

I first wrote this report in August of 2001. It was based on a lot of research, and the most up to date statistics available at the time. Although those statistics are now dated, the remaining information and concepts are by no means obsolete. If anything, things have gotten worse. I'm leaving the original report intact, but at the end, I've included updated information provided by Travelers Insurance Company. There's also a chart I found at the website of the U.S. Equal Employment Opportunity Commission (EEOC). Please take a look as this data is just as threatening and eye-opening as the original content of this report.

*Dave Cornish – President – C & G Insurance Agency  
March 13, 2009*

**CONFIDENTIAL**

## **“Attorneys Have A New **CA\$H** Cow... And You're It!”**

***It May Now Be The # 1 Threat To Your Business  
And It Is Time For You To Take Action***

We've discussed this risk before, but the danger was never as imposing as it is now. After a tremendous amount of research, I decided it was time to write this special report for my clients. As you will see, this is a very confidential communication. You are encouraged to keep this report restricted to yourself and carefully selected employees.

**I urge you to take this report home, find some quiet time, read every word (don't skim), and then read it again. Please don't put it off. You need to act before it's too late. I think it's that important to your financial well being.**

Before I reveal the identity of the legal profession's latest jackpot, I thought I'd start out with some facts.

- There's a better chance that you'll suffer a loss from this than a fire!
- There are now more lawsuits filed annually for this than for products liability!
- Between 1990 and 1998, the number of lawsuits filed for this in federal court tripled!
- In fact, the number of lawsuits for this is now growing by more than 20% annually!
- At this rate, the number of these lawsuits will more than double in just three years!
- Last year the federal agency that oversees this dealt with about 80,000 charges!
- That's not counting the hundreds of thousands of claims filed with state and local agencies!

- The average jury verdict award for this is now over \$800,000!
- That's higher than the average award for premises liability cases!
- That's higher than the average award for vehicular liability cases! (I found this statistic shocking. After all, what could be worse than the injuring capability of 3,000 + pounds of a fast moving machine on wheels?)
- The number of \$1 million + judgments for this is more than double that of premises liability cases!
- The number of \$1 million + judgments for this is more than quadruple that of vehicular liability cases!
- The probability of verdicts favoring plaintiffs in these cases increased 49% in 1994 to 71% in 1999! (No wonder attorneys love this stuff.)
- Juries are absolutely not sympathetic to your cause!
- Just the cost to defend yourself can average between \$100,000 and \$250,000 if it goes to a jury trial!
- One third of all cases decided for the plaintiff also involve punitive damages!
- Median punitive damages are now over \$200,000!
- There are now more law students in college than there are practicing attorneys, signaling an even greater explosion of this lucrative practice!

***If you haven't already guessed, or looked ahead,  
the picture is about to become crystal clear***

- The American employee has come to expect employment and employment related benefits to be an *entitlement* – an expectation shared by many jurors!
- Societal standards have changed dramatically over recent years, and employees are increasingly aware of their legal rights, and increasingly willing to aggressively pursue them (especially when they know they'll probably win)!
- 83% of Americans believe their employer must have just cause for termination!
- More than 50% of employers have received a sexual harassment complaint!
- Of all punitive damage awards in the U. S., 50% are awarded in employment cases!
- Cases are won on emotions, not technical evidence!
- Most employers ignore, rather than address, workplace risk!
- Most employers don't even know the magnitude and breadth of employment risk!

***And The Name Of This New Epidemic ...***



**Employment Practices**

**You know, things like:**

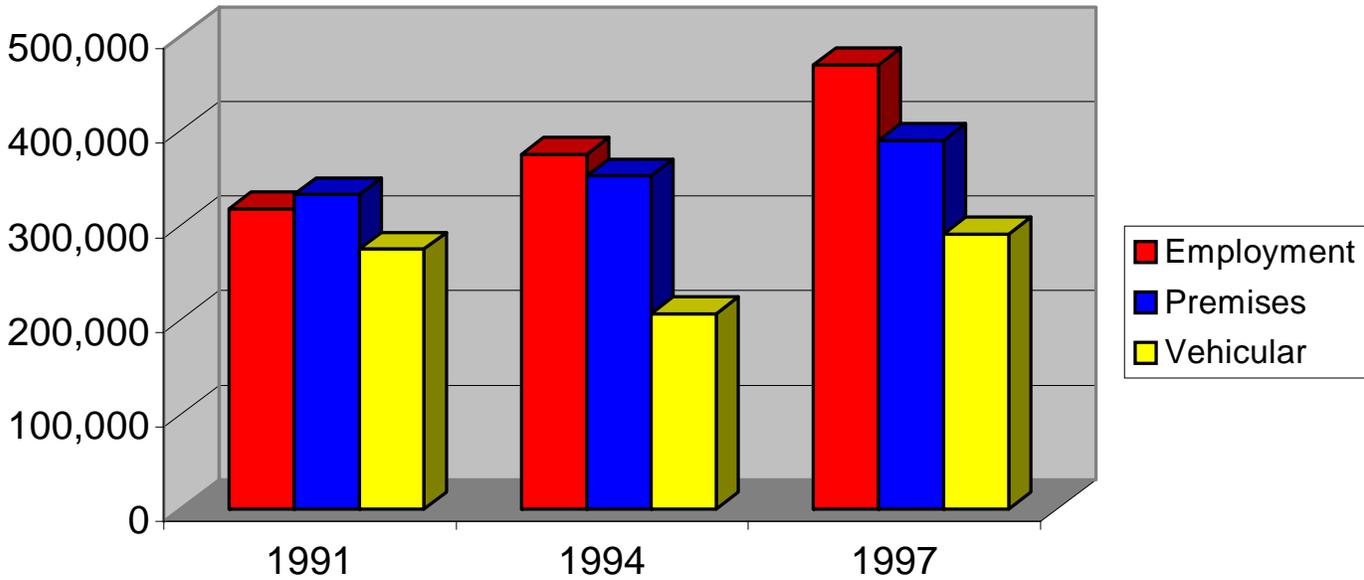
- ▶ Discrimination for:
  - Race
  - National Origin
  - Gender
  - Pregnancy
  - Color
  - Marital Status
  - Age
  - Sexual Orientation
  - Creed
  - Medical Condition
  - Physical Appearance
- ▶ Retaliation
- ▶ Sexual Harassment
- ▶ Workplace Harassment
- ▶ Wrongful termination
- ▶ Breach Of Employment Agreement
- ▶ Violation Of The Family Medical Leave Act
- ▶ Employment Related Misrepresentation
- ▶ Invasion Of Privacy
- ▶ Defamation
- ▶ Libel Or Slander
- ▶ Failure To Promote
- ▶ Wrongful Denial Of Training
- ▶ Failure To Employ
- ▶ Failure To Grant Tenure

