

WEBINAR SERIES

Protect Your Business:

Key Insights into EPLI and
Employment Risk
Management Strategies

November 6, 2024



Today's Presenters



Elisabeth Shaw
Vice President, General Counsel
PrestigePEO



Colleen Higley
Director of HR Client Services
PrestigePEO

Today's Agenda

- EPLI Basics
- The Big Five and Other Protected Categories
- Claim and Litigation Trends
- Strategic HR & Risk Mitigation
- What To Do If You Receive a Claim

Webinar Forum

All participants are muted.

Please type questions in the side navigation panel and we will try to address most questions during today's session.

Today's presentation will be posted online at prestigepeo.com/webinars

EPLI Basics

EPLI Basics

- Employment Practices Liability Insurance (EPLI) is insurance for businesses that covers certain claims by workers alleging that their legal rights have been violated.
- Important protection for businesses in an increasingly litigious society.
- Covers: certain types of discrimination, harassment, retaliation, and other claims, depending on the policy.
- Claims come in various forms:
 - Demand Letter: Letter from a claimant or their counsel, usually demanding a sum of money or other relief for alleged violation(s) of employment law(s),
 - Charges of Discrimination: Claims filed with the EEOC or state or local agencies alleging violations of EEO laws, and
 - Lawsuit: Filed in state or federal courts outlining specific violations of law and demanding monetary or other relief.

The Big Five and Other Protected Categories

The Big Five: Title VII

Title VII of the Civil Rights Act of 1964 established that it is unlawful for employers to discriminate against these five protected classes:

- Race
- Color
- Sex
- Religion
- National Origin



Other Protected Classes

Not an all-inclusive list, but there are some other federally protected classes:

- Age under the Age Discrimination in Employment Act (ADEA)
- Pregnancy under the Pregnancy Discrimination Act
- Disability under the Americans with Disabilities Act (ADA)
- Equal Pay under the Equal Pay Act
- Military Service under the Uniformed Services Employment and Reemployment Rights Act (USERRA)

State Protected Classes

Some states have additional protections for employees. For example:



New York

Sexual orientation, gender identity or expression, domestic violence victim status, arrest or conviction record, familial status.



California

Sexual orientation, gender identity or expression, domestic violence/sexual assault/stalking victim status, arrest or conviction record, citizenship status, medical condition, genetic characteristics, AIDS/HIV status, political affiliation.



Florida

Marital status, sickle-cell traits, domestic violence victim status, AIDS/HIV status

Claim and Litigation Trends

EEOC Charges

On the federal level, employees can file Charges of Discrimination with the EEOC.

- In **FY 2023**, there were:
 - 81,055 Charges filed.
 - Settlements totaled over \$665,000,000.
- In **FY 2022**, there were:
 - 73,485 Charges filed.
- Settlements totaled over \$342,000,000.
- In **FY 2021**, there were:
 - 61,331 Charges filed.
 - Settlements totaled over \$350,000,000.

EEOC Charges: New York

In **FY 2023**, 9,553 Charges* were filed in New York.

- Age: 687
- Sex: 1,411
- Disability: 1,338
- Race: 1,030
- Color: 229
- National Origin: 499
- Religion: 1,550
- Retaliation: 2,259

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

In **FY 2022**, 7,649 Charges* were filed in New York.

- Age: 455
- Sex: 940
- Disability: 995
- Race: 746
- Color: 319
- National Origin: 323
- Religion: 1,143
- Retaliation: 1,466

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

EEOC Charges: California

In **FY 2023**, 15,599 Charges* were filed in California.

- Age: 988
- Sex: 1,995
- Disability: 2,397
- Race: 1,894
- Color: 535
- National Origin: 798
- Religion: 235
- Retaliation: 4,007

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

In **FY 2022**, 10,309 Charges* were filed in California.

- Age: 659
- Sex: 930
- Disability: 1,388
- Race: 1,030
- Color: 229
- National Origin: 499
- Religion: 1,550
- Retaliation: 2,259

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

EEOC Charges: Florida

In **FY 2023**, **15,599** Charges* were filed in Florida.

