

# EMPLOYMENT PRACTICES LIABILITY INSURANCE COVERAGE PART

**THIS COVERAGE PART PROVIDES CLAIMS-MADE COVERAGE  
PLEASE READ THE ENTIRE COVERAGE PART ENDORSEMENT CAREFULLY**

**THIS INSURANCE PROVIDES CLAIMS MADE AND REPORTED COVERAGE. DEFENSE COSTS APPLY AGAINST THE LIMITS OF INSURANCE AND ARE SUBJECT TO THE DEDUCTIBLE.**

**PLEASE READ THIS COVERAGE CAREFULLY TO DETERMINE RIGHTS, DUTIES, COVERAGE AND COVERAGE RESTRICTIONS.**

**WE HAVE NO DUTY TO PROVIDE COVERAGE UNLESS THERE HAS BEEN FULL COMPLIANCE WITH ALL THE CONDITIONS, SECTION V AND ANY OTHER APPLICABLE COVERAGE CONDITIONS.**

**IF WE HAVE ISSUED THIS POLICY BASED UPON YOUR APPLICATION FOR THIS INSURANCE, THE APPLICATION IS INCORPORATED BY REFERENCE AND IS ON FILE WITH THE COMPANY OR ITS AGENT AND BECOMES A PART OF THIS POLICY. THAT APPLICATION IS A REPRESENTATION OF THE CORRECTNESS OF THE INFORMATION BASED UPON WHICH WE HAVE ISSUED THIS POLICY.**

Throughout this Coverage, the words "you" and "your" refer to the Named Insured shown in the Declarations and any other person or organization qualifying as a Named Insured under this Coverage. The words "we", "us" and "our" refer to the Company providing this insurance. The word "insured" means any person or organization qualifying as such under **SECTION II - WHO IS AN INSURED.**

All words and phrases that appear in quotation marks have special meaning. Refer to **SECTION VII - DEFINITIONS.**

## SECTION I – COVERAGE

In consideration of the payment of premium and subject to the Limits of Insurance shown in **Item 4** of the Declarations and all the definitions, exclusions, terms and conditions of this insurance, we agree with you as follows:

### 1. Insuring Agreement

- a. We will pay on behalf of the insured for "damages" in excess of the Deductible arising out of any "wrongful acts" to which this insurance applies.

We have no obligation under this insurance to make payments or perform acts or services except as provided for in this paragraph and in paragraph **2.** below.

- b. This insurance applies to such "damages" only if:

- (1) The "damages" result from "claims" made by:

- (a) "Employees";
- (b) "Persons leased to you" by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business;
- (c) "Temporary workers";
- (d) "Former "employees";
- (e) Applicants for employment by you;  
or
- (f) Clients or customers of yours;
- (2) The "wrongful acts" take place in the "coverage territory";
- (3) Such "wrongful acts" occurred:
  - (a) After the Retroactive Date, if any, shown in the Declarations; and
  - (b) Before the end of the policy period; and

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- (4) A "claim" is both:
- (a) First made against any insured, in accordance with paragraph c. below, during the policy period or any Extended Reporting Period we provide under **SECTION VI - EXTENDED REPORTING PERIODS**; and
  - (b) Reported to us either (i) during the policy period or within thirty (30) days thereafter; or (ii) with respect to any "claim" first made during any Extended Reporting Period we provide under **SECTION VI - EXTENDED REPORTING PERIODS**, during such Extended Reporting Period.

- c. A "claim" will be deemed to have been made at the earlier of the following times:
  - (1) When notice of such "claim" is received and recorded by you or by us, whichever comes first; or
  - (2) When we make settlement in accordance with paragraph **2.b.(2)** below.
- d. All "claims" by one or more claimants for "damages" based on or arising out of:
  - (1) One "wrongful act"; or
  - (2) An "interrelated" series of "wrongful acts";

by one or more insureds shall be deemed to be one "claim" and to have been made at the time the first of those "claims" is made against any insured.

- e. Each payment we make for "damages" or "defense expense" reduces the Amount of Insurance available, as provided under **SECTION III - LIMITS OF INSURANCE**.

**2. Defense of Claims, Administrative Hearings & Settlement Authority**

Subject to the limits of insurance, deductible, conditions, exclusions, definitions, and other terms of this Coverage:

- a. We have the right and duty to defend "claims" against the insured seeking "damages" to which this insurance applies and to pay for related, "defense expense."