- ▶ Failure To Create Or Enforce Adequate Workplace Or Employment Policies And Procedures
- ▶ Wrongful Discipline
- ▶ Wrongful Denial Of Training
- ▶ Wrongful Evaluation
- ▶ Wrongful Denial Or Deprivation Of Seniority
- ▶ Wrongful Deprivation of Career Opportunity
- ▶ Wrongful Evaluation
- ▶ The following negligent practices if in connection with the above wrongful employment practices:
  - Hiring
  - Supervision Of Others
  - Training
  - Retention

***Like You Didn't Already Have Enough On Your Plate To Worry About***

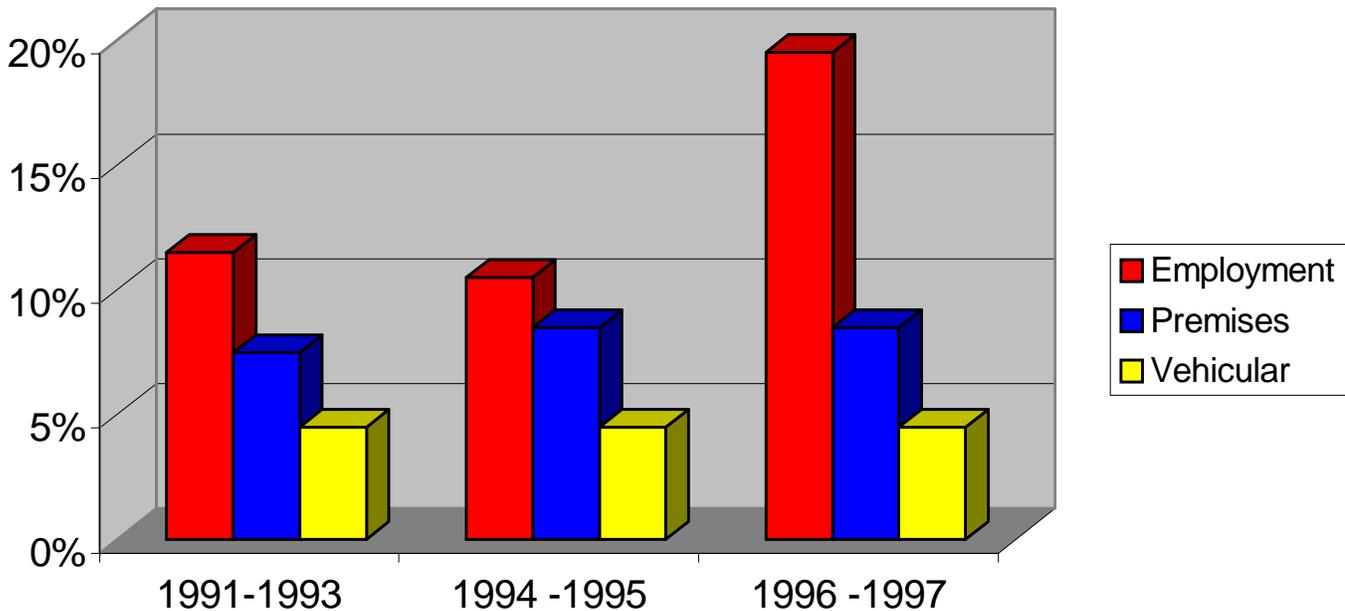
**SOURCE: Jury Verdict Research**  
**1998 Current Award Trends in Personal Injury:**

**Average Jury Verdict Award by Liability Type**



**SOURCE: Jury Verdict Research**  
**1998 Current Award Trends in Personal Injury**

**Number of \$1 Million + Judgements by Liability**



**Examples And More Examples**

*I guarantee that you've had a brush with similar scenarios, or know other business owners that have*

**Single Employee Settlements**

**\$30,000:** A female salesperson and her male supervisor engaged in a romantic relationship for three

years. **After she broke off the relationship, she reported to her attorney that she felt her terms of employment were suffering.** Her attorney told the owners of the business and counsel that “she would look great on a witness stand.” The out of court settlement included \$30,000, a promotion to supervisor, and attorney’s fees of \$7,800.

