

## Employment Practice Liability (EPL) Insurance

Many New Zealand businesses are currently reviewing the structure of their company as they respond to the ongoing economic uncertainty. For some this will result in the difficult decision to undertake a staff restructure which can be stressful for both employer and employee particularly where the exercise is being undertaken quickly or under financial pressure.

In these circumstances it is essential that business owners follow a due process which reflects their obligations as an employer. Employers should seek legal advice from a specialist employment lawyer or adviser *prior to* engaging with their workforce. Specialist advice is also available from Employment New Zealand.

Failing to effectively manage any restructure process may result in a range of negative outcomes for both the business and employees and ultimately could generate Personal Grievance claims against the company. Employees may allege wrongful dismissal, mental anguish, discrimination, or harassment and often bring up more deep-seated issues completely unrelated to the current restructure. At the very least, businesses may damage their future reputation as an employer and at worst could be faced with significant compensation costs.

EPL Insurance was developed to assist businesses in such circumstances to provide compensation for Personal Grievances and the associated legal and investigation costs. Even though these policies help to mitigate some of the expenses associated with employment disputes, it is important to note that they may not cover every cost, such as:

- The employer's time and effort spent managing the issue internally within the company
- Most policies will have an excess
- Legal fees incurred without the consent of the insurer - it is therefore important to notify your EPL insurer (or broker) as soon as you become aware of any employment issue that could potentially give rise to a claim
- Wages, holiday pay or other benefits to which the employee would otherwise be entitled under their employment contract at the time they leave the organisation (irrespective of any dispute)

Other important policy conditions exist such as:

- Some policies require businesses to seek legal advice *prior to* implementing any workforce changes
- Businesses should not admit to any wrong-doing to their employees which may prejudice any future defence
- EPL Policies are offered on a 'claims made' basis meaning the policy must be in force at the time the employer becomes aware of a potential claim - irrespective of when the workforce change actually took place. Often there can be many months between an employee being impacted and then actually lodging a Personal Grievance. If the policy has been cancelled in the meantime, then it will no longer provide any cover.

Hopefully this information is helpful as you consider the risks your business faces in this uncertain economic environment. This overview is offered as an introduction to the core issues only and should not be taken as legal advice.

If you have any questions or if you would like to discuss these or any issues further, please do not hesitate to talk to your broker.