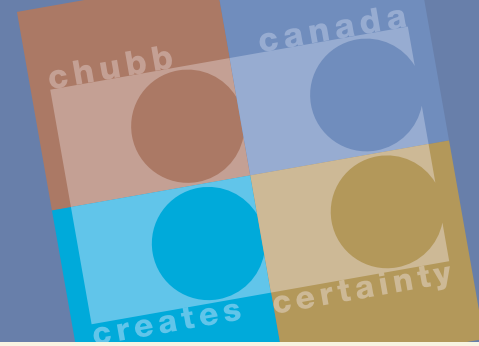


# Chubb Employment Practices Liability Insurance



## A Risk Management Solution for the Evolving Canadian Employment Risk

**Are you confident that you can keep up to date with, and comply with, all of the requirements concerning: employment contracts, recruiting practices, sex, race, religious belief, disability and age discrimination, working hours, employee privacy rights and good faith obligations at the time of termination?**

Canadian companies no longer operate in a benign legal environment. This is particularly true for employment related risk and the potential for an organization, its directors, officers and employees, to be exposed to claims by present, former or prospective employees.

The employment relationship is also subject to significant regulation through the application of various statutes and regulations which impose stringent requirements on employers. With an aging workforce, provincial governments recently proposed removing the age cap in the human rights code with the effect of banning mandatory retirement.

In that context, the prestigious C.D. Howe Institute has noted that dismissals, lateral promotions and possible demotions of older workers will now be more prominent because of lack of clarity about how long older workers will remain with the organizations; monitoring and evaluating older workers will become more prominent, partly to protect against unjust dismissal and age discrimination cases.<sup>2</sup>

With the prospect of substantial awards and further legislative protections, the growing trend for workers to bring an action against their employers is costing companies an enormous amount in management time and professional costs.

## What is Employment Practices Insurance?

Comprehensive protection against errors and omissions in the management and administration of human resources. In essence, it is an HR malpractice policy. Employment Practices Liability (EPL) insurance is specifically designed to respond to specific employment exposures including: sexual harassment, constructive dismissal and employment related misrepresentation.

Good human resources practices can go a long way to mitigate exposures but can't eliminate them completely. A Chubb Employment Practices Liability policy provides broad coverage for companies and their employees against the financial impact of employment related actions.



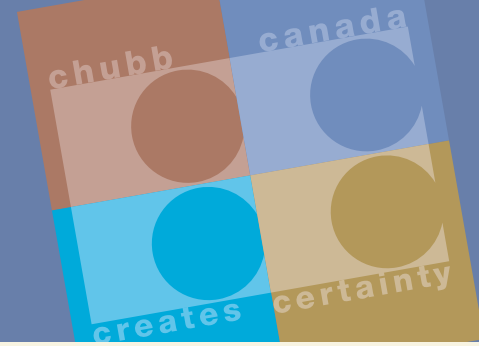
*The Canadian Human Rights Commission received approximately 2000 complaints in 2004, of which over 60% were employment related.<sup>1</sup>*

<sup>1</sup> 2004 Annual Report of the Canadian Human Rights Commission.

<sup>2</sup> Banning Mandatory Retirement: Throwing Out the Baby With the Bathwater, Morley Gunderson, C.D. Howe Institute Commentary 79. March 2004.



# Chubb Employment Practices Liability Insurance



## What's covered by a Chubb Employment Practices Liability Policy?

Loss resulting from covered claims brought by past, present or prospective employees against insured organizations and insured persons alleging wrongful employment practices including breach of any written or oral employment contract or quasi-employment contract.

Features include:

- Cover for settlements, judgments and defence costs of your organization and its directors, officers and employees
- Broad definition of wrongful act
- Damages for mental anguish
- Defence costs for punitive, exemplary or aggravated damages
- Full severability of the application and of exclusions
- Defence costs paid as incurred
- Broad acquisition cover
- World-wide coverage

## What are wrongful employment practices?

There is an extensive list of employment-related allegations including:

- Wrongful dismissal, discharge or termination of employment
- Breach of any oral or written employment contract or quasi-employment contract
- Misrepresentation
- Violation of employment discrimination laws (including workplace or sexual harassment)
- Wrongful failure to employ or promote
- Wrongful discipline
- Negligent evaluation
- Invasion of privacy
- Failure to employ or promote
- Wrongful demotion
- Defamation
- Wrongful infliction of emotional distress
- Failure to grant tenure
- Wrongful deprivation of a career opportunity

## What types of Claims are covered?

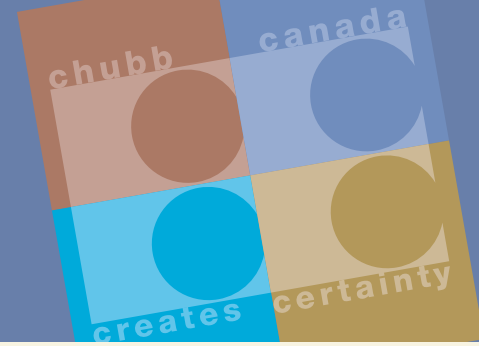
- Civil actions
- Arbitration proceedings
- Applications
- Written demands for monetary damages
- Formal administrative and formal regulatory proceedings
- Requests for reinstatement

*“Monitoring and evaluating older workers will become more prominent, partly to protect against unjust dismissal and age discrimination cases.”*

*Morley Gunderson, CD Howe Institute*



# Chubb Employment Practices Liability Insurance



## Who will defend claims?

Chubb pays defence costs as and when they are incurred. Chubb has the right under the policy to appoint defence lawyers and, for this, has selected high quality, specialized firms who provide excellent service at good value.