**\$58,000:** An insurance producer had a \$112,000 commission book of business. His book was deteriorating and little effort was made to generate new business. When the agency fired him for inadequate production, he sued the agency and its owners for **age discrimination**. The agency settled out of court for \$58,300 and attorney’s fees of \$10,000. The agency’s counsel advised that, because of his “protected class” status and other factors, they would otherwise be facing a potential risk of \$250,000 to \$500,000.

**\$65,000:** A jury awarded \$65,000 in damages to a former machine operator of a company who alleged that she had been **sexually harassed and later fired when she complained to supervisors**. The company argued that the plaintiff was a difficult, moody employee who was having an affair with the co-worker she alleged had sexually harassed her. The company further argued that they monitored the situation and found no evidence of harassment. The jury found that the company failed to take prompt and reasonable measures to stop sexual harassment after supervisors knew about it, retaliated against her for complaining about the harassment and intentionally discriminated against her on the basis of her gender when it fired her. The jury awarded the plaintiff \$15,000 for emotional harm, distress, humiliation and embarrassment, and awarded \$50,000 in punitive damages, twice the amount that the plaintiff requested.

**\$71,000:** A female customer service rep. aspired to be promoted to salesperson status, and shared her aspirations with her supervisor. After 3 years of employment, having never been promoted, she sued the company for **gender discrimination**. In deposition, she referenced vague promises made by her supervisor; the fact that the company had hired a male supervisor during those three years; and gender related jokes made at the most recent Christmas party. The out of court settlement was for \$71,000. Attorney fees and court costs were another \$12,500.

**\$75,000:** A Circuit Court recently upheld a jury award of \$75,000 in punitive damages for **violation of the Americans with Disabilities Act** (“ADA”). Even though the supervisors who demoted and fired the plaintiff were aware of the plaintiff’s impairment and the ADA’s general requirements and that the company had an anti-discrimination policy, the supervisors had not been educated about disability discrimination. The court stated that a generalized policy of equality did not demonstrate an implemented good faith policy of educating employees on the ADA’s accommodation and nondiscrimination requirements.

**\$110,000:** A hospital agreed to pay a former nurse \$110,000 to settle a **race and disability discrimination** lawsuit filed on behalf of the nurse by the EEOC. The hospital also agreed to provide race and disability discrimination training to its supervisors and managers. The plaintiff alleged that the hospital began to give her negative performance reviews after she had a heart attack. She was placed on probation and eventually was fired when she failed to meet extraordinarily high goals that were set for her, which were tougher than those set for her white and non-disabled co-workers. The hospital denied it discriminated against the plaintiff, and stated that settling the suit was a business decision that allowed both sides to avoid mounting litigation costs.

**\$250,000:** A supermarket in Hawaii settled for \$250,000 when the plaintiff, a male clerk, was subject to **physical and verbal sexual harassment** by his male supervisor, following which the plaintiff allegedly was **terminated after complaining**.

**\$552,000:** A hotel settled for \$552,425 on a claim of a blackjack dealer that the company unlawfully discharged for absenteeism, much of which constituted FMLA (**Family Medical Leave Act**) leave for treatment for a herniated disk.

**\$850,000:** A federal jury awarded a total of \$850,000 to a quality assurance worker who alleged that he was **denied promotions at a telecommunications company in the northeast because he is Mexican-American**. He was awarded \$50,000 for lost wages and benefits, \$50,000 in general damages and \$750,000 in punitive damage.

**\$1 million:** A worker won a jury award after accusing a supervisor of persistent **sexual harassment**. The complaint alleged the employee was sexually harassed for a five year period. The jury awarded \$375,000 for emotional distress, \$550,000 in punitive damages, and \$90,000 in economic losses.

**\$1.2 million:** A jury awarded a 51 year old employee \$177,323 in lost wages, \$45,000 for emotional distress, \$1 million in punitive damages. The plaintiff alleged that he was **denied five promotions due to his age**. The positions were subsequently awarded to younger applicants. Later the plaintiff was terminated because of “poor performance and poor judgment.” After the firing, he was allegedly **harassed by a former supervisor** after the plaintiff had indicated his intent to file an age discrimination suit with the state.

**\$4 million:** Recently, a Chicago man, who allegedly was subjected to five years of a daily barrage of **racial slurs** from his boss, said he was ecstatic after securing a \$4 million verdict against his employer, a suburban industrial drum maker. Additionally, he claimed that he was **denied promotions and overtime**. The jury awarded \$900,000 for mental anguish, \$100,000 for lost wages, and \$3,000,000 for punitive damages.

