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INSURANCE ISSUES FOR HUMAN RESOURCES PROFESSIONALS

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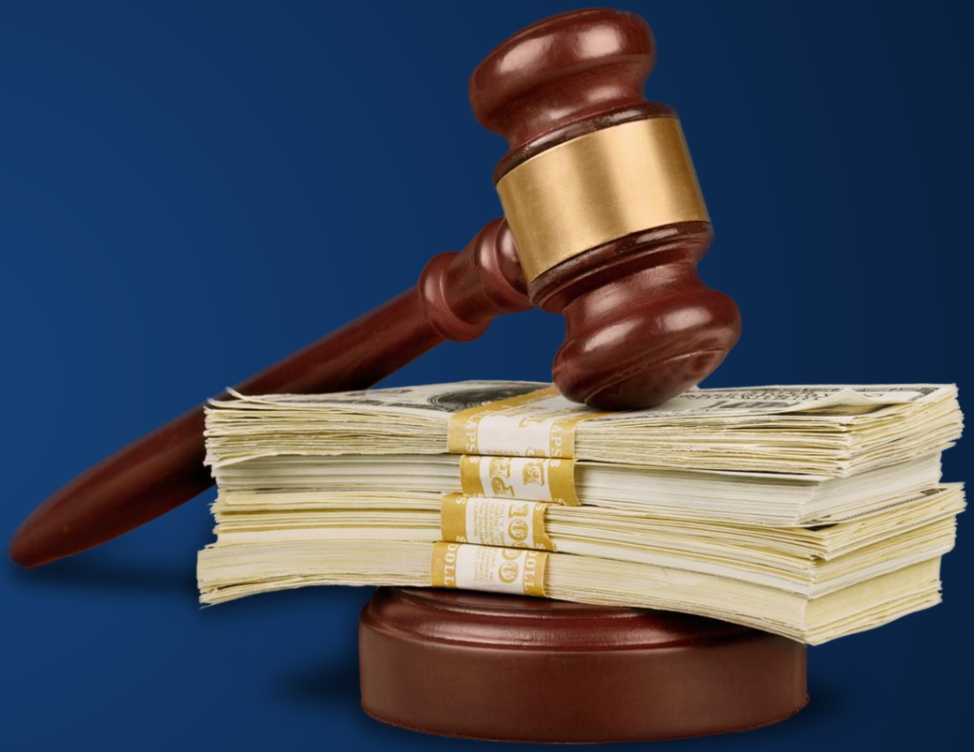
Overview

- Trends in workers' compensation insurance: litigation funding and excess awards
- Employment Practices Liability insurance: new risks, including AI and DEI
- Cyber Liability Insurance: integration with Human Resources

LITIGATION FUNDING AND WORKERS' COMPENSATION CLAIMS

INTRODUCTION TO LITIGATION FUNDING

- Funds for covering legal fees and living expenses while a case is pending
- Provided in exchange for a portion of a worker's potential future settlement
- If the worker loses the case, they are not required to repay the advance



MARKET OVERVIEW

- The global litigation funding investment market was valued at $19.0–20.64 billion in 2024–2025
- Estimated growth rate of 8-14% through 2036

KEY GROWTH DRIVERS

1. Rising litigation costs and complexity.
2. Increased awareness and acceptance by corporate and legal firms.
3. Institutional investor participation (pension funds, hedge funds, sovereign wealth funds).
4. Regulatory shifts and growing transparency in funding frameworks.

KEY TRENDS IN WORKERS' COMPENSATION

- Lost-time claim frequency declined by 5% in 2024
- The long-term average annual decline is 3.6%
- Medical and indemnity severity increased by 6% in 2024
- Net written premium decreased 3% to $41.6 billion in 2024

LITIGATION IN WORKERS' COMPENSATION

- According to the 2025 Annual Workers' Compensation Industry Insight Survey, 61% of survey participants cited litigation as the top challenge facing the industry
- Effects of Attorney Involvement:
  - Increased the median claim duration from 305 days to 901 days
  - Increases expense payment by 200% and increases lost time days by 284%
- Newer employees more likely to hire attorneys

WHY ARE WORKERS SEEKING LEGAL REPRESENTATION?

From WCRI Research:

- Fear of being fired when injured (48%)
- Concern that their supervisor questions the legitimacy of the claim (42%)
- Belief that the payer/insurer has denied the claim (46%)

Additional Factors:

- Difficulty navigating the workers' compensation system
- Lack of communication from employer or insurer/adjuster
- Denial or delay of prescribed medical treatment
- Loss of employer-paid health insurance during claim period
- Lack of modified work duty opportunities

IMPACT OF LITIGATION FUNDING ON EMPLOYERS

- Increased claim duration and costs
- Impact on workers' compensation premiums
- Insurance premiums increasing
- Employer lobby groups are seeking increased regulation
- Complete capital loss risk for funders
- Eroded investor confidence and reduced capital efficiency

EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI) – CURRENT TRENDS

EPLI FUNDAMENTALS

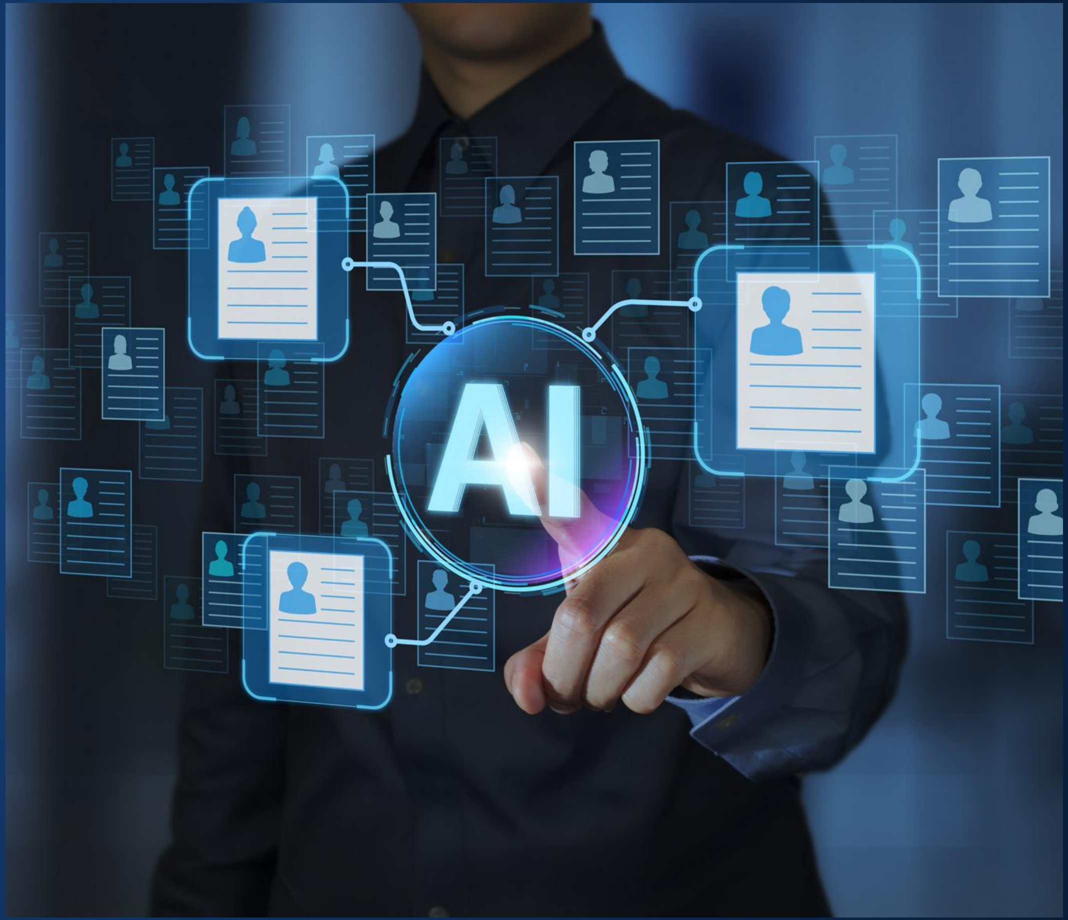
- EPLI protects businesses against claims by employees alleging violations of their legal rights
- Policies typically cover defense costs, settlements, and judgments arising from employment-related claims
- Defending wrongful employment practices claims has become increasingly costly

AI AND EPL ISSUES

- According to the Society for Human Resource Management's 2025 survey, over 50% of employers now use AI in recruiting.
- AI is being implemented across several HR processes: Resume screening, candidate assessments, video interviews, performance management, compensation decisions.
- Legal risks: algorithmic discrimination and disparate impact.

DISPARATE IMPACT

- A policy or practice that seems neutral on its face but ends up disadvantaging a protected group
- The EEOC has warned that automated decision-making tools fall under the same anti-discrimination laws as traditional practices
- Mobley v. Workday - Age Discrimination Case



STATE-LEVEL AI REGULATION

- Illinois' Artificial Intelligence Video Interview Act requires employers to disclose when AI is being used in video interviews and to obtain applicant consent
- New York requires permission before a company can use AI-generated likenesses of employees
- California and Colorado now require companies to be transparent about when and how AI influences hiring decisions

EMPLOYER LIABILITY AND INSURANCE COVERAGE

- Employers remain responsible for compliance with anti-discrimination and privacy laws.
- EPLI policies may not cover certain AI-related claims
- Contracts with vendors should be explicit about risk allocation.
- Use of AI should not prevent coverage through EPLI policies.