- Age: 988
- Sex: 1,995
- Disability: 2,397
- Race: 1,894
- Color: 535
- National Origin: 798
- Religion: 235
- Retaliation: 4,007

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

In **FY 2022**, **12,763** Charges* were filed in Florida.

- Age: 687
- Sex: 1,411
- Disability: 1,331
- Race: 1,134
- Color: 429
- National Origin: 503
- Religion: 366
- Retaliation: 2,077

*Please note: These are **ONLY** federal EEOC charges. Charges filed on the state and local levels are higher in number.

EEOC Charges: Takeaways

- No matter which state - retaliation claims are high across the board.
- We are seeing fluctuations in types of claims throughout the states; however, two things continue to rise:
 - Number of claims, and
 - Settlement costs
- EEOC is focused on a few priority items: systematic discrimination; advancing racial justice, preventing retaliation, advancing pay equity, and advancing DEI for equal opportunity.

State & Local Claims

- Many states and localities also have legislative or statutory protections for workers (they cannot be more restrictive than federal law, and oftentimes, state and local jurisdictions significantly expand protections).
- Often, EEOC charges can be dual filed on the state level as well.
- Some states and localities also extend the timeframe in which employees can file a charge or complaint.



Strategic HR and Claims Mitigation

Strategic HR

- Handbook
- Training
- Discipline and Documentation
- Engaging in the Interactive Process (ADA)
- Investigating Complaints
- Workplace Culture

It's easy to look at the employment law landscape and think there's not much you can do as a business owner to protect yourself. But that is NOT true! There are important steps you can take to protect your business from claims and defend against claims.

Employee Handbook

Important Handbook Policies:

- Equal Employment Opportunity (EEO) Policy
 - Outlines organizations protection and equal opportunities for protected classes under federal and state law.
 - Memorializes organization's commitment to treating people fairly.
 - Provides process for reporting allegations of discriminatory or harassing behavior in the workplace.
- Sexual Harassment Policy
 - Outlines appropriate and inappropriate conduct in the workplace.
 - Provides process for reporting allegations of sexual harassment in the workplace.



Employee Handbook

Important Handbook Policies:

- Workplace Conduct Policy
 - Establishes expectations for behavior and conduct in the workplace.
- Progressive Discipline Policy
 - Establishes disciplinary process in the organization.
 - Provides consequences to employees for violations of employment policies
- At-Will Employment Policy.
 - Establishes that any employee can quit or be terminated for any legal reason at any time.

Employee Handbook

A well-designed employee handbook sets an organization up for success.

- In the event of a Charge or Complaint, the employer can show:
 - They take all complaints seriously.
 - They have an established process for addressing concerns in the workplace.
 - Any legitimate action against the employee- such as termination- was appropriate under the company's policies and procedures and did not violate the law.
- Make sure you have proof (signed acknowledgment page) showing employee received the handbook.

Employee Handbook

Example:

Jared received the Company's handbook during his orientation and signed the employee acknowledgment form, which stated he received the handbook and understood its content.

From the beginning of his employment, Jared was not able to do basic job functions. Jared's employer decided to terminate Jared employment, without documenting his poor performance. Jared files a Charge with the EEOC against his employer alleging that he complained of discrimination based on his race. Jared's employer is shocked. Jared never made a discrimination complaint to anyone at the company before his termination.

In their response to Jared's charge, Jared's employer can use their handbook to show:

- Their company has a strong policy against discrimination in the workplace.
- Jared received a copy of that policy.
- Jared was aware of the company's procedures for reporting complaints.

The company can show Jared received their handbook and they are able to argue Jared did not follow their procedures for filing a complaint, they had no knowledge of any complaint, and their decision to terminate was based on a legitimate, non-discriminatory reason: Jared's failure to do his job.

Discipline & Documentation

- Consistent enforcement of company policies
- Progressive (typically)
- Keep write-ups in the employee's file
- Internal witness to disciplinary action (preferably another manager or supervisor)



Discipline & Documentation

Example:

Lucy was hired in early 2024. From the beginning of her employment, Lucy received multiple client complaints. Lucy's employer writes Lucy up on July 28, 2024, October 1, 2024, and on October 15, 2024, Lucy's employer gives Lucy a final written warning. On November 1, 2024, Lucy receives her fourth client complaint and is terminated.