However, we have no duty to:

- (1) Defend "claims" against the insured seeking "damages"; or
  - (2) Pay for related "defense expense", when this insurance does not apply.
- b. We may, at our sole discretion:
    - (1) Investigate any "wrongful act" that may result in "damages"; and
    - (2) Settle any "claim" which may result, provided:
      - (a) We have the insured's written consent to settle; and
      - (b) The settlement is within the applicable Limit of Insurance available.
  - c. Our liability will be limited as described below if:
    - (1) The insured refuses to consent to any settlement we recommend; and
    - (2) Such recommended settlement is acceptable to the claimant.

After such refusal, our liability under this Coverage for such "claim" shall not exceed the amount we would have paid for "damages" and "defense expense" if the insured had consented to our settlement recommendation. The insured shall thereafter be responsible for the negotiation and defense of that "claim" at their own cost and without our involvement.

- d. Our right and duty to defend such "claims" ends when we have used up the Limit of Insurance available, as provided under **SECTION III - LIMITS OF INSURANCE**. This applies both to "claims" pending at that time and any that may be made.
- e. (1) When we control defense of a "claim", we will pay associated "defense expense" and choose a counsel of our choice from the panel of attorneys we have selected to deal with "wrongful acts" "claims".

If you give us a specific written request at the time a "claim" is first made:

- (a) You or any involved insured may select one of our panel of wrongful act attorneys; or
- (b) You or such insured may ask us to consider the approval of a defense attorney of your or that insured's choice who is not on our panel.

We will then use the attorney selected in (a) above, or consider the request in (b) above, if we deem it appropriate to engage counsel for such "claim".

(2) If by mutual agreement or court order the insured assumes control of the defense before the applicable Limit of Insurance is used up, the insured will be allowed to select defense counsel and we will reimburse the insured for reasonable "defense expense". You and any involved insured must:

(a) Continue to comply with **SECTION V - CONDITIONS, 4. Duties in Event of "Wrongful Acts" or "Claims"**.

(b) Direct defense counsel to:

(1) Furnish us with the additional information we request to evaluate the "wrongful acts" or "claim"; and

(2) Cooperate with any counsel we may select to monitor or associate in the defense of the "wrongful acts" or "claim".

If we defend any insured under a reservation of rights, both such insured's counsel and our counsel will be required to maintain records pertinent to "defense expenses". These records will be used to determine the allocation of any "defense expenses" for which you or any insured may be solely responsible, including defense of an allegation not covered by this insurance.

We will notify you in writing when the applicable limit of insurance has been used-up by the payment of judgments, settlements or "defense expense". We will also initiate and cooperate in the transfer of defense of any "claim" to an appropriate insured for whom the duty to defend has ended by reason of **SECTION I - paragraph 2.d.** above.

f. Upon notice to us and with our prior approval, the first Named Insured is authorized to act on behalf of all insureds with respect to the payment of "damages" in settlement of any Administrative Hearing or other non-judicial proceeding before the Federal Equal Employment Opportunity Commission, or any similar Federal, state or local body or commission. This authorization is limited to the sum of:

(1) "Damages" covered by this Coverage; and

(2) "Defense expenses", as defined in paragraph 5.d. in **SECTION VII - DEFINITIONS**;

in a total amount not to exceed two times the amount of the Deductible stated in the Declarations.

### 3. Exclusions

This insurance does not apply to "claims" based on, arising out of, or in any way involving:

a. (1) "Wrongful acts" which were the subject of any demand, suit or other proceeding which was initiated against any insured; or

(2) Facts and circumstances which would cause a reasonable person to believe a "claim" would be made and which were known to any insured;

prior to the effective date of the earlier of:

(i) The first Coverage of this type that we issued to you of which this Coverage was an uninterrupted renewal of this type of coverage; or

(ii) This Coverage.

b. Loss of any benefit conferred or loss of any obligation imposed under an express contract of employment.

c. Any obligation to pay "damages" by reason of the assumption of liability in any contract or agreement.

However, this exclusion does not apply to liability for "damages" that the insured would have in the absence of the contract or agreement.

d. Liability arising under any of the following laws:

(1) Any workers compensation, disability benefits or unemployment compensation law, or any similar law.