**\$5.5 million:** A jury awarded \$5.5 million to a former truck driver with epilepsy. The Equal Opportunity Employment Commission (EEOC) said the **trucker unfairly lost his job and was denied comparable work after suffering a seizure**. The jury awarded \$192,000 in back pay, \$960,000 in compensatory damages, and \$4.4 million in punitive damages.

**\$21 million:** A female employee sued a mid-western automotive manufacturer, alleging she was **discriminated against because of her sex**, and was awarded \$21 million in compensatory damages. The final judgment could reach \$40 million, once prejudgment interest, mediation sanctions and attorney fees are added. The employee alleged that she was constantly harassed, and when she complained, the company documented her complaint, but failed to investigate or take remedial action.

**\$23.1 million:** A jury awarded \$23.1 million in damages to a former automotive systems and facility management executive in the mid-west who alleged that the company fired him after he told top level company officials about alleged unethical kickbacks, price fixing and unethical activities at some of the company’s operations. The plaintiff’s suit alleged **wrongful termination, breach of contract,**

**retaliation and slander.** The company's defense was that the plaintiff was terminated because he had tried to extort money from the company by writing a letter to top managers demanding millions of dollars as severance pay. Although the company's investigation found no truth to the plaintiff's allegations of unethical practices, the plaintiff did not have to prove that the unethical practices actually occurred; the issue was whether the plaintiff had a good faith belief that what he was saying was true. The jury awarded \$4.4 million for wrongful termination, retaliation, and breach of contract, \$500,000 for slander, \$17 million in punitive damages, and \$1.2 million in pre-judgment interest.



### *Multiple Employee Settlements*

*You may not have the exposure to multiple employee complaints of this magnitude, but the causes are still relevant ... very relevant!*

**\$450,000:** A meat company settled a **sex discrimination** lawsuit with six female driver managers alleging wage disparity between men and women in comparable jobs, for \$450,000 and increases in plaintiff's pay.

**\$900,000:** A southeastern restaurant with approximately 200 employees was sued by the EEOC for **sex discrimination**, without a single complaint filed by an employee or applicant. A federal district court held that its recruitment procedures, unsupervised delegation of hiring authority and subjective hiring standards had a disparate impact on women as a group. This decision was reached even though the restaurant was owned and managed by a woman, employed women in virtually every other job category, and women predominated as department heads. The restaurant argued that it had very low turnover and women rarely applied for the position that was subject of the dispute, possibly because the job required the lifting and carrying of unusually heavy food trays. The court ordered the restaurant to pay four women a total of \$150,000 in lost wages, and placed an affirmative obligation on the restaurant to remedy the "disparate impact," retaining jurisdiction for three years in order to supervise its hiring practices. The restaurant spent over \$750,000 in legal fees.

**\$1.3 million:** A class action suit filed by the EEOC against a west coast seafood company alleged that the company subjected 18 Vietnamese American workers to **discriminatory conditions because of their national origin**. The suit alleged that the company created a hostile work environment, denied training and promotional opportunities, subjected employees to undesirable living and working conditions, demoted them, and reduced pay rates and terminated crewmen for requesting time off. The suit was settled for \$1.3 million, and included an agreement by the company to implement a new program to provide equal training and employment opportunities, conduct training regarding the company's discrimination policies and procedures, and provide quarterly reports to the EEOC regarding their compliance.

**\$2 million:** A company settled a class action suit brought by job applicants who charged that **certain questions asked in a pre-employment psychological exam violated their constitutional right to privacy as well as various state labor laws.**

**\$2.3 million:** A federal judge approved a \$2 million settlement of a lawsuit filed by employees and former employees who claimed they were **discriminated against because of their race.** Plaintiff's attorney's fees amounted to an additional \$300,000

**\$2.4 million:** A university settled for \$2.4 million on a case in which 18 former housekeepers were **prohibited from speaking Spanish on the job, even at lunch, and were subjected to physical and verbal abuse when they did so.**

**\$2.6 million:** A northeastern liquor importer reached an agreement in which the company agreed to pay \$2.6 million to more than 100 female employees who alleged that they were **subjected to acts of sexual harassment** by the President of the company, as well as by other management employees and customers. In addition to the payment of monetary damages, the company agreed to take steps to prevent sexual harassment, including a 24-hour toll-free complaint line, training for all supervisors, and implementing a comprehensive policy against discrimination and sexual harassment.

**\$5.8 million:** Two female employees sued their former employer for **sexual harassment under a variety of state law torts, including intentional infliction of emotional distress and battery.** One woman was awarded \$4.85 million, including \$3.4 million in punitive damages. The jury awarded the other plaintiff nearly \$1 million, including \$925,000 in punitive damages.

**\$6.2 million:** Eleven plaintiffs shared a \$6.2 million settlement in an **age discrimination** lawsuit against a heating and cooling company, the second largest per-person settlement for an age discrimination case in the EEOC's history. The EEOC sued the company two years prior to the settlement, after it found cause to believe the company had terminated 11 of its sales managers in 1992 and 1993 because they were more than 40 years old.

**\$6.8 million:** Two former employees of a manufacturing company, who were fired after they began dating, were awarded \$6.8 million in damages by a jury which found the company **breached a contract of employment as well as an implied covenant of good faith and fair dealing.**

**\$7.1 million:** A mid-western electronics company settled a class action lawsuit alleging a **violation of the Age Discrimination in Employment Act (ADEA)** for \$7.1 million. The suit was brought by approximately 800 former employees whose jobs were moved to Mexico after the company downsized its U.S. facilities.

