

What's Happening to D&O and EPLI Insurance?



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Directors and officers (D&O) insurance is an important coverage for golf and country clubs, protecting you against lawsuits from prospective, current or former employees, as well as from the general public, third parties and members. The personal assets of individual board members often are at stake.

Employment practices liability insurance (EPLI) is equally important, protecting clubs from charges of alleged or actual employment practices like retaliation and wrongful termination. Included in this are “wage and hour” claims involving part-time (non-exempt) employees.

For nonprofit clubs, securing both D&O and EPLI coverage at reasonable rates has become challenging recently. Insurers are reluctant to renew policies with losses. Policies that are renewed come with sublimits or much higher premiums and deductibles.

NONPROFIT TRENDS

The causes of this trend are not related specifically to clubs. The overall nonprofit industry has performed poorly in this area, with significant and costly D&O and EPLI claims. As a result, insurance carriers are extending coverage restrictions to every type of nonprofit, including clubs that have had a good loss history.

“Wage and hour” claims have been particularly problematic in recent years with a rapid escalation of litigation alleging wage and hour law violations under the Fair Labor Standards Act (FLSA).

All it takes is a manager mishandling a part-time employee’s time or wages – perhaps not providing a break – and the employee can bring suit.

Virtually every business, especially those in California, is susceptible to these claims, including class-action lawsuits. In fact, the number of employment lawsuits alleging wage and hour violations increased fourfold from 1993 to 2012, according to the Society for Human Resource Management (SHRM).

Defending and paying wage and hour claims is expensive, especially legal fees, and becomes more so when it is a class action or multiple-plaintiff lawsuit.

As claims skyrocket under the FLSA and similar state laws, employers are finding wage and hour exclusions in their insurance policies. In addition, insurers are increasingly assigning a low sublimit to wage and hour claims, a sublimit that is quickly eroded by the payment of defense costs.

WHAT YOU CAN DO

While this trend may cause some short-term pain, it’s important to remember the insurance industry works in cycles. Today, rates may be higher and coverage tougher to find, but in years to come that is likely to change.

It is a reminder, however, of the importance of having good hiring and supervisory practices. Given the claims that have affected the nonprofit industry, supervisors and managers need professional training on what they should or should not do when handling employees.

Just because someone is an excellent employee and has worked their way up through the ranks in your club does not mean they have the skills to manage employees effectively. Evaluate staff on their supervisory and management skills and provide training when necessary.

If allegations arise, do not address them yourself. Instead, work closely with your human resources manager. If you do not have an in-house human resources professional, contract a human resources consultant.

To prevent wage and hour risks, keep a detailed time sheet. Managers and employees alike should be instructed and trained to treat break and meal times as bona fide time off. Human resource professionals, either in-house or contracted, can help establish guidelines and manage these important issues.

As society grows more litigious, it pays for nonprofit clubs to be protected against employment practices exposures. Talk to your insurance broker about your D&O and EPLI coverage. **BR**

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