## Who is Insured?

- The Policyholder and its Subsidiaries
- Past, present or future directors, officers, and employees
- Estates, heirs, legal representatives or assigns of directors, officers and employee who are incompetent, insolvent or bankrupt

## Isn't this covered under other insurance policies?

Employment practices liability coverage is specifically tailored to address the human rights and non-unionized employee tort and contract risk. The Employment Practices policy allows you to manage your employment risk without worrying about the legal exposure if you make the wrong decision in respect of an employee.

Other coverages, such as general liability and directors' and officers' insurance, were not specifically designed to respond to the multitude of corporate and individual exposures in the employment law context. General liability coverage does not generally extend to claims by employees for employed related misrepresentations or breach of contract. Directors' and officers' insurance doesn't generally extend coverage to employees and won't respond where the entity is sued for wrongful or constructive termination.

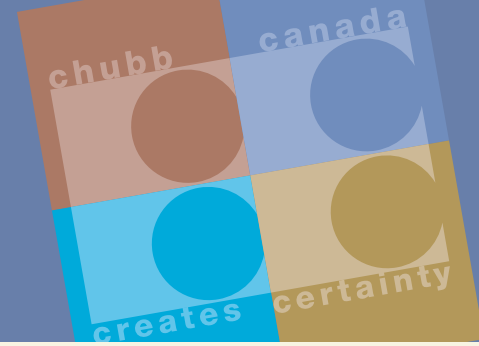
## Loss examples

To help illustrate the potentially devastating financial impact of employment exposures, we have assembled this collection of scenarios which are representative of the types of risk that Canadian companies are exposed to:

1. A class action proceeding was filed against a company, its CEO and a number of its directors by 26 laid-off employees seeking damages for wrongful termination, along with amounts owing for accrued vacation pay. The matter was resolved prior to the certification hearing and the EPL policy responded by paying the defence costs for all defendants, along with approximately \$80,000.00 representing the insured portion of the settlement.
2. The President of a private Canadian company, whose annual salary was over \$200,000.00, was told that following a restructuring, her position would be eliminated but she would be in charge of the company's operating divisions. At the time, she was pregnant and took the position that she had been constructively terminated and discriminated against on the basis of gender. She filed a human rights complaint and also sought damages for wrongful termination. The EPL policy responded by paying the defence costs for the human rights complaint and the six figure settlement which included \$10,000.00 for damages for mental distress.



# Chubb Employment Practices Liability Insurance



3. A CFO was terminated for cause following an internal investigation regarding accounting irregularities. Pursuant to the provision of his employment contract, he sought arbitration and claimed damages for wrongful termination. The matter was settled following mediation with the EPL Policy funding 90% of the six figure settlement representing the covered loss.

4. A CEO of a private company with total compensation of over \$1M per year, was told that a retirement party was being arranged for him for the end of the calendar year since the company's retirement policy imposed mandatory retirement at age 65. The CEO denied that the policy applied to executives and took the position that he was being constructively terminated and sued for damages. He also alleged that the company's reduction of his pension entitlement due to a calculation error, was an act of bad faith. The matter went to mediation and was ultimately settled on confidential terms. The EPL policy responded, paid defence costs and paid for the settlement which exceeded \$1,000,000.

For additional information about how to obtain Employment Practices Liability insurance coverage from Chubb, or to learn about loss minimization techniques, contact your Chubb broker or contact us at one of our regional offices:

## Branch Offices

Toronto	Montréal	Calgary	Vancouver
One Financial Place 1 Adelaide Street East Toronto, Ontario M5C 2V9 Phone: (416) 863-0550 Fax: (416) 863-5010	1250 Boulevard Rene- Levesque West 27th Floor Montréal, Québec H3B 4W8 Phone: (514) 938-4000 Fax: (514) 938-2288	Dome Tower, Suite 2100 333-7th Avenue S.W. Calgary, Alberta T2P 2Z1 Phone: (403) 261-3881 Fax: (403) 269-2907	250 Howe Street Suite 910 P.O. Box 10432 Vancouver, B.C. V6R 3R8 Phone: (604) 685-2113 Fax: (604) 685-3811



[www.chubbinsurance.com](http://www.chubbinsurance.com)

## Chubb Insurance Company of Canada

For promotional purposes, Chubb refers to member insurers of the Chubb Group of Insurance Companies: Federal Insurance Company, Vigilant Insurance Company, Great Northern Insurance Company, Pacific Indemnity Company, Northwestern Pacific Indemnity Company, Texas Pacific Indemnity Company, Executive Risk Indemnity Inc., Executive Risk Specialty Insurance Company, Quadrant Indemnity Company, Chubb Custom Insurance Company, Chubb Indemnity Insurance Company, Chubb Insurance Company of New Jersey, Chubb National Insurance Company, Chubb Atlantic Indemnity, Ltd., Chubb Insurance Company of Australia, Limited, Chubb Insurance Company of Canada, Chubb Insurance Company of Europe S.A., Chubb Argentina de Seguros, S.A., Chubb do Brasil Companhia de Seguros, Chubb de Colombia Compania de Seguros S.A., Chubb de Chile Compania de Seguros Generales S.A., Chubb de Mexico, Compania Afianzadora, S.A. de S.V., Chubb de Mexico, Compania de Seguros, S.A. de S.V., Chubb de Venezuela Compania de Seguros C.A., PT Asuransi Chubb Indonesia. Not all insurers do business in all jurisdictions.

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. Claims examples are based on actual cases, composites of actual cases, or hypothetical situations. Actual coverage is subject to the language of the policies as issued.