**\$7.5 million:** A mid-western car company agreed to pay \$7.5 million to settle claims of **racial and sexual harassment** at two plants which employed approximately 4,500 employees. More than twelve women alleged that they were groped, routinely subjected to catcalls by male co-workers, and exposed to sexually explicit posters and graffiti. In addition, the company will attempt to boost the representation of women entering supervisory positions at the two plants, has agreed to spend a projected \$10 million for diversity training of all of its U.S. employees, and must implement a performance appraisal system for supervisors which ties their responsiveness to harassment issues with the company's bonus plan. A

federal judge allowed 14 women to file a separate suit alleging race and sex discrimination, rather than accepting the agreement reached by the company and the EEOC. This could result in a much larger payout than the \$7.5 million the company agreed to pay.

**\$8 million:** A major television network agreed to pay \$8 million to 200 female plaintiffs to settle two sex discrimination lawsuits alleging a pattern and practice of **sex discrimination entailing discriminatory compensation, promotions and training, hostile environment, and retaliation for complaints.**

**\$9.9 million:** A northeastern pharmaceutical company agreed to pay \$9.85 million to settle claims that its former president and other executives **pressured women employees for sex and replaced older workers with younger, more attractive single women.** The president was later sued for \$15 million by the company to recover costs related to the EEOC investigation.

**\$10.5 million:** A supermarket chain agreed to terms of a settlement agreement providing the company would pay \$10.5 million to a class of African American employees for **discriminatory discharge and failure to promote.**

**\$19 million:** A federal jury awarded more than \$19 million to seven men who had alleged that their employer had **discriminated against them based on their age.** The men, former district managers, alleged that because older employees receive more in seniority bonuses and incur higher health care costs for the self-insured company, the men were pressured and relentlessly criticized in order to encourage retirement.

**\$96.9 million:** A computer software manufacturer agreed to pay \$96.9 million to settle two class action lawsuits by 8,000 – 12,000 **temporary workers who claimed the company hired them through temp agencies or as independent contractors to avoid paying fringe benefits.**

**\$192.5 million:** A soft drink manufacturer agreed to pay \$192.5 million and revamp human resources policies to improve diversity in settling a **race based** class action suit by about 2,000 African American employees accusing the company of **discrimination in compensation and evaluation practices, hostile environment, and other disparate treatment.**

## Questions & Answers

**Q:** *Do I have an exposure?*

**A:** Take this quick test and see. Answer each question true or false, and total the numbers of each:

- T**   **F**   We have never terminated an employee.
- T**   **F**   We do not anticipate having to terminate any employee in the future.
- T**   **F**   Our workforce composition (race, ethnicity, gender, age) closely mirrors that of the general population.

- T F** Our workforce is regularly trained in acceptable behavior toward the opposite sex.
- T F** We have a written, progressive disciplinary procedure.
- T F** We have no workers over the age of 40.
- T F** We have no employees with a disability (i.e. impaired hearing, obesity, alcohol or drug dependency, partial paralysis).
- T F** We have women and minorities in executive/management roles in the same proportion as in the general population.
- T F** We have never had a problem with an employee alleging unfair treatment.

— — **TOTAL**

***Q: What does it mean?***

**A:** 0-2 false answers – Maybe you should read no further. You are probably at low risk of employment practices charges or suits.

3-5 false answers – You are a potential target for legal action by employees who may perceive that they have been treated unfairly. Keep reading to learn more.

6-9 false answers – You are a high-risk employer for employment practices suits. Contact me immediately to learn more about Employment Practices Liability Insurance (EPLI).

***Q: Is this exposure new?***

**A:** No, but legislation in the past 10 years, plus almost continuous headlines concerning this subject, have increased public awareness. Both have resulted in a skyrocketing number of claims, and like a snowball going downhill, it just keeps getting bigger and bigger. Significant changes include:

- The Title VII of the 1964 Civil Rights Act, on which many employment practices claims alleging discrimination are based was broadened significantly in 1991. Courts also allowed punitive and exemplary damages to be awarded in employment practices cases.
- The manner in which employment related cases were handled changed dramatically. Before 1991, they were heard by a judge or magistrate. **After 1991, plaintiffs were allowed to argue their cases in front of a jury, which could include people who have been dissatisfied with their own employers.**
- Since the early 1990s, several new federal laws have been enacted that increase the employment practices exposure. These include the Americans With Disabilities Act and the Family Medical Leave Act.
- The U. S. Supreme Court meets every six months, often creating new employment practices law

(and exposures) in the process. The court's rulings in two 1998 cases (Faragher vs. City of Boca Raton and Burlington Industries Inc. vs. Ellerth) are prime examples. The decisions made employers vicariously liable for the sexual harassment of their supervisors – **whether the employers knew of it or not**. Do you know everything that's happening between your employees?

