The Chubb 2004 Private Company Risk Survey

The Chubb 2004 Private Company Risk Survey was sponsored by the Chubb Group of Insurance Companies to gain a better understanding of the many risks privately held companies and their directors and officers face. The survey provides valuable perspectives on these exposures, the concerns of private company executives, and the executives' perceptions of their own vulnerabilities.

During the research, private company executives were asked for their views on directors and officers liability, fiduciary liability, employment practices liability, crime, workplace violence, kidnap and ransom, and other executive protection-related exposures.

Summary

Many private company executives are coming to the realization that their companies are not immune from lawsuits and other regulatory complaints from current and former employees. In 2003, the federal Equal Employment Opportunity Commission (EEOC) reported a total of 81,293 charges claiming multiple types of discrimination, and 393 actual lawsuits were filed alleging employment discrimination. According to Chubb's survey, 26% of executives at privately held companies reported that their company had been sued by an employee or former employee, and 22% reported having an employee file a discrimination or harassment complaint with the EEOC or state agency during the past few years.

Furthermore, in November 2003, when the survey was conducted, 44% of executives said it is likely that an employee or former employee will sue their company in 2004, and 50% said it is likely that an employee will file a complaint with the EEOC or state agency this year.

Several factors, such as widespread media coverage of employment-related litigation, may be clouding the horizon for privately held firms. Based on our experience, downsizings and acquisitions will add to the uncertainty, especially since so many privately held companies anticipate taking these actions in 2004.

It is prudent for private company boards and management to take steps to mitigate their exposures to litigation. In fact, more than one-half of the private companies surveyed indicated they have taken such measures, including employment discrimination and/or sexual harassment training and written policies banning employment discrimination and sexual harassment. However, there may be some caveats:

- Small companies are considerably less likely than other companies to offer training or to have written discrimination and harassment policies, leaving them more vulnerable to lawsuits. If cost is a reason for not doing so, then they may not be aware that a number of low-cost tools are available on-line to help them.
- Many executives in the privately held companies may believe they have addressed their exposures by establishing certain policies and procedures. However, the scope of the survey did not permit an assessment of the details or the quality of these procedures.



- It is particularly disturbing to find that a large number of firms (56%) do not plan to consult human resource professionals before making employment-related decisions in the year ahead.
- It is surprising, given the current legal environment, the specter of major settlements, and the potential for more high-profile discrimination lawsuits, that less than half of the privately held firms have employment practices liability insurance (EPLI). Some private company executives may erroneously believe that other types of liability coverages may provide the corporation and its directors and officers with protection in the event of an EPL lawsuit.

We urge private company executives to discuss the management of their employment-related risks with their insurance agent or broker or other risk management adviser.

Methodology

Impulse Research Corp., an independent market research firm in Los Angeles, conducted the survey in November 2003. Researchers conducted telephone interviews with a random sample of 300 chief executive officers, chief financial officers and other executives at privately held companies in 30 cities across the United States. The respondents came from small to large privately held firms in a broad array of industries.

The overall sampling error is +/- 6% at the 95% level of confidence.

Respondents

Respondents were drawn from a diverse sampling of private companies in industries such as manufacturing, high technology, health care, financial services, and retail from a mix of 30 small and large cities across the country.

- Cities Where Respondents Are Based:
Atlanta; Boston; Chicago; Dallas; Detroit; Houston; Los Angeles/Long Beach; Minneapolis/St. Paul; Nassau/Suffolk counties, NY; New York City; Newark, NJ; Oakland, CA; Orange County, CA; Philadelphia; Phoenix; Pittsburgh; San Diego; Seattle; St. Louis; and Washington, D.C.
- Number of Employees at Responding Company:
 - 100 or fewer employees: 106 respondents
 - 101-999 employees: 64 respondents
 - More than 1,000 employees: 130 respondents
- Annual Revenue at Responding Company:
 - Less than \$10 million: 110 respondents
 - \$10 million-\$1 billion: 99 respondents
 - More than \$1 billion: 91 respondents

Number of Employees vs. Annual Revenue				
	Total *	<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
Less than 100	35%	84%	12%	2%
100 to 499	16%	12%	30%	3%
500 to 999	6%	1%	14%	2%
1,000 or more	44%	2%	43%	93%

EPL Survey Findings

The Past—More than one in four (26%) executives reported that their company and/or its board of directors had been sued by an employee or former employee during the past few years.

- The midsize firms were more than twice as likely as the smaller firms to have been the target of an employee lawsuit, and the large firms were twice as likely as the midsize firms to have been the target.
- Executives at 22% of the firms indicated that an employee had filed a discrimination or harassment complaint with the EEOC or a state agency.
- Larger companies were more likely to have been the target of a complaint filed with the EEOC or a state agency, although the gap between midsize companies (25%) and larger companies (34%) is not great.