Lucy files a Charge with the EEOC against her employer alleging that she is being discriminated against based on her sex. Lucy's employer is shocked. Lucy never made a discrimination complaint to anyone at the company before her termination.

In their response to Lucy's Charge, Lucy's employer can use their discipline and documentation to show they had a legitimate, non-discriminatory reason for terminating Lucy. They can also provide copies of Lucy's disciplinary file to back up their decision to terminate her.

Employee Training

- Some states and localities mandate certain trainings. For example, New York and Illinois both have sexual harassment training requirements:
 - for new hires, and
 - on an annual basis.
- Chicago and New York City also have their own training requirements.
- California even requires sexual harassment training to be interactive and that the documentation of the training be kept for a minimum of two years.
- Required trainings typically have specific deadlines, and content requirements.



Employee Training

- Other important employee trainings:
 - Harassment & Discrimination Training for all employees
 - Harassment & Discrimination Training for supervisors
 - Discipline & Documentation Training for supervisors
- Always keep a log of who has attended training as part of your records (and it is strongly recommended that employees acknowledge and sign off on attending training(s)).



Employee Training

Example:

Brittany was hired on in late 2023. Brittany completed the company's mandatory sexual harassment training during her orientation. From the beginning of her employment, Brittany would often no call, no show. After dealing with Brittany's behavior for a few months, Brittany is terminated.

Brittany files a Charge with the EEOC against her employer alleging that she complained of sexual harassment and was fired due to her complaint. Brittany never made a sexual harassment complaint to anyone at the company before her termination.

In their response to Brittany's Charge, Dillon's employer can use Brittany's attendance at this training to show Brittany was aware that they took sexual harassment claims seriously and that Brittany was trained on the company's sexual harassment policies and procedures. While they will still need to argue that Brittany did not make a complaint of sexual harassment, they can show that they take sexual harassment seriously and make sure all of their employees know the expectations for behavior in the workplace.

Engaging in the Interactive Process

As we've seen earlier, disability claims are on the rise:

- If an employee indicates that they have a disability that is impacting their ability to do their job, the employer has an obligation to engage in the interactive process.
- The interactive process is:
 - Request for an Accommodation
 - Engagement between Employer and Employee about the Request
 - Identifying Reasonable Accommodations
 - Providing a Reasonable Accommodation

Engaging in the Interactive Process

- Remember: the most important part is the back-and-forth discussion with the employee where you try to find an accommodation that works for both the employee and the employer.
- Employers should go above and beyond to try to find an accommodation that does not impose an undue burden on the employer.
- Agencies and Courts are going to view most accommodation requests as reasonable.
- The bar is high for employers.



Engaging in the Interactive Process

Example:

Joy was hired on June 1, 2024, for a full-time on-site job in New York for an employer based entirely in New York. A few weeks into her employment, Joy disclosed she had anxiety and found it difficult to come into the office. She requested to work from home in California where her extended family lives. Joy's employer asked Joy to come up with some solutions that did not involve her moving to California where the company did not have any business dealings or locations.

Joy insisted that she needed to move to California. Joy's employer offered to let her work from home in New York as needed. Joy rejected the NY work-from-home accommodation. Joy quit her job and filed a Charge based on disability discrimination.

In their response to Joy's Charge, Joy's employer can show that they engaged in the interactive process. While they did not ultimately grant Joy's request, they can show that they took her request for an accommodation seriously and that they tried to work with her to find a solution that worked for both parties.

Investigating Complaints

- If an employee brings a complaint of harassment, discrimination, or other violation of law to your attention, you have a duty to investigate that complaint.
- Even if you don't think the complaint has merit, it's important to take all complaints seriously.
- If you receive a complaint, PrestigePEO can help:
 - Report the complaint to us.
 - If you would like, we can investigate the allegations and speak with any witnesses.
 - We are happy to provide practical advice on how to address the allegations and help you identify any corrective action you might need to take, if needed.
 - You should advise the complainant that you've investigated their allegations and taken corrective action. They don't need to know what action you've taken, but they should know you took their concerns seriously and did not ignore them.