- In the late 1980s and early 1990s, numerous states enacted workers compensation reforms, compelling injured workers to rely solely on workers compensation benefits (as originally intended under the workers compensation system) and making it more difficult for them to sue their employers. As a result, cadres of plaintiff attorneys literally retrained themselves to go into another area of law that permits jury trials and potentially large awards – employment practices.

*Q: How likely is it?*

**A:** As I stated before, charges filed with the EEOC and corresponding state agencies for employment cases have more than tripled in the last ten years, and they will more than double in the next three years. Last year the federal agency that oversees this dealt with about 80,000 charges, and that's not counting the hundreds of thousands of claims filed with state and local agencies! **There's a better chance that you'll suffer a loss from this than a fire! There are now more lawsuits filed annually for this than for products liability!**

*Q: Who wants to sue me? I've done nothing wrong.*

- A:** ► Don't kid yourself. The person you would least expect will sue you. It's been proven countless times. The law of averages will catch up with you. All it takes is a good and/or hungry lawyer (certainly in abundance) and a motivated employee.
- You are correct when you say you've done nothing wrong. Often, the cases have no factual basis for a suit, yet you need competent counsel to prepare your defense. If you don't respond quickly, and prove that you have made a good faith attempt to comply with the law, everyone involved in the suit will proceed forward, and an allegation could escalate into the courts. **You do not want an allegation to evolve into a jury trial.**

*Q: Aren't most losses small?*

**A:** Yes, but there are thousands of cases each year where larger damage awards/settlements are made. Discrimination/harassment verdicts are now averaging more than \$800,000 each. Defense costs alone average \$100,000 to \$250,000 for litigated cases. **Even when the amount of each loss in excess of \$1 million is eliminated, the average plaintiff verdict is \$324,000, plus defense costs.**

*Q: How severe could an employment claim ever get?*

**A:** Liabilities associated with employment claims can be enormous. You may have heard of the huge claims paid out recently by well known companies like McDonnell Douglas (\$28 million); Mitsubishi (\$54.5 million); UPS (\$80.7 million); or really mega claims like Voice of America (\$508 million), or Coca Cola (\$192.5 million).

*Q: But don't such claims usually involve large classes with numerous employees?*

**A:** Mega claims do not always involve large classes of employees. A jury awarded \$80.7 million to just one UPS female supervisor. In that case, a male supervisor poked her in the breast during an argument and the jury wanted to send a message. The \$28 million award in the McDonnell Douglas case also involved only one former employee who claimed age discrimination. In fact, large jury awards usually involve only one, or just a few individuals. For example:

- ▶ A Michigan jury awarded \$5.5 million to a former truck driver with epilepsy when the company failed to accommodate his request to do yard work instead of driving.
- ▶ A New Jersey jury awarded \$8.8 million to just three employees laid off during a company reorganization
- ▶ A Missouri jury awarded \$4.2 million to an insurance claims adjuster in an age discrimination case.

**Q:** *The big claims you mentioned all involved large corporations. Because we are a smaller company, aren't we safe?*

**A:** No, the larger companies make the headlines, but even the smallest companies can and will have problems. While some federal laws only apply to firms of a certain size (for example, the Civil Rights Act applies to firms above 15 employees), 37 states reduce this threshold, some to as low as one employee. Employers of all sizes are liable under common law for charges of negligence or intentional tort. Employers of less than 15 employees are experiencing plaintiff verdicts in employment discrimination cases that average **\$240,000**. Employers of 50 to 100 employees are averaging just over **\$300,000** per plaintiff verdict. **Each of these figures is taken after capping judgments at \$1 million and does not include the additional cost of defense (\$100,000 to \$250,000)**. Here's an example:

- ▶ A Philadelphia jury recently returned a verdict for a plaintiff who worked at the Arc Water Treatment Company. Apparently the plaintiff was subject to national origin slurs. His boss allegedly called him "Italian reject" and "pasta brain." The jury deliberated for less than ½ hour and awarded him \$200,000 in front and back pay, \$100,000 for emotional distress and \$265,000 for his attorneys. That's \$565,000, and did not include the defendant's legal costs. Arc Water Treatment has 15 employees.

**Q:** *Don't most cases settle before verdict?*

**A:** Yes. Less than 5% of all initiated lawsuits actually go to verdict. But, the remaining 95% that receive settlements average almost \$50,000 with an almost equal amount spent on defense. Even cases for which lawsuits are never initiated, when settled during the administrative process, are averaging awards of almost \$20,000 plus significant defense expenses.

**Q:** *Don't federal laws have damage caps?*

**A:** Some do. State laws have no such caps, and as a result, companies are exposed to unlimited damages for most causes of action. There is never a cap on defense costs or on tort claims.

**Q: *We have good employment practices in place. So wouldn't we successfully defend any claim made against us?***

**A:** There are two problems with this assumption. First, the cost of successfully defending a lawsuit is high. Legal fees vary based upon geographic location and quality. **But, it is not uncommon for legal costs associated with winning an employment lawsuit (through trial) to top \$250,000!** Second, it is dangerous to assume your company is in total compliance with all employment laws given the vast amount of ever-changing workplace regulations in effect today. Recently, a jury awarded one employee \$313,000 when it found WalMart had failed to properly apply the leave provisions of the Family and Medical Leave Act. The company managed to get that jury award set aside, but it still had to deal with the damages issue and further expensive court proceedings. If a large company like WalMart has to deal with problems like that, how can you be sure your company will not be dragged into a costly – or even catastrophic – employment lawsuit?

