

### San Francisco/Bay Area

6160 Center Street, Suite B  
Clayton, CA 94517  
P: (925) 673-2200  
F: (925) 673-2212  
E: info@imcservices.com

### Napa/Lake County Area

P.O. Box 1232  
Middletown, CA 95461  
P: (707) 987-8644  
F: (707) 987-8641  
E: info@imcservices.com

Website: www.imcservices.com



## Prevent 401(k) Discrimination at Your Business

According to *The Wall Street Journal*, many employers may be forced to limit or refund the retirement plan contributions of higher earners to meet nondiscrimination rules.

Federal rules require that 401(k) plans show no favoritism toward more highly compensated employees—those earning more than \$105,000 in 2008. The basic rule, according to the American Benefits Council, is that high-earner contributions cannot exceed two percentage points of their salaries more than lower wage earners. Take, for example, a highly compensated worker who defers 6% of wages and a lower earner who defers 2%. Based on the rule,



this plan would fail the nondiscrimination test, since the difference exceeds two percentage points.

Employers should contact plan administrators and request information on how to maintain compliance. Additionally, employers who take a more active role in the administration of their company's 401(k) plans should review liability insurance for information on whether costs associated with discrimination violations are covered—just in case a problem is discovered through a claim.

For more information about your firm's fiduciary liability insurance, call our service team today. ■

## EEOC Wage and Hour Claims

Some of the most common claims received by the U.S. Equal Employment Opportunity Commission (EEOC) are wage and hour complaints brought by employees who are being paid incorrectly.

According to the Employment Standards Administration's Wage and Hour Division, more than \$220 million in back wages for more than 340,000 employees were recovered in FY 2007, much higher than the previous record in 2003. The EEOC took compliance action approximately 30,000 times and assessed more than \$10.3 million

in civil penalties as a result.

Many employers commit violations because they do not understand complicated payroll guidelines set forth by multiple entities. The EEOC reminds employers of the following:

- Be cautious of deducting wages from exempt employees' salaries.
- Be aware of hourly employees' break requirements.
- Include bonuses and commissions in overtime pay calculations.
- Never assume overtime exemptions for salaried employees. ■

## Claims Against Home Association Boards



**N**onprofit homeowners and condominium associations could be especially vulnerable to increased litigation resulting from declines in the housing market, according to *Insurance Journal*.

These associations are usually responsible for establishing and enforcing covenants, conditions and restrictions. *Insurance Journal* reports that some covenants that deal with maintenance and appearance of the units could be the basis of lawsuits against the board from members who are having difficulty selling their homes. Further concern is that desperate members may look to blame the board for the loss of value in their homes, especially if covenants designed to keep the properties up have not been enforced properly.

Association board members, directors and officers should be sure an adequate directors and officers liability policy is in force to help shoulder the cost of defense of such allegations.

For more information on a policy designed to protect the board members of your nonprofit, call our service team today. ■

## Resources on Records Retention Rules

Determining how long to retain employment, payroll, business, personal and other records can place tremendous burden on business owners. Retention rules at both the state and federal level make compliance even more onerous.

Business owners who fail to adequately retain business or personal records may find themselves involved in costly litigation if the misuse of or inability to produce a record causes someone financial harm.

To help, business owners can subscribe to a record-retention service that provides retention requirements by state, as well as information on federal guidelines. Other valuable resources on record retention include:

**www.irs.gov**—The ultimate authori-

ty on retention involving employment records, payroll information, audit, financial, tax and other information.

**www.hhs.gov/ocr/hipaa/**—The comprehensive source for information on HIPAA compliance.

**www.osha.gov**—The federal website for extensive information on retention regarding OSHA compliance and workers compensation.

**www.glb.info/**—This website contains important retention and compliance information for the Gramm-Leach-Bliley Act designed to protect consumer information.

**www.toolkit.com/news/newsDetail.aspx?aa=1&nid=recordre**—This small business assistance organization provides a comprehensive chart of various retention guidelines. ■

## Punitive Damage Awards

Firms purchase employment practices liability (EPL) insurance to protect their interests from claims. But what happens if the court decides to tack on punitive damages to teach the firm a lesson? Are punitive damages covered by the EPL policy?

This question is extremely important for business owners due to the fact that these damage awards can be substantial, sometimes enough to put a firm out of business. Unfortunately, there is no easy answer.

Some EPL policies absolutely exclude any payments for punitive damages. Others may attempt to include coverage yet are prevented by state laws that preclude an insurance company from paying punitive damages on behalf of a guilty insured.

Do you know if your policy intends to pay for punitive damages assessed



against your firm? Does your state allow an insurance company to pay those awards on your behalf?

If you do not know the answers to these questions, give our service team a call. We can help you determine what your policy says, what your state says, and what options, if any, remain to address these potentially expensive awards. ■

## Covering Claims for Professionals Outside the CGL

Think that the commercial general liability (CGL) policy you purchased for your business covers all of your actions in the course of your employment? Think again. While standard CGL policies are designed to cover claims of bodily injury and property damage to a third party, they are intended to pay for damage that is accidental. If the damage is caused by your failure to perform work at a professional standard, that CGL may not defend you.

Consider an architect whose

error in design causes an expensive delay in the construction process. Even though the damage



was not an intended result, such a claim is likely excluded from the CGL since it occurred as a

result of negligence concerning that person's professional expertise.

Professional liability insurance is not limited to doctors, attorneys and the like. Many occupations that carry professional status are susceptible to claims that are not covered under a standard CGL.

If you are unsure if your business actions are covered under your CGL or if you would like more information about professional liability insurance for your business, call our service team today. ■

## Do Other Policies Cover Employment Practices Liability?

**A**s employment practices liability claims skyrocket (the number of investigations for some claim types have doubled over the last three years), employers look to common business insurance policies for help in paying expensive defense costs, settlements and judgments. Unfortunately, these policies often leave employers to fend for themselves.

**Workers Compensation**—This policy is designed to cover liability and costs associated with bodily injury and/or illness resulting from employment. It is not designed to provide an employer protection from claims such as harassment or wrongful termination or other claims that do not

arise from the physical conditions of the workplace.

**Commercial General Liability**—While some older forms of commercial general liability may provide limited coverage for employ-

**Most CGL policies exclude payment for claims arising from employment conditions.**

ment practices liability claims, most policies in place today are amended by the insurance company to absolutely exclude any payment for claims arising from employment conditions.

### **Directors and Officers**

**Liability**—It is true that some D&O insurance policies include limited coverage for employment practices. However, any coverage that is included is usually limited to a select group (often directors and executive officers only). Further, many policies are amended to specifically exclude common employment practices claims, such as discrimination, harassment and wrongful termination.

The best method for an employer to protect against an employment-related liability claim is with employment practices liability insurance.

Call today to discover your options. ■

**Thank you for  
your referrals.**

If you're pleased with us, spread the word! We'll be happy to give the same great service to all of your friends and business associates.

## **Protect Individual Directors and Officers**

**S**ide A "difference-in-conditions" directors and officers insurance is designed to protect individual directors' and officers' assets rather than the corporation. It is intended to respond in situations when the corporation cannot protect these individuals or is unable to indemnify management. It is also designed for situations where traditional directors and officers insurance is depleted or unavailable.

Want more information on a Side A DIC D&O policy? Our service team can help evaluate your current coverage and help you determine if this insurance is right for your firm. Call today. ■

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