

THE EMPLOYMENT LAWS CONTINUE TO EVOLVE

How can the larger BuyHere/PayHere operations protect themselves as the employment laws continue to evolve? More importantly, do they need to protect themselves? Is all the talk of Employment Practices Liability insurance simply more hype from the insurance companies in an attempt to line their coffers with premium dollars not likely to be used to pay claims?

Let me tell you a story to help you decide.

Have you ever heard of Lilly Ledbetter? Her name was all over the news a few years back and became one for history books when President Obama signed the Lilly Ledbetter Fair Pay Restoration Act of 2009. It's that law that restarts the statute of limitations every time a paycheck is issued on a discriminatory basis. Let me remind you of how it all began:

Lilly was a supervisor working for Goodyear Tire Company in their corporate offices. She worked there from 1979 until she retired in 1998. Just before her retirement became official, someone anonymously alerted her to some facts and figures. In short, they gave her hard copy information proving her male co-workers earned substantially more than she did in spite of tenure, job duties, and glowing employee reviews. She sued, won her case in District Court, only to have it overturned by a Court of Appeals and ultimately by the Supreme Court.

Her case was dismissed because of the 180-day statute of limitations applicable to any alleged unlawful employment practice. Lilly claimed that every time she was given a paycheck, a new statute of limitations was established, while the court held that the statute began on the date the pay level was established. The Act made Lilly's line of reasoning the new law of the land: Employee compensation is almost always confidential and difficult to determine and therefore should not be subject to the 180-day statute.

So, what does that have to do with dealers who employ ten-plus employees? It is true that dealers, like all employers, are more aware of gender bias, diversity issues, sexual harassment, discrimination, etc. Likewise, employees are more cognizant to their rights under the law, or what they think their rights might be. What appears to be a non-issue today, might not be tomorrow. Some of the buzz in the insurance halls is whether or not there will be a federal statute put in place regarding workplace bullies! In fact, ten states are considering laws that would outlaw bullying in the workplace. As of today, I'm unaware of any law or legal recourse available to an employee who might claim they have been bullied. Although it's impossible to forecast the future, my bet is that plaintiff attorneys are already fine-tuning their advertisements to hit the TV airwaves as soon as some state passes a statute protecting workers from workplace bullying.

My point is that each small to medium employer must make their own informed decision as to whether or not Employment Practices Liability insurance is appropriate to their operation. Lots of things go into that decision. Among them are:

- What is the insurance budget for that year?
- How many employees?
- How were the employees chosen? In other words, did you run background checks? Are they family members or friends, more than they are employees? Are they seasonal? Did you hire 'off the street' so to speak?
- Is your operation a sole proprietorship, partnership, limited liability corporation, C corporation, what?
- Have you discussed with your attorney your exposure to lawsuits brought by employees?

EPL insurance should not be a Texas independent auto dealer's first consideration when establishing his insurance portfolio, but it should be on the radar. I urge you to find the time to sit down with your insurance counselor and review all of your business' exposures to determine where best to spend your insurance dollars.

Please call, e-mail or fax to me any insurance questions and/or concerns. This column belongs to you, and I enjoy working for Texas independent auto dealers.
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