



Insurance Nightmares: EXPOSED!

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Guest: Tonya Holleder, RPLU, ASLI Russell Bond

What is Directors & Officers Liability / Employment Practices Liability, who needs it and why. How does this coverage protect board members?

Directors & Officers Liability or D & O coverage helps cover the defense costs, settlements and judgments arising out of lawsuits and wrongful act allegations brought against a nonprofit organization. It is used to protect the organization and board member's personal assets. If a board is not protected the board members could end of paying costs out of their own pocket!

The Employment practices liability insurance or EPL insurance or EPLI, provides coverage to employers against allegations by employees (or third party's) alleging: Discrimination (based on sex, race, age or disability, for example) Wrongful termination. Other employment-related issues, such as failure to promote, sexual harassment, etc.

Many times, D&O and EPL coverage is written together.

Who needs this coverage?

Any nonprofit with a board of directors, needs the coverage. Not just for protection but also to attract candidates for the board. Many people are in-properly informed that they don't need the coverage because they are protected by Federal Laws – this is not really the case.

D&O can step in whether or not the allegations are true, which gives your board members a chance to mount a legal defense. Without the coverage, directors and officers must dip into their personal assets to deal with these lawsuits. It is important to protect board members by providing this coverage so in the event of a lawsuit they do not risk losing their personal assets. Board members need to realize that they might be held liable for any action that is done by another board member.

Why is the coverage needed?

Directors and Officers Insurance can help pay for legal expenses when a board member is sued over their decisions or their unethical behavior, such as:

- Personally, guaranteeing a bank loan or business debt on which the nonprofit defaults.
- Failing to ensure that the nonprofit files necessary tax returns.
- Misusing nonprofit funds.
- Discriminatory hiring decisions.

Examples of Claims:

Donors – Claims resulting from those who make donations to the organizations

The Board of Directors of a church was sued by a number of their donors, alleging misrepresentation of the financial status of the organization. Three members brought separate suits for repayment of the money lent to the church. The first case settled for \$240,000 of which \$117,000 accounted for expense. The second case settled for \$75,000 and incurred \$86,000 in defense costs. The last case paid nothing to the claimant, but incurred \$13,000 in defense costs. The total loss including defense costs exceeded \$530,000.

Third Parties – Third party lawsuits can be filed for various reasons

An organization filed a suit against a foundation and its Board of Directors for improperly infringing upon the claimant's intellectual property rights. The claimant filed suit seeking injunctive and monetary relief for the Foundation's alleged improper use of trademarked property while promoting their fundraiser. The claim settled and the total loss including defense was over \$400,000.

Employees – The most common claims made by employees involve discrimination, harassment, wrongful termination, retaliation and hostile work environment.

Discrimination

After 10 years of employment, an employee was fired for poor work performance. This employee brought a discrimination suit against their employer under the Americans with Disabilities Act (ADA). The individual alleged lack of work place accommodation and constructive discharge. The claim was closed for a total loss of over \$80,000, including more than \$20,000 in defense costs.

Sexual Harassment

An employee alleged one of the directors sexually harassed her by unwanted physical contact, which occurred multiple times. After mediation, the case settled for \$30,000. The defense costs exceeded \$20,000.

Retaliation

A former employee discovered illegal transactions involving retirement funds. Shortly after reporting the violations, she was terminated by her employer. She filed suit alleging retaliation and wrongful termination. The total loss exceeded \$100,000 with the settlement figure over \$80,000.

Governmental Agencies – Claims due to violations of the law

The United States Department of Justice brought suit, alleging misappropriation of funds and failure to revert unused money back to the government. The insured received federal grant money and allegedly used leftover grant money to renovate office space instead of return it to the government. The case closed for a total loss of over \$60,000, including \$21,000 for defense costs.

Volunteers – Volunteers are able to bring suits similar to those made by employees

A volunteer claimed the denial of a full time position was due to her sex, race and pregnant condition. She filed a lawsuit claiming discrimination. The claim is pending further litigation and defense costs paid to date total over \$10,000 with an outstanding loss reserve of \$65,000.

Members – A claim against the directors to protect the members' interest.

A law enforcement fraternity began proceedings to have a member removed from the organization. This member then sued the organization in order to have the proceedings halted. While there was no monetary settlement, the defense costs were \$15,000.

Beneficiaries/Clients – A claim by the recipient of the organization's services

A discrimination suit was filed against the Board of Directors when the claimant requested a transfer within the housing complex and was denied. The claimant alleged discrimination based on national origin, religion and sex. The claimant was a resident at a drug and alcohol rehabilitation center. The court dismissed the case due to a lack of evidence. More than \$10,000 was paid in defense costs.

Associated Costs if involved in a lawsuit.

Costs vary depending on the allegation. Average cost runs between \$35,000 and \$100,000 for defense and Indemnity average's \$457,000

Premiums for D& O coverage.

Premiums are calculated by several factors: for example, the number of board members, employees, volunteers. Annual revenues of the board and how the revenues are obtained and thru what type of funding sources (dues, events, grants etc)

If you have questions about how to protect your business from a cyber or breach threat, or have additional questions on any insurance questions please reach out to MarciaBrogan.com or 716.684.6000

Marcia C. Brogan

Marcia C Brogan Agency

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A NYS, NYC, COUNTY OF ERIE, CITY OF BUFFALO
CERTIFIED WBE COMPANY

Phone: (716) 912-1803 | Toll-free: (800) 444-5530 | Fax: (716) 684-6285
marciabroganagency@gmail.com | MarciaBroganInsuranceAgency.com