However, this exclusion shall not apply to any "claim" based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the insured on account of the claimant's exercise of rights pursuant to any such law;

**(2)** Employees' Retirement Income Security Act of 1974, Public Law 93-406, (ERISA) as now or hereafter amended, or any similar state or other governmental law. This includes

- (a)** Fiduciary liability;
- (b)** Liability arising out of the administration of any employee benefit plan; and
- (c)** Any other liability under any such laws;

**(3)** The Fair Labor Standards Act, or any state or common law wage or hour law, including, but not limited to laws governing minimum wages, hours worked, overtime compensation and including any record keeping and reporting related thereto.

This exclusion includes actions or claims brought by or on behalf of individuals or agencies seeking wages, fines, penalties, taxes, disgorgement or other affirmative relief or compensation.

This exclusion does not include claims based on the Equal Pay Act or retaliation related to Equal Pay Act claims;

- (4)** The National Labor Relations Act;
- (5)** The Worker Adjustment and Retraining Notification Act (Public Law 100-379);
- (6)** The Consolidated Omnibus Budget Reconciliation Act of 1985; or
- (7)** The Occupational Safety and Health Act.

This exclusion **d. (1) - (7)** also applies to:

- (i)** Any rules or regulations promulgated under any of the foregoing and amendments thereto,
- (ii)** Any similar provisions of any federal, state or local law,
- (iii)** That part of any "damages" awarded for the cost or replacement of any insurance benefits due or alleged to be due to any current or former "employee", and
- (iv)** Any "claim" based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the insured on account of the claimant's exercise of rights pursuant to any such law described in this item **d.** This provision **d.(iv)** does not apply to the specific retaliation exceptions shown in items **d.(1)** and **d.(3)** above.

**e.** Oral or written publication of material, if such material:

- (1)** Was published by or at the direction of the insured with knowledge of the material's falsity; or
- (2)** Was first published before the Retroactive Date, if any, shown in the Declarations.

**f.** Dishonest, criminal or fraudulent acts of the insured.

**g.** The willful failure by the insured or with the insured's consent to comply with any law or any governmental or administrative order or regulation relating to "employment practices".

Willful, as used in this exclusion **g.**, means acting with intentional or reckless disregard for such employment related laws, orders or regulations.

The enforcement of this exclusion against any insured shall not be imputed to any other insured.

**h.** "Bodily injury".

**i.** "Employment practices" which occur when or after:

- (1)** You file for or are placed in any bankruptcy, receivership, liquidation or reorganization proceeding; or
- (2)** Any other business entity acquires an ownership interest in you, which is greater than fifty percent.

**j.** Costs of complying with physical modifications to your premises or any changes to your usual business operations as mandated by the Americans with Disabilities Act of 1990 including any amendment thereto, or any similar federal, state or local law.

This exclusion also applies to any "claim" based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the insured on account of the claimant's exercise of rights pursuant to any such law described in this item **j.**

**k.** Lockout, strike, picket line, related worker replacements or other similar actions resulting from labor disputes or labor negotiations.

This exclusion also applies to any "claim" based upon, arising from or in consequence of any actual or alleged retaliatory treatment of the claimant by the insured on account of the claimant's exercise of rights pursuant to labor disputes or labor negotiations.

**l.** Lending, or arranging for the lending of, money, including credit card, debit card, leasing or mortgage operations or activities.

**m.** The rental, sale or usage of any kind of housing.

## SECTION II - WHO IS AN INSURED

1. For purposes of this insurance, if you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your current or former members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your current or former members are also insureds, but only with respect to the conduct of your business. Your current or former managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership or joint venture, you are an insured. Your current or former directors are insureds, but only with respect to their duties as your directors.
2. Your current or former "employees" are also insureds, but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business.
3. Any heirs, executors, administrators, assignees or legal representatives of any individual insured in subparagraphs **1.** and **2.** above, in the event of the death, bankruptcy or incapacity of such insured, shall be insureds, but only to the extent this insurance would have been available to such insured but for their death, bankruptcy or incapacity.

4. Any organization you newly acquire or form, other than a partnership or joint venture, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:

- a. You must provide us notice of such acquisition or formation within 30 days of the effective date of your acquisition or formation;
- b. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- c. Coverage does not apply to any "wrongful acts" that occurred before you acquired or formed the organization; and
- d. You must pay us any additional premium due as a condition precedent to the enforceability of this additional extension of coverage.

