

Do I Really Need EPLI Coverage?

By [Don Walsh](#)

Yes. Yes, you do. We handle many employment claims for employers and one of the first questions always asked is “do you have insurance coverage?” You paid for it; now it is time to use it. Defending unexpected claims from current or former employees is necessary but can be expensive. Employer’s Practices Liability Insurance (EPLI) coverage covers many of these employment related claims and helps employers avoid some unescapable and unexpected costs. Some of the more frequent claims generally covered by EPLI policies include:

- Discrimination and hostile work environment claims under state or federal law
- Wrongful termination
- Disability claims
- FMLA violation claims
- Retaliation
- Employment related defamation, libel or slander
- Negligent hiring, supervision, retention or training

Employers cannot insure away and abandon all of their HR responsibilities, however, because there are still several types of claims which may not be covered by such policies:

- Wage/hour claims including such claims for unpaid wages, misclassification of employees, missed meal/rest breaks, failure to pay overtime and waiting time penalties
- Some breach of contract claims
- Claims for punitive damages

When reviewing your coverage, there are also a few basic terms upon which your risk manager should focus:

- Duty to defend obligations should be present rather than the simple duty to indemnify claims. Coverage which imposes the obligation on the insurer to cover your investigation and counsel fees is better than footing those bills on your own.
- Are defense costs included in the limit of the policies or are they paid “outside” of the limit?
- How does the policy define an “employee”? Does the definition include management, owners, interns, volunteers, independent contractors and applicants?
- Are any actions excluded? Breaches of contracts and wage claims are the more frequent exclusions.

Let us know if you need help in reviewing your policies to ensure your coverage is complete.



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The Effect of Incorporating Documents by Reference

By [Michael Stover](#)

On a typical construction project; the contract documents generally consist of the Prime Contract between the Owner and General Contractor, General Conditions, Supplemental Conditions, Specifications or Project Manuals, Plans and Drawings as well as possible addenda to each of those documents. There will also typically be subcontracts, sub-subcontracts and purchase orders. In addition, often such contract documents incorporate by reference other documents such as bids, proposals, letters of intent, government regulations, correspondence between the parties, “standard terms and conditions” on the reverse side of pre-printed or standard form documents or in master agreements as well as other items. Depending upon what a particular entity’s role in the project is and where that entity falls on the hierarchal chain of contracts, any or all of the contract documents may set forth requirements that a party must comply with.

Accordingly, it is imperative that a thorough review of the contract documents be conducted to determine which documents apply to a particular circumstance and to determine if there are any documents which are incorporated by reference which might impact your performance obligations and requirements. Under Maryland law, when documents are incorporated by reference into a contract, the documents are to be read and construed together as if they were one instrument even if you didn’t read them or even receive them.

However, absent indication of contrary intention, incorporation of one contract into another contract involving different parties does not automatically transform the incorporated document into an agreement between the parties to the second contract. An example of this would be where a surety bond incorporates the underlying contract. Just because the underlying contract is incorporated into the bond, does not make the surety a party to the underlying contract or obligated to perform all of the terms and conditions of the underlying contract. However, in most construction contracts, not only are the other documents incorporated by reference, but the contract usually places the obligation on the party to perform the requirements of the incorporated contract to the extent related to the scope of work. Accordingly, under a typical construction contract, the parties will be required to fulfill obligations set forth in the documents incorporated by reference. Thus, it can be critical to be know what is required of you in all incorporated documents.



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