

Walking into a discrimination minefield

Small businesses at risk without employment practices liability coverage



By Jeffrey
O'Shaughnessy

When a former employee sued Ernest for age discrimination, the owner of a small food services company fought back. He knew the allegation was totally false but, unfortunately for Ernest, he was completely on his own.

Like many small-business owners, he had not included employment practices liability insurance (EPL) in his commercial insurance package. EPL covers liability and defense costs from claims that allege unlawful employment practices, such as discrimination, sexual harassment and wrongful termination.

Overwhelmed by the demands of running his business, Ernest eventually made a strategic decision to settle. That decision cost him \$20,000 in settlement and legal fees, not to mention the distraction and emotional toll.

Businesses expect to be sued

Ernest learned the hard way what many business owners fear: The workplace is a minefield.

In fact, a recent poll of small business owners conducted for The Hartford Steam Boiler Inspection and Insurance Co. found that 92 percent believed they would face a claim or lawsuit stemming from an employment issue.

Yet few of the small business owners had considered purchasing a traditional EPL policy, because of the expense and paperwork required of coverage designed for big companies and large employers. That means most small business owners are ill-equipped to defend against a claim that could destroy a lifetime of hard work.

The statistics are sobering.

From 2002 to 2006, the U.S. Equal Employment Opportunity Commission logged approximately 420,000 workplace complaints and a total of almost \$1.25 billion was awarded to employees.

Last year, discrimination claims increased for the first time in four years, pregnancy discrimination charges were at the highest level ever, and a record 15 percent of sexual harassment claims were filed by men.

Given the risk in a changing and more diverse workplace, it's even more surprising that the majority of small business owners do not have EPL. Some can't imagine being sued. Others are playing the odds.

A sizable number of businesses — 40 percent — believe they cannot afford the coverage they need.

The reality, however, is that EPL has evolved. It has become more affordable and less onerous to obtain. EPL coverage is now available in business owner (BOP) policies or other commercial packages. A separate application and additional underwriting information are frequently not required.

EPL insurance typically provides coverage for employment claims brought by past, present or prospective full time, part time, temporary or seasonal employees. Policies may include specialized EPL claim services and legal representation.

Small businesses at risk

Small businesses face big risks from employment claims. Many don't have internal resources, from in-house counsel and a professional human resources staff, to establish risk-management policies and procedures. They may not have policy manuals or perform thorough background checks. Even when they do, groundless allegations can be made at any time and are still costly to defend.

For example, a worker at a small manufacturing plant was warned repeatedly for showing up late, slacking off and a poor attitude. Eventually he was fired, but he sued for racial discrimination. The owners said the charges were baseless, but it still cost them \$10,000 to fight the complaint. They were not insured.

Although most employers know that substandard job performance must be rigorously documented to survive a legal challenge, not all have the knowledge and resources to do so, leaving them vulnerable if a problem arises.

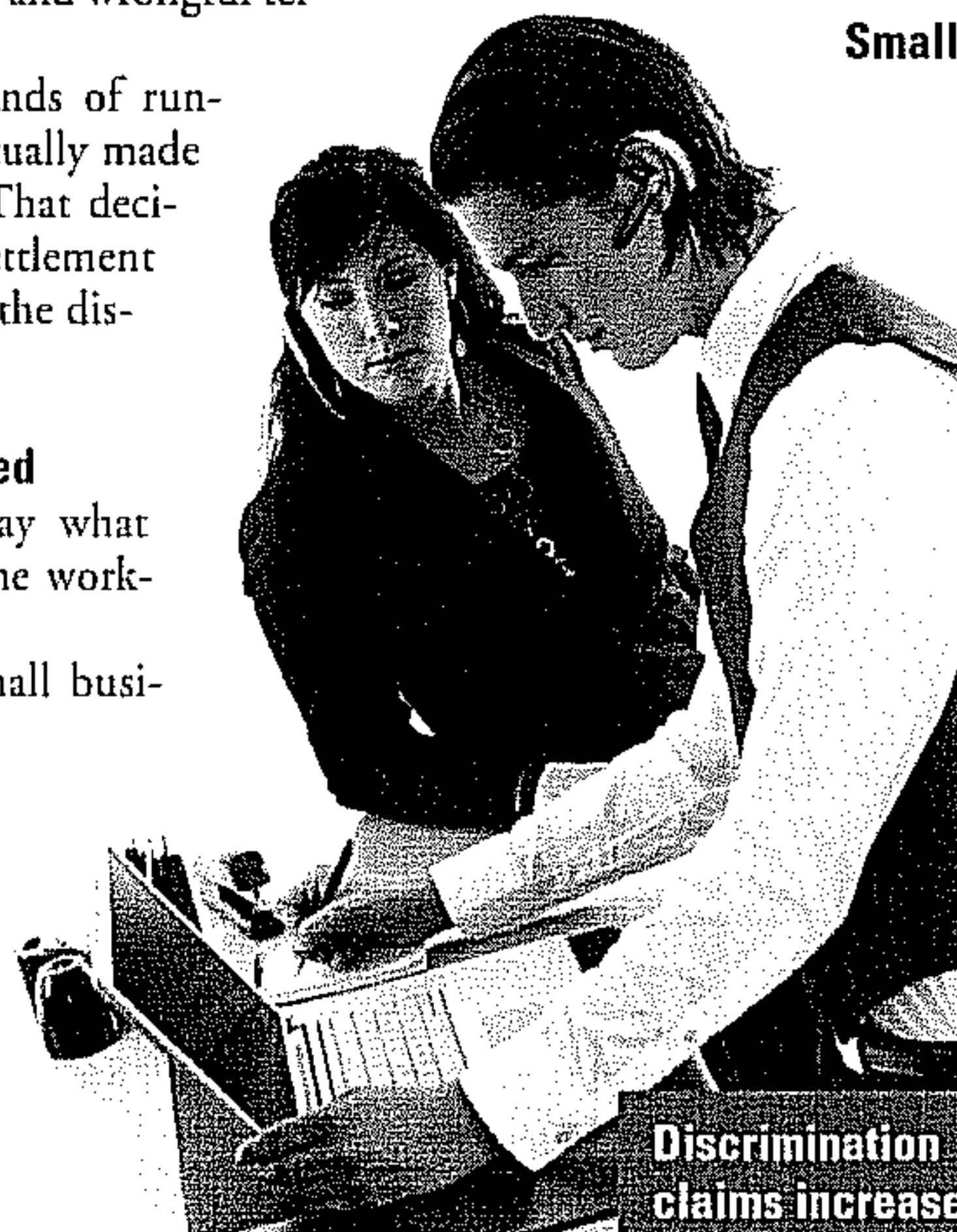
"We don't keep good records about our employees' performance," said Michael, a survey participant who owns a telecommunications business.