Chart 1	Total *	Annual Revenues		
		<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
An employee or former employee has sued the company and/or its directors and officers	26%	10%	23%	47%
An employee has filed a discrimination or harassment complaint with the federal EEOC or a state agency	22%	7%	25%	34%

The Future—More than two in five (44%) privately held company executives expect that their company or its directors and officers will be sued by an employee or former employee in 2004.

- Half (50%) believe an employee is likely to file a complaint with the EEOC or a state agency.
- Large numbers of firms reported that they anticipate downsizings (55%) or acquisitions (46%) in 2004.
- Executives at more than half of the companies surveyed (56%) anticipate that employment decisions will be made without involvement by human resources professionals.

Chart 2	Total *	Annual Revenues		
		<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
An employee or former employee is likely to sue the company and/or its directors and officers	44%	22%	40%	67%
An employee is likely to file a discrimination or harassment complaint with the federal EEOC or a state agency	50%	28%	52%	67%
Company is likely to make employment decisions without consulting human resource professionals	56%	62%	53%	53%
Company is likely to reduce force, close plant, or downsize	55%	41%	51%	71%
Company anticipates making major acquisition	46%	33%	46%	57%

The Cost—Nearly one-third (32%) of the executives believe that an EPL allegation or lawsuit could carry serious financial or other consequences in 2004.

- More than half (55%) of respondents estimated the cost of an EPL lawsuit at \$100,000 or more.
- Thirty-six percent of respondents felt the cost to the company of an EPL lawsuit might be \$100,000 to \$500,000.
- Executives at nearly one in five of the private companies (19%) thought the cost of a lawsuit might exceed \$500,000.

Chart 3	Total *	Annual Revenues		
		<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
Percentage indicating that an allegation or actual case of wrongful termination, discrimination, or sexual harassment will cause serious financial or other damage to your firm.	32%	18%	36%	44%
Cost to settle an employee discrimination or sexual harassment suit: less than \$100,000	45%	63%	45%	31%
Cost to settle an employee discrimination or sexual harassment suit: \$100,000 to \$499,000	36%	27%	33%	47%
Cost to settle an employee discrimination or sexual harassment suit: \$500,000 to \$999,999	9%	9%	8%	9%
Cost to settle an employee discrimination or sexual harassment suit: \$1 million or more	10%	1%	13%	13%

Loss Prevention—Nearly three in four companies surveyed appear to be responding to the growing threat of employment-related lawsuits against their companies and directors and officers.

- Seventy-two percent of the respondents reported that their firm already has in place written policies banning employment discrimination and sexual harassment.
- Fifty-two percent indicated that their company provides employment discrimination and/or sexual harassment training. However, although this training is fairly common among midsize and large companies, only 23% of small companies provide it.
- Larger firms are more likely to have such policies and programs in place, although substantial numbers of smaller and midsize firms have them as well.
- Thirty-six percent of the companies surveyed plan to conduct a risk assessment of executive protection-related exposures, including EPL, in 2004.
- A somewhat greater number, 44%, expect to retain legal, human resource, or other consultants to help them address their exposures.
- And even more firms (74%) plan to implement new human resource policies, procedures, and training programs to help prevent losses.

Chart 4	Total *	Annual Revenues		
		<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
Plan to implement new HR policies, procedures, and training programs to help prevent losses	74%	62%	72%	83%
Currently have written policies banning employment discrimination and sexual harassment	72%	53%	80%	88%
Currently provide employment discrimination and/or sexual harassment training	52%	23%	60%	79%
Plan to retain legal, HR and other consultants to address exposures	44%	38%	40%	53%
Plan to conduct a risk assessment of executive protection-related exposures, including EPL	36%	26%	40%	40%

Insurance—Two in five (40%) of the private companies surveyed report that they currently purchase EPLI.

- Twice as many larger firms (55%) purchase the coverage compared to smaller firms (25%).
- Some 18% of the privately held firms plan to purchase insurance for emerging concerns/exposures during 2004.
- Smaller firms (24%) appear to be slightly more likely than their larger peers to plan to purchase the coverage.

Chart 5	Total *	Annual Revenues		
		<\$10 million	\$10 million-\$1 billion	Over \$1 billion
BASE: Total	300	110	99	91
Currently purchase employment practices liability insurance	40%	25%	52%	55%
Plan to purchase insurance for emerging concerns/exposures	18%	24%	19%	13%

* Note: The total number is calculated for the full sample of 300 survey participants. It is not an average of the three breakout groups; rather, it is weighted slightly toward the largest group sampled (the 110 companies with less than \$10 million in annual revenue).



Chubb Group of Insurance Companies

Warren, NJ 07059

<http://csi.chubb.com>

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This literature is descriptive only. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms and conditions of the policy as issued. Actual coverage is subject to the language of the policies as issued.

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