Investigating Complaints

Example:

Brandon was hired in May 2024. Brandon completed the company's mandatory sexual harassment training during his orientation. From the beginning of his employment, Brandon refused to do his job or attend company meetings. Brandon's co-worker sends him an inappropriate memes in the workplace. Brandon complains of sexual harassment in July 2024. The company takes Brandons' concerns seriously. The company investigates his complaints and disciplines the coworker.

Brandon continues to refuse to do his job. After dealing with Brandon's behavior for a few months, on September 4, 2024, Brandon is terminated. Brandon files a Charge with the EEOC against his employer alleging that he complained of sexual harassment and was fired due to his complaint.

In their response to Brandon's Charge, Brandon's employer can show they took Brandon's sexual harassment claims seriously and took corrective action. They can then argue that they had a legitimate, non-discriminatory reason for terminating his employment that had nothing to do with his complaint.

Employee Engagement and Workplace Culture

- It's important to have a workplace where employees are comfortable bringing forward complaints.
 - Open door policies
 - Require all managers and supervisors to treat all employees with respect
 - Make sure all employees are aware of who they can report complaints to
 - Prestige HRBP is a resource here for all Prestige clients.
 - Behavior starts at the top - all upper management should be held to the highest standards.

Workplace Culture

Let's talk about retaliation:

- As we discussed earlier, retaliation claims are currently the most frequently filed types of claims.
- It's easy for employees to show retaliation, because often it's human nature to feel offended or wronged by another's complaint or to react negatively to complaints in the workplace.
- A lot of times problem employees are also the ones making a variety of complaints in the workplace that may or may not have merit.
- When you have a healthy workplace culture and are willing to engage with employees regarding their concerns, you reduce the potential for an EPLI claim.

Workplace Culture

Example:

Bella and Mary are hired as administrative assistants at the beginning of 2024. Bella works at the Company's Melville office. Mary works at the Company's Garden City location. They are both terrible at their jobs. In June 2024, the regional manager, Tony, sexually harasses both employees. Bella and Mary complain to their supervisors about the behavior. The complaints are investigated, and Tony is terminated.

Bella's supervisor is annoyed that she has more work now that Tony is gone and starts making snide comments to Bella about the situation. Mary's supervisor is supportive of Mary and continues to treat her the same. Both Bella and Mary continue to be terrible at their jobs and by the end of September 2024, both employees are terminated for poor performance.

Mary accepts that she was terminated due to her poor performance, and since she felt she was treated fairly by her supervisor, she does not file a claim. However, Bella is hurt and embarrassed by her supervisor's poor treatment. Bella decides to file a complaint with the EEOC for retaliation.

The company is going to argue that they terminated Bella due to a legitimate, non-discriminatory reason. However, Bella's supervisor has exposed the company to this retaliation claim by treating her differently than she did before Bella complained.

What to Do If You Receive A Claim

What to Do If You Receive a Claim:

- All claims and potential claims must be reported to PrestigePEO within 2 business days.
- Report them to your HR Business Partner and provide a copy of the claim.
- We need to involve the carrier as quickly as possible so we can mitigate the claim.
- Once a claim is submitted to the carrier and they determine that it is a covered claim, coverage counsel is assigned to assist the client in defense and resolution.
- The carrier, PrestigePEO, and you will work together to defend and resolve the claim.
- All clients with EPLI coverage are required to cooperate in the claims process.

What to Do If You Receive a Claim

- What is a potential claim?
 - Allegations of harassment or discrimination in the workplace
 - Threats to file a charge or sue you, your company, or other employees
- Example #1 of a potential claim:
Maya complains she is being discriminated against due to her race.
- Example #2 of a potential claim:
Maya is terminated and threatens to sue the company due to unlawful termination.

What to Do If You Receive a Claim

- If you don't timely report a claim, there is a chance that the EPLI carrier may deny the claim.
- If you suspect you might have a claim or think one might be coming, you must report it immediately!
- Why do we require immediate reporting?
 - We want to help you mitigate any potential claim as quickly as we can.
 - Time is always of the essence in responding to and defending EPLI claims.

