

Client Advisory

Private Company Directors and Officers, Employment Practices Concerns: COVID-19

We sometimes hear that private companies should not purchase Directors & Officers (D&O) insurance because “no one’s going to sue us.” After all, you don’t have outside shareholders or your shareholders are all friends and family. So where could the law suits possibly come from?

Events such as the COVID-19 pandemic remind us why this kind of insurance is so important, even for private companies. As recently as two months ago, many of us were certainly not expecting creditor problems, competitor issues or employment practice claims. With the escalation of COVID-19 and its effect on the workplace and the economy, that has all changed for many of us.

Fortunately, if you have purchased a D&O policy for your private company, including Employment Practices Liability (EPL) and Fiduciary Liability, you already have some very strong protections in place for your business.

EVEN IF YOU
ALREADY HAVE
D&O COVERAGE,
THIS PANDEMIC
IS CAUSING
ISSUES YOU
MAY NOT HAVE
ANTICIPATED.

Here's a list of potentially serious issues the COVID-19 situation could cause.

- Suits from creditors resulting from lack of liquidity due to the sudden economic shutdown
- Suits from competitors that allege unfair competition, non-compete violations, or improper activities from former employees
- Allegations from "outside" shareholders of breach of fiduciary duty, negligence in lack of preparedness or failure to secure appropriate insurance
- Alleged discrimination or harassment, particularly regarding protected classes, as a result of HR policies implemented in response to the outbreak
- Claims under the Americans with Disabilities Act (ADA) if employers aren't careful about how they question employees relating to COVID-19
- Fiduciary claims may become likely if company stock is part of any financial benefit plan such as an ESOP
- Fast-changing work roles may lead to issues concerning plan eligibility. Health plan coverage uncertainty may lead to allegations of poor plan design

Many of these allegations may trigger defense and indemnification protection from a well-written D&O, EPL and Fiduciary policy. *But that is not a certainty.*

One of the smartest moves to make right now is talk with your Marsh & McLennan Agency representative to review your plan as well as analyze your risks. Make sure you have the right Directors & Officers insurance coverage, including Employment Practices Liability (EPL) and Fiduciary Liability.

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