

The EPL Insurance Advisor – May 2019

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To assist underwriters and claims professionals in assessing emerging employment risks, we are pleased to provide the first issue of our newsletter. *The EPL Insurance Advisor* highlights topical issues in claims, defenses, and liability risk management developments.

2019 EPLI Trends Report – What Analysts and Underwriters Should Know
Workplace law changes constantly. Analysts and underwriters need to keep up with expanding risks, changing legal obligations, reason-defying jury verdicts, and a record number of threatened and asserted claims associated with these changes. Despite decreases in overall Equal Employment Opportunity Commission (EEOC) administrative filings, threat letters, state court lawsuits, federal court filings, and settlement demands are growing. Our 2019 *EPLI Trends Report* gives an overview of the related risks and exposures employers and, by extension, carriers face in 2019.

[Download the Report ...](#)

Class Action Report – Trends in Mega-Risk Litigation
Class action and multi-plaintiff litigation of employment-related disputes continue to be filed in record numbers and are a staple of most EPLI claims books. Jackson Lewis' quarterly *Class Action Trends Report* discusses new developments in workplace law class action litigation and offers strategic guidance and tactical tips on the defense of such claims. Topics covered include:

- Are you my employee? – Distinguishing independent contractors and employees
- Prevention pointers – Is an “independent contract” enough?
- Independent contractors in California
- Regulatory roundup
- Review of recent case law and other class action developments
- Strategies to minimize your risk and defend against independent contractor claims

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Pay Equity – The Most Significant and Accelerating Discrimination-Based Risk
With equal pay in the spotlight, wage data collection on the horizon, and pay discrimination claims on the rise, carriers and insureds face growing pressure from many directions. Our four-part “Rethinking Pay Equity” series provides practical advice to help you understand the impact of the many new rules and regulations around pay equity on litigation and underwriting decisions. This series dives into the issues of “comparable” employees for pay equity purposes, overcoming the impact of prior salary information, pay transparency, and common explanations for pay differences. Read the series:

- Rethinking Pay Equity: Overcoming the Impact of Prior Salary Information
- Rethinking Pay Equity: Who is ‘Comparable’ for Pay Equity Purposes?
- Rethinking Pay Equity: Common Explanations for Pay Differences
- Rethinking Pay Equity: Being Transparent — Should Employers Publish Information About Pay?

Latest State #MeToo Legislation – New Jersey Law Against Discrimination
Driven by the #MeToo movement, and possibly forecasting the next wave of legislation, New Jersey has followed California, New York, and other jurisdictions to bar enforcement of non-disclosure provisions in settlement agreements. The effect of such laws on litigation and settlement of sexual harassment claims, which remain on the forefront of EPLI exposure, is striking. For a detailed discussion of the change to the New Jersey law, effective March 18, 2019, [read our article ...](#)

Pay Date Reporting Requirements
Federal Judge Tanya S. Chutkan had ordered the reinstatement of EEO-1 pay data reporting

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Restrictive Covenants, Trade Secrets and Unfair Competition

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obligations with a compliance deadline of September 30, 2019. On May 3, 2019, at the same time the EEOC was announcing its decision to collect pay data for 2017 as well as 2018, the Office of Management and Budget (OMB) was filing a Notice of Appeal of the judge's order. For more information, please see these articles outlining the pay data reporting requirements and their potential implications on EPLI-related litigation:

- EEOC Announces Plans to Collect 2017 and 2018
- EEOC Decides to Collect 2017 Pay Data In Addition to Data for 2018
- Judge Revives EEO-1 Pay Data Reporting Requirement
- Judge Vacates Stay of EEO-1 Pay Data Reporting Tool
- Judge Orders EEOC to Collect Pay Data by September 30th

Please contact a Jackson Lewis attorney with any questions about these and other emerging employment risks.

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