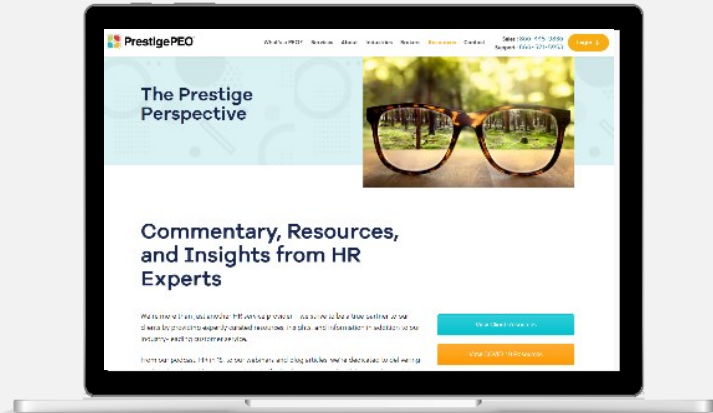
What to Do If You Receive a Claim

- Another important obligation is cooperation.
 - Cooperation is a requirement to have coverage under our policy.
 - You have a duty to cooperate with us and the carrier in the resolution of the claim.
 - Failure to cooperate can lead to a denial of coverage!
- Remember: We want to help you resolve issues in the workplace quickly, so you don't have claims.
- If you do receive a claim, we aren't looking to blame you, we are looking to help you resolve it!

Need Help?

- **Handbooks:**
 - PrestigePEO clients have access to PrestigePEO's federal handbook with state addenda.
 - If your organization does not have a handbook, please reach out to your HRBP.
- **HRBP Assistance**
 - Every client has an assigned HRBP to help provide HR guidance for issues in the workplace
 - HRBPs can provide guidance on disciplinary issues in the workplace.
- **Trainings**
 - PrestigePEO has an LMS platform with a variety of trainings.
- **Compliance Guidance**
 - PrestigePEO has a Compliance Updates and other resources for managers on our website.

Questions / Comments / Discussion?



You can view today's presentation and video recording by visiting:

<https://www.prestigepeo.com/webinars>



Be on the look out for our email newsletter, **PrestigePEO Insights**

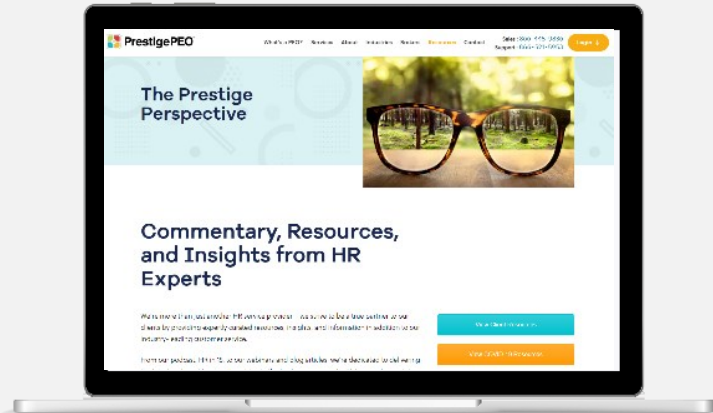


Join us on **LinkedIn, Facebook, Instagram, Twitter, and YouTube** to receive event notifications and weekly updates



Reach out to your support teams – HR and Compliance, Employee Benefits, and Payroll directly from our **PrestigeGO mobile app**

Questions / Comments / Discussion?



You can view today's presentation and video recording by visiting:

<https://www.prestigepeo.com/webinars>



Join us on **LinkedIn, Facebook, Instagram, Twitter, and YouTube** to receive event notifications and weekly updates



Reach out to your support teams – HR and Compliance, Employee Benefits, and Payroll directly from our **PrestigeGO mobile app**



PrestigePEO™

Human Resources, Employee Benefits, and Payroll Simplified

You started your business because you had a great idea. We started our business to handle the rest.