"My HR friends say we really need to do more, but it isn't easy in a small company."

The more intimate working environment can also lead to heightened risks. Large companies may fire or lay off hundreds or thousands of people at a time. At a small firm, firings are much more personal and closely scrutinized.

At many companies, a small group or just one person runs the entire business. Most business owners are already working long hours filling a multitude of roles. The addition of a

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lawsuit can make it impossible for an already overworked owner to focus on running the business.

In addition to being time-consuming and distracting, a lawsuit can cause a small business to spend a great deal of money and the outcome is never certain. A large or even mid-sized settlement or litigation award could have a significant impact on the bottom line of any company.

Business owners also face emotional costs, less easily quantified but still damaging.

"It took us probably six to nine months to settle this issue," said a tool manufacturer owner who was hit with an age discrimination and wrongful termination suit. "The charges were thrown out in the end, but I have to say, both my father and I took this very personally. It was a big drain emotionally."

With EPL now more affordable and easier to acquire, most small business owners opt to purchase the coverage once they consider the risks. Many business

owners in the survey talked about how important EPL insurance was for them when they faced a complaint.

A cabinetry shop owner called a charge filed against him "absurd ... almost comical." The EPL coverage he had purchased helped him cope. "I was relieved, instead of crying when I got the lawsuit," he said.

Small business owners, and the insurance professionals who serve them, understand just how risky the workplace can be.

"I think employment issues are among the most complex issues we face, said one business owner in the survey. "We have more than enough to do servicing clients, growing the business and supervising essential employees. It's worth it to me to have EPL coverage. Beyond the cost, it's just great to know someone's watching your back." □

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Workplace woe: Are abusive bosses or inferior employees to blame?

Considerable attention, both in blogs and in popular media, has been given to abusive bosses over the past few years. Less discussed are employees' responses to such behavior. Research recently conducted by Wayne Hochwarter, a professor of management at Florida State University, and research associate Samantha Engelhardt sought to answer how employees react to abusive supervisors by examining the responses of more than 180 employees from a wide variety of professions who reported supervisor abuse.

"Our goal was to isolate those who reported daily abuse from those who did not," Hochwarter said.

Their research shows that the differences between the two groups are staggering:

- Thirty percent of those who reported abuse slowed down or purposely made errors, compared with 6 percent of those not reporting abuse.

- Twenty-seven percent of those who reported abuse purposely hid from the

boss, compared with 4 percent of those not reporting abuse.

- Thirty-three percent of those who reported abuse confessed to not putting in maximum effort, compared with 9 percent of those not reporting abuse.

- Twenty-nine percent of those who reported abuse took sick time off even when not ill, compared with 4 percent of those not reporting abuse.

- Twenty-five percent of those who reported abuse took more or longer breaks, compared with 7 percent of those not reporting abuse.

Hochwarter and Engelhardt also found that those not reporting abuse were three times more likely to proactively fix problems, including perceived abuse, than those who reported mistreatment.

"The data do not allow us to definitively state if abuse leads to these reactions, or if managers are just responding to their subordinates' less-than-stellar behavior," Hochwarter said. "However, it is clear that employee-employer relations are at one of the lowest points in history." □