**Q: *Isn't there coverage under my General Liability, Workers Compensation, or Umbrella policies?***

**A: No.** Employment Practices Liability is specifically excluded on these policies. The exposure is much too big, requiring a separate policy, premium, and underwriting.

**Q: *Are you going to tell me I need to buy another insurance policy?***

**A: Yes. I think you absolutely, positively, need to buy Employment Practices Liability Insurance ... NOW!!!**

- ▶ **EPLI is no longer just “nice to have.”** It's every bit as important and necessary as fire insurance and products liability insurance. Remember, you're now more likely to have an employment practices claim than a fire or product lawsuit, and you have insurance protection for those two risks.
- ▶ The average award is greater for employment practice claims than vehicular or premises liability claims, and you wouldn't dream of not insuring those two exposures.
- ▶ Most businesses carry, at the least, four standard policies:
  1. Property/Liability Package (building, contents, premises liability, products liability, computers, business interruption, etc.)
  2. Auto
  3. Workers Compensation
  4. Liability Umbrella
- ▶ **The times now dictate that a fifth policy be added to the Big Four ...**

### **EMPLOYMENT PRACTICES LIABILITY INSURANCE**

**Q: What do I get when I buy EPLI?**

**A: The better policies will give you three layers of protection:**

1. You now understand the gravity of this epidemic, but, like most employers, you and your management team have no clue with respect to the legal “dos and don’ts” of employment law. How do you stop this nightmare from becoming a reality in your business? Sometimes the best offense is a good defense! **Your best line of defense is prevention, and knowledge is the key to prevention. A good policy will offer risk management benefits like:**
  - Training in workplace practices, policies, and procedures for management and employees.
  - Model employment policies and forms that you can customize.
  - Access to employment law facts, changes, and issues.
  - Unlimited access to a toll-free hotline to receive free general guidance from an attorney who specializes in employment law. **This alone is worth the price of admission (or premium)!**
2. Speaking of defense, **an EPLI policy is your defense attorney!** If an allegation is groundless, which many are, you’ll still pay \$20,000 or more just in defense costs. If it goes to a jury trial, you’ll be looking at \$100,000 to \$250,000 in defense costs.
3. If you settle in or out of court, the policy will pay the settlement and defense costs up to the limit you choose. Typical limits are \$500,000 and \$1,000,000 (higher limits are available). Like your other policies (auto, products, premises, workers compensation), you should choose a minimum of \$1,000,000 for EPLI.

**Q: Is EPLI expensive?**

**A: I have several ways of answering this question.**

1. How expensive would it be to not have it?
  - ▶ Going naked on this exposure could destroy your business. **Remember the average jury verdict is \$800,000 plus another \$100,000 to \$250,000 for defense costs.** Also, there are a lot more \$1 million plus settlements for employment practices than auto or premises claims.
  - ▶ Consider what you must do to prepare and defend even a groundless allegation against you or your company:
    - Legal Bills – The average legal bill for defending a groundless employment case is estimated to be \$20,000 minimum. Most attorneys specializing in employment law earn around \$300 per hour. Asking a law firm to just open a file can cost \$3,000.

- Finding and Engaging Expert Counsel – Without coverage, you would have to dig deeply into your work time to organize and manage a case.
  - Preparing the Case – Without EPLI claims management specialists, you would have to be the liaison with the counsel you engaged and perform the leg work to help prepare the case. All in all, you would lose countless hours of management time away from your business, not to mention the emotional drain on you and other members of your staff.
2. Depending on how many employees you have, the premium can be comparable to what you now pay to insure a few vehicles, or a building, or products liability.
  3. This has developed into a major form of protection, and isn't some obscure coverage that's just thrown onto your package policy for a few hundred bucks. **The reason is the insurance industry is experiencing big claims, and plenty of them.**
  4. Like it or not, the Employment Practices issue is an added cost of doing business in the new millenium. It's a cost whether you face it alone, or with the protection of an insurance policy. **Of the two choices, I think the insurance policy is a much easier and cheaper option.**

***Q: I'm still not sure I really need this. What can I do to get off the fence?***

- A:** ▶ Talk to your attorney. He/she will certainly give you a good idea on how financially devastating a jury trial can be to a company your size.
- ▶ Read the newspaper and your industry publications. Employment practices suits are making the Headlines day in and day out.
- ▶ Read this report again, paying close attention to the statistics and the multitude of examples.

***Bottom Line...***  
***When you consider the above points, EPLI coverage is  
 "must have" protection at any price!***

***As mentioned at the beginning of the report,  
 here is some updated information from Travelers & The EEOC***

- ▶ According to the chart below, there were 95,402 claims filed in 2008, which is a **26% increase in just three years.**
- ▶ Retaliation is the fastest growing type of employment claim.
- ▶ A plaintiff in any employment suit has a **75% chance of winning.**
- ▶ In 2005, the average award was \$957,000.
- ▶ If a plaintiff wins, they have an **18% chance of a verdict of \$1 million or more, a 25% chance of**

**\$500,000 or more, and a 49% chance of a verdict of \$250,000 or more.**

- ▶ It's not uncommon for legal fees associated with winning an employment lawsuit to be **in excess of \$250,000.**

You've already seen plenty of claim examples, but there's one more you should see. **It just shows how ridiculous this new "cash cow" has gotten.**

**\$455,000**

### **You've Got To Be Kidding**

An employee who voluntarily admitted having a substance abuse problem won his wrongful termination case. Finding that the termination was a violation of the American with Disabilities Act (ADA), the jury awarded over \$105,000 in past earnings, \$100,000 in front pay, as well as another \$250,000 for mental anguish. The company had only 19 employees.