This paragraph does not apply to any organization after it is shown in the Declarations.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

## SECTION III - LIMITS OF INSURANCE

1. The Amount of Insurance stated as Aggregate Limit on the Coverage Declarations is the most we will pay for the sum of:
  - a. "Damages" for all "claims" arising out of any actual or alleged "wrongful acts" covered by this insurance; and
  - b. "Defense expense" for all "claims" seeking "damages" payable under paragraph **a.** above.

Each payment we make for such "damages" or "defense expenses" reduces the Aggregate Limit by the amount of the payment.

This reduced limit will then be the Amount of Insurance available for further "damages" and "defense expenses" under this Coverage.

2. Subject to paragraph **1.** above, the Amount of Insurance stated as the Each "Claim" Limit of Insurance is the most we will pay in excess of the Deductible as further described in **SECTION IV - DEDUCTIBLE** for the sum of:
  - a. "Damages":

- (1) For injury arising from "wrongful acts" covered by this insurance; and
  - (2) Arising out of one "claim"; and
- b. "Defense expense" associated with that specific "claim" in item 2.a. immediately preceding.
3. In addition to the payments for "damages" and "defense expense" in paragraphs 1. and 2. above, we will also pay all interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of paragraphs 1. and 2. above.

The Limits of Insurance of this Coverage apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

**SECTION IV - DEDUCTIBLE**

- 1. A deductible applies to all "damages" for injury arising from "wrongful acts" and any "defense expense" however caused.
- 2. Our obligation to pay "damages" and "defense expense" on behalf of any insured applies only to the sum of the amount of "damages" and "defense expense" for any one "claim" which are in excess of the deductible amount stated in **Item 5.** of the Declarations.
- 3. Your obligation is to pay the deductible applicable to each "claim" made against this insurance. That deductible applies to the sum of all "damages" because of injury arising from "wrongful acts" paid for any one "claim" and applicable "defense expense" associated therewith. If there should be no "damages" paid for a "claim", you are still obligated to pay the applicable deductible for any "defense expense" incurred by us in connection with that "claim".
- 4. The terms of this insurance apply irrespective of the application of the deductible, including those with respect to:
  - a. Our right and duty to defend any "claims" seeking those "damages"; and
  - b. Your and any involved insured's duties in the event of a "claim".

- 5. We may pay any part or all of the deductible to effect settlement of any "claim" and, upon notification of the action taken, you shall promptly reimburse us for such part of the deductible as we may have paid for "damages" or "defense expense".
- 6. The application of the deductible does not reduce the applicable Limits of Insurance.

**SECTION V – CONDITIONS**

For the purposes of the coverage provided by this endorsement, the following are added to **Paragraph E. Liability And Medical Expenses General Conditions.**

**The following conditions are subject to Massachusetts Changes Endorsement BP 01 08.**

**1. Bankruptcy**

Subject to exclusion i.(1), the bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this insurance.

**2. Duties in the Event of "Wrongful Acts" or "Claims"**

- a. You must see to it that we are notified as soon as practicable of any specific "wrongful acts" which you believe may result in an actual "claim". Your belief must be reasonably certain as the result of specific allegations made by a potential claimant or such potential claimant's representative, or as the result of specifically identifiable injury sustained by a potential claimant. Notices of "wrongful acts" should include the following detailed information:
  - (1) How, when and where such "wrongful acts" took place;
  - (2) The names and addresses of any potential claimants and witnesses; and
  - (3) The nature of any injury arising out of such "wrongful acts".

Notice of such "wrongful acts" is not notice of a "claim", but preserves any insured's rights to future coverage for subsequent "claims" arising out of such "wrongful acts" as described in the Basic Extended Reporting Period of **SECTION VI - EXTENDED REPORTING PERIODS**.

- b. If a "claim" is received by any insured:
- (1) You must immediately record the specifics of the "claim" and the date received;
  - (2) You and any other involved insured must see to it that we receive written notice of the "claim", as soon as practicable, but in any event we must receive notice either:
    - (a) During the policy period or within thirty (30) days thereafter; or
    - (b) With respect to any "claim" first made during any Extended Reporting Period we provide under **SECTION VI - EXTENDED REPORTING PERIODS**, during such Extended Reporting Period.
- As a condition precedent for coverage under this insurance, notice of a "claim" must include the detailed information required in paragraphs **4.a.(1), (2) and (3)**; and
- (3) You and any other involved insured must:
    - (a) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
    - (b) Authorize us to obtain records and other information;
    - (c) Cooperate with us in the investigation, settlement or defense of the "claim"; and
    - (d) Assist us, upon our request, in the enforcement of any right against any person or organization, which may be liable to the insured because of injury or damage to which this insurance may also apply.