KEY AI-RELATED EPLI CONCERNS

- AI for HR purposes is among the areas most likely to lead to employment-related claims.
- Risk mitigation strategies:
  - Conduct regular bias audits of AI tools
  - Require human review of AI-generated outputs
  - Train HR professionals to identify and respond to AI red flags
  - Implement stronger employee education and training

EPL AND THE SHIFTING DEI LANDSCAPE

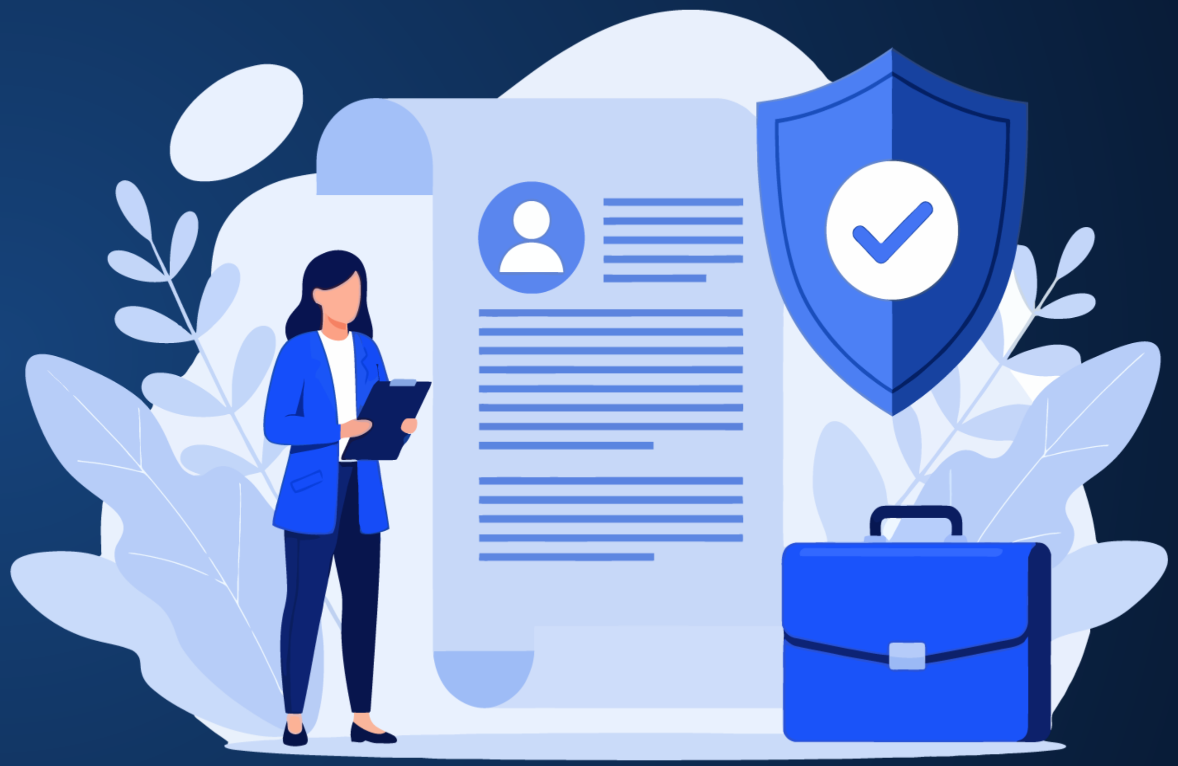
- DEI initiatives have prompted lawsuits claiming reverse discrimination against majority-group employees.
- Federal regulatory and executive actions
  - January 21, 2025 - Executive Order 14173
  - March 19, 2025 - the EEOC and the Department of Justice jointly issued guidance regarding certain DEI initiatives and violating Title VII of the Civil Rights Act of 1964
  - June 5, 2025 - Ames v. Ohio Department of Youth Services

EPL AND MANAGING THE RISK

- Review and update coverage
- Insurance coverage that can respond to AI and DEI risks
- Other relevant policies may include:
  - Commercial General Liability (CGL)
  - Directors and Officers (D&O)
  - Errors and Omissions (E&O)
  - Cyber Insurance

GENERAL EMPLOYMENT BEST PRACTICES

- Update and enforce hiring, evaluation, termination, and remote work policies.
- Provide regular training on harassment, discrimination, and compliance.
- Document employee disputes and corrective actions.
- Consult with legal counsel to navigate potentially conflicting state and federal requirements.



CYBER LIABILITY INSURANCE AND HUMAN RESOURCES

WHY HR IS A CYBERSECURITY PRIORITY

- **The vulnerability of HR Data**
  - Human Resources represents one of the most vulnerable cyber areas of any business
  - HR data found in 82% of data breaches
  - Social Security numbers, banking information, medical records, and personal identifiers
  - Organizations frequently retain more HR data than necessary

CAUSES OF DATA BREACHES

- The Human Element
  - Phishing, password mismanagement, or simple mistakes
- Internal and external threats
  - Disgruntled employees or human error stemming from a lack of defense training
  - Sophisticated attacks where cybercriminals target organizations through HR systems

UNDERSTANDING CYBER LIABILITY INSURANCE

- What cyber liability insurance covers
  - Online Incidents, including Data Breaches, Ransomware Attacks, and Phishing Scams
  - First-party cyber liability insurance covers losses sustained directly by the business during an attack
  - Third-party cyber liability insurance protects businesses from claims made by affected parties

COVERAGE

Covered

- Customer/employee notifications
- Data recovery
- System damage repair
- Legal defense
- Credit monitoring
- Crisis management

Not Covered

- Poor security processes
- Breaches prior to policy purchase
- Human error from employees
- Insider attacks
- Preexisting vulnerabilities
- Technology system improvements

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QUESTIONS

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