The information on the next page was taken from the website of the U. S. Equal Employment Opportunity Commission (EEOC) on March 13, 2009. At the time, the information had just been updated by the EEOC two days before. The number for total charges reflects the number of individual charge filings. Because individuals often file charges claiming multiple types of discrimination, the number of total charges for any given fiscal year will be less than the total of the eight types of discrimination listed.

The data are compiled by the Office of Research, Information and Planning from data reported via the quarterly reconciled Data Summary Reports and compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

Red shaded boxes are the most popular category for the year, yellow for second most popular, and green for third.

- Notice how race discrimination is number one every year.
- Sex discrimination was number two until 2007.
- Retaliation has taken over second place in the last two years.

### *Employment Practices Charge Statistics For 1997 Through 2008*

	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
<b>Total Charges</b>	80,680	79,591	77,444	79,896	80,840	84,442	81,293	79,432	75,428	75,768	82,792	95,402
<b>Race</b>	29,199	28,820	28,819	28,945	28,912	29,910	28,526	27,696	26,740	27,238	30,510	33,937
	36.2%	36.2%	37.3%	36.2%	35.8%	35.4%	35.1%	34.9%	35.5%	35.9%	37.0%	35.6%
<b>Sex</b>	24,728	24,454	23,907	25,194	25,140	25,536	24,362	24,249	23,094	23,247	24,826	28,372
	30.7%	30.7%	30.9%	31.5%	31.1%	30.2%	30.0%	30.5%	30.6%	30.7%	30.1%	29.7%
<b>National Origin</b>	6,712	6,778	7,108	7,792	8,025	9,046	8,450	8,361	8,035	8,327	9,396	10,601
	8.3%	8.5%	9.2%	9.8%	9.9%	10.7%	10.4%	10.5%	10.7%	11.0%	11.4%	11.1%
<b>Religion</b>	1,709	1,786	1,811	1,939	2,127	2,572	2,532	2,466	2,340	2,541	2,880	3,273
	2.1%	2.2%	2.3%	2.4%	2.6%	3.0%	3.1%	3.1%	3.1%	3.4%	3.5%	3.4%
<b>Retaliation - All Statutes</b>	18,198	19,114	19,694	21,613	22,257	22,768	22,690	22,740	22,278	22,555	26,663	32,690
	22.6%	24.0%	25.4%	27.1%	27.5%	27.0%	27.9%	28.6%	29.5%	29.8%	32.3%	34.3%
<b>Retaliation - Title VII only</b>	16,394	17,246	17,883	19,753	20,407	20,814	20,615	20,240	19,429	19,560	23,371	28,698
	20.3%	21.7%	23.1%	24.7%	25.2%	24.6%	25.4%	25.5%	25.8%	25.8%	28.3%	30.1%
<b>Age</b>	15,785	15,191	14,141	16,008	17,405	19,921	19,124	17,837	16,585	16,548	19,103	24,582
	19.6%	19.1%	18.3%	20.0%	21.5%	23.6%	23.5%	22.5%	22.0%	21.8%	23.2%	25.8%
<b>Disability</b>	18,108	17,806	17,007	15,864	16,470	15,964	15,377	15,376	14,893	15,575	17,734	19,453
	22.4%	22.4%	22.0%	19.9%	20.4%	18.9%	18.9%	19.4%	19.7%	20.6%	21.4%	20.4%
<b>Equal Pay Act</b>	1,134	1,071	1,044	1,270	1,251	1,256	1,167	1,011	970	861	818	954
	1.4%	1.3%	1.3%	1.6%	1.5%	1.5%	1.4%	1.3%	1.3%	1.1%	1.0%	1.0%

**If the preceding chart isn't scary enough,  
remember it doesn't even include the  
hundreds of thousands of claims filed with state and local agencies  
and it doesn't include the cost to defend.**

- ▶ You're now more likely to have an employment practices claim than a fire or product lawsuit, and you have insurance protection for those two risks.
- ▶ The average award is greater for employment practice claims than vehicular or premises liability claims, and you wouldn't dream of not insuring those two exposures.
- ▶ A plaintiff in any employment suit has a **75% chance of winning.**
- ▶ Going naked on this exposure could destroy your business. **Remember the average award is \$957,000 plus another \$100,000 to \$250,000 for defense costs.** Also, there are a lot more \$1 million plus settlements for employment practices than auto or premises claims. Can your business afford a million dollar hit?

**These Four Points Alone Should Persuade You To Call Us Immediately  
To Get Your Employment Practices Liability Insurance Protection  
Call Today at (630) 985-9700**