- c. No insureds will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent, other than those specific payments authorized under paragraph **2.f.** of **Defense of Claims, Administrative Hearings & Settlement Authority**, in **SECTION I - COVERAGE**.

### 3. Legal Action Against Us

No person or organization has a right under this Coverage:

- a. To join us as a party or otherwise bring us into a "claim" seeking "damages" from any insured; or
- b. To sue us on this Coverage unless all of its terms have been fully complied with.

Any person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial, but we will not be liable for "damages" that are not payable under the terms of this Coverage or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

### 4. Representations

By accepting this Coverage you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us in your application for this insurance. That application is attached to and incorporated into this Coverage and forms the basis of our obligations under this insurance; and
- c. Since we have issued this Coverage in reliance upon your representations, this insurance is voidable if any material fact or circumstance relating to the subject of this insurance is omitted or misrepresented in your application.

### 5. Sole Agent

The first Named Insured is authorized to act on behalf of all insureds as respects the giving or receiving of notice of cancellation or nonrenewal, receiving premium refunds, requesting any Supplemental Extended Reporting Period and agreeing to any changes in this Coverage.

4. A Basic Extended Reporting Period is automatically provided without additional charge. This period starts with the end of the policy period and lasts for:
  - a. Five years with respect to "claims" arising out of "wrongful acts" which had been properly reported to us before the end of the policy period in accordance with paragraph 4.a. of **Duties in the Event of "Wrongful Acts" or "Claims"**, in **SECTION V - CONDITIONS**; and
  - b. Sixty--days with respect to "claims" arising from "wrongful acts" not previously reported to us.

The Basic Extended Reporting Period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such claims.

5. A Supplemental Extended Reporting Period of either twelve (12) or thirty-six (36) months duration is available, but only by endorsement and for an extra charge. This supplemental period starts when the Basic Extended Reporting Period set forth in paragraph 4.b. above ends. You must give us a written request for the endorsement, and its length, within 30 days after the end of the policy period. The Supplemental Extended Reporting Period will not go into effect unless you pay the additional premium when due. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
  - a. The exposures insured;
  - b. Previous types and amounts of insurance;
  - c. Limits of Insurance available under this Coverage for future payment of "damages" or "defense expense"; and
  - d. Other related factors.

The additional premium will not exceed 200% of the annual premium for this Coverage.

6. The Supplemental Extended Reporting Period Endorsement we issue shall set forth the terms, not inconsistent with this **SECTION VI - EXTENDED REPORTING PERIODS**, including a provision to the effect that the insurance afforded for "claims" first received during such period is excess over any other valid and collectible insurance available under policies in force after the Supplemental Extended Reporting Period begins.

## SECTION VI - EXTENDED REPORTING PERIODS

1. We will provide Extended Reporting Periods, as described below, if:
  - a. This Coverage is cancelled or not renewed; or
  - b. We renew or replace this Coverage with insurance that:
    - (1) Has a Retroactive Date later than the date shown in the Declarations; or
    - (2) Does not apply on a claims-made basis.
2. Extended Reporting Periods do not extend the policy period or change the scope of coverage provided. They apply only to "claims" as the result of "wrongful acts" committed after the Retroactive Date, if any, shown in the Declarations and before the end of the policy period. Once in effect, Extended Reporting Periods may not be cancelled.
3. Extended Reporting Periods do not reinstate or increase the Limits of Insurance.



## SECTION VII - DEFINITIONS

1. **"Bodily injury"** means physical injury to the body, sickness or disease sustained by a person as the result of direct physical injury to the body, including death resulting from any of these at any time. "Bodily injury" does not include mental anguish that results from a "wrongful act".

2. **"Claim"** means written or oral notice presented by:

a. Any "employee," "person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business", "temporary worker," former "employee" or applicant for employment by you; or

b. The EEOC or any other federal, state or local administrative or regulatory agency on behalf of a person described in paragraph 2.a. above; or

c. Any client or customer of yours.

alleging that the insured is responsible for "damages" as a result of injury arising out of any "wrongful act".

"Claim" includes any civil proceeding in which either "damages" are alleged or fact finding will take place, when either is the result of any "wrongful act" to which this insurance applies.

This includes:

(i) An arbitration proceeding in which such "damages" are claimed and to which the insured submits with our consent;

(ii) Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent; or

(iii) Any administrative proceedings as established under federal, state or local laws applicable to "wrongful acts" covered under this insurance.

3. **"Coverage territory"** means:

a. The United States of America (including its territories and possessions) and Puerto Rico; or

b. Anywhere in the world with respect to the activities of a person whose place of employment is in the territory described in paragraph 3.a. above, while he or she is away for a short time on your business, provided that the insured's responsibility to pay "damages" is determined in a suit on the merits (or any type of civil proceeding described under the definition of "claim") in and under the substantive law of the United States of America (including its territories and possessions) or Puerto Rico.

4. **"Damages"** means monetary amounts to which this insurance applies and which the insured is legally obligated to pay as judgments or awards, or as settlements to which we have agreed in writing.

"Damages" include:

a. "Pre-judgment interest" awarded against the insured on that part of the judgment we pay;

b. Any portion of a judgment or award, to the extent allowed by law, that represents a multiple of the compensatory amounts, punitive or exemplary damages; and

c. Statutory attorney fees.

"Damages" do not include:

(1) Civil, criminal, administrative or other fines or penalties;

(2) Equitable relief, injunctive relief, declarative relief or any other relief or recovery other than money; or

(3) Judgments or awards because of acts deemed uninsurable by law.

5. **"Defense expense"** means payments allocated to a specific "claim" for its investigation, settlement, or defense, including:

a. Attorney fees and all other litigation expenses.

b. The cost of bonds to appeal a judgment or award in any "claim" we defend. We do not have to furnish these bonds.

c. The cost of bonds to release attachments, but only for bond amounts within the Amount of Insurance available. We do not have to furnish these bonds.

d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of any "claim", including actual loss of earnings up to \$250 a day because of time off from work.

- e. All court costs taxed against the insured in the "claim". However, these payments do not include attorney's fees or attorney's expenses taxed against the insured.

"Defense expense" does not include:

- (1) Salaries and expenses of our employees or your "employees", other than:
  - (a) That portion of our employed attorneys' fees, salaries and expenses allocated to a specific "claim" for the defense of the insured; or
  - (b) The expenses described in paragraph d. above; or
- (2) Interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the amount available for the judgment under the provisions of **SECTION III - LIMITS OF INSURANCE.**

6. **"Employee"** means:

- a. A person employed by you for wages or salary;
- b. A person who is a current or former member of your board of directors; or
- c. A "temporary worker".

However, "employee" does not include any:

- (1) Independent contractor;
- (2) Any employees of any independent contractor while acting within the scope of their employment; or
- (3) Any "worker leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business".

7. **"Employment Practices"** means any remedy which is sought by any of your:

- a. "Employees";
- b. "workers leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business";
- c. Former "employees"; or
- d. Applicants for employment by you,

under any civil employment law whether federal, state or local and whether arising out of statutory or common law, because of any of the following actual or alleged practices:

- (1) Wrongful refusal to employ a qualified applicant for employment;
- (2) Wrongful failure to promote;
- (3) Wrongful deprivation of career opportunity;
- (4) Wrongful demotion, evaluation, reassignment or discipline;
- (5) Wrongful termination of employment, including constructive discharge;
- (6) Employment related misrepresentation;
- (7) Harassment, coercion, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference or any other protected class or characteristic established by any applicable federal, state or local statute; or
- (8) Oral or written publication of material that:
  - (a) Slanders;
  - (b) Defames or libels; or
  - (c) Violates or invades a right of privacy.

8. **"Interrelated"** means having as a common nexus any fact, circumstance, situation, event, transaction, cause or series of related facts, circumstances, situations, events, transactions or causes.

9. **"Pre-judgment interest"** means interest added to a settlement, verdict, award or judgment based on the amount of time prior to the settlement, verdict, award or judgment, whether or not made part of the settlement, verdict, award or judgment.

10. **"Temporary worker"** means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

11. "Third Party Practices" means harassment, discrimination or humiliation as a consequence of race, color, creed, national origin, marital status, medical condition, gender, age, physical appearance, physical and/or mental impairments, pregnancy, sexual orientation or sexual preference which are directed against any client or customer of yours.

12. "Wrongful Acts" means:

a. "Employment practices"; or

b. "Third party practices"