

# CONDUCTING INTERNAL INVESTIGATIONS

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DECEMBER 11, 2023

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# TOPICS

- Coverage & claims
- Conducting workplace investigations
- Member codes of conduct and investigations
- Implementing best practices
- Q & A

# WHY ARE WE HERE?



**EPL tied for  
#2 in claims filed  
for 2023**



**EPL claims  
decreased 21%  
over 2022**

*Data as of 11/1/23*

# CLAIMS HISTORY - 2023

- 4 Wrongful Termination
- 3 Discrimination
- 1 Retaliation
- 1 Hiring Decision

*Data as of 11/1/23*

# ARE WE COVERED?

## NAR Institutes, Societies & Councils

- State and Local Chapters
- Subsidiaries

## State and Local REALTOR® Associations

- Charitable Foundations
- Political Committees
- Educational Endeavors

## MLSs wholly-owned by two or more Associations

# ARE WE COVERED?

**Directors & Officers**

**Committee Members**

**Employees**

*While acting within  
the scope of their  
duties on behalf of  
the insured entity.*



- SPOILER ALERT -

**INTERNAL INVESTIGATIONS  
ARE NOT COVERED BY THE  
NAR POLICY**

# ARE WE COVERED?

## Employment Practices Liability (EPL):

- Employment-related discrimination;
- Employment-related harassment, including gender, racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based
- Harassment, or unlawful workplace harassment, including workplace harassment by any nonemployee;
- Abusive or hostile work environment;
- Wrongful dismissal or discharge or termination of employment, whether actual or constructive;
- Breach of an actual or implied employment contract;
- Wrongful deprivation of a career opportunity, wrongful failure or refusal to employ, promote, or grant tenure, or wrongful demotion;



# ARE WE COVERED?

## Employment Practices Liability (EPL), contd.

- Employment-related defamation, libel, slander, etc.;
- Wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures;
- Wrongful discipline;
- Employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;
- Retaliation;
- Negligent evaluation; or
- Negligent hiring, supervision, retention or training.

**Claim limit is \$500,000 per claim.**

# ARE WE COVERED?

## Exclusions:

- Claims arising from Worker's Compensation Law, Unemployment Compensation Law, Employers Liability Law, Disability Benefits Law.
- Claims attributable to the administration of, participation in contributions to, or payments from any pension or benefits plan or trust fund.
- Claims for wages, salaries, commissions, fees, bonuses, promotions, profit sharing, pensions or other employee benefits earned in the normal course of employment.



**LISA GARRETT, ESQ.**

Dentons Cohen Grigsby  
Chubb EPL Panel Counsel

# Employment Practices: Conducting Internal Investigations

1. Recent Trends

2. Importance of Anti-discrimination/Anti-harassment Policies

3. Investigation Best Practices

## Recent Trends

- U.S. Equal Employment Opportunity Commission (EEOC) which is the federal agency that enforces federal anti-discrimination laws (e.g., Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, etc.) has been more active.
- The EEOC is filing more lawsuits against employers. EEOC's initial data for FY2023 (ended September 30<sup>th</sup>) shows that the EEOC filed 143 lawsuits which was a 50% increase over the number of cases filed in FY2022.

# Recent Trends continued

- The EEOC issued Proposed Enforcement Guidance on Harassment in the Workplace on September 29, 2023, with a 30-day comment period. If it becomes final, it would be the EEOC's first update on harassment since its "Enforcement Guidance on Vicarious Liability for Unlawful Harassment by Supervisors" issued in 1999 after the U.S. Supreme Court's decisions in Faragher-Elterth.
- Increased reports of discrimination/harassment in the form of antisemitism and Islamophobia.
- Increased instances of employers receiving complaints from outside channels, e.g., members of the public or activist groups, open letters posted on social media, etc.

# Importance of Anti-discrimination/ Anti-harassment Policies

- Ensure legal compliance for employers.
- Under certain circumstances, enable an employer to assert an affirmative defense to claims of harassment by a supervisor.
- Articulate prohibited conduct, identify reporting procedures, advise employees that complaints of harassment will be investigated and if substantiated that effective corrective action will be taken.
- Establish and maintain a dignified workplace free of harassment which helps foster accountability, productivity, commitment and a feeling of safety for employees, among other things.

# Investigation Best Practices

- Once it has notice of potentially harassing conduct, an employer is required to take reasonable corrective action to prevent conduct from continuing which includes conducting a prompt and adequate investigation and taking appropriate action based on the investigation findings.
- Understand when an investigation is warranted.
- Determine whether intermediate steps are necessary while investigation takes place.
- Investigation should commence promptly.
- An adequate investigation is one that is sufficiently thorough to arrive at a reasonably fair estimate of truth.



# Investigation Best Practices continued

- Investigator should be impartial and well trained in skills for interviewing witnesses and evaluating credibility; certain situations may warrant engaging outside legal counsel or HR consultants to perform the investigation.
- Investigator should form a conclusion and determine whether there has been a violation of policy or the law.
- If conclusion warrants corrective action, determine the level needed to effectively eliminate conduct. With respect to employees, corrective action could take the form of counseling, written discipline, additional training, suspension or separation from employment, depending on the circumstances. With respect to non-employees, corrective action may warrant different approach.

# Investigation Best Practices continued

- Inform the complainant and alleged harasser of the investigation findings and whether corrective action will be taken, and if so, what type.
- Check in with employees. Are remedial measures working? Make sure there's no retaliation for engaging in protected activity (i.e., reporting harassment, participating in the investigation, filing a charge/complaint of discrimination with a federal/state/local enforcement agency).
- If receive a report of retaliation investigate and address appropriately.



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# RESOURCES

## **NAR RESOURCES – GENERAL EMPLOYMENT**

**[Employer/Employee Guidelines](#)**

**[HR for Associations](#)**

**[Human Resources Toolkit](#)**

**[Employment Practices Legal Hotline](#)**

## **NAR RESOURCES – HARASSMENT**

**[Good Sense Governance – Harassment](#)**

**[Preventing and Addressing Sexual Harassment](#)**

**[Sample Anti-Harassment Policy](#)**

**[Best Practices for Internal Harassment Investigations](#)**

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**[Best Practices for Internal Harassment Investigations](#)**



## EPL ASSIST™

- Access to EPL Assist™ website (registration required).
- **No cost, live hotline** and email access to a legal expert at Littler Mendelson, dedicated to Chubb insureds.
- Library of online employment law resources, information and training videos.
- Employment law updates, and much more.



The screenshot shows the Littler EPL ASSIST website interface. At the top, there is a navigation bar with the Littler logo, links for Home, Littler GPS\* - 50 State Surveys, ComplianceHR, and Logout, a green bar with 'Free Hotline: 1-888-' and an email icon, and the CHUBB logo. Below this is a secondary navigation bar with 'Documents & Templates', 'Forms & Notices', 'Reference', 'Learning', 'News & Analysis', and a search bar. Three blue arrows point from the 'STATE INFO', 'VIDEOS', and 'HOTLINE' boxes below to the 'Documents & Templates', 'Learning', and 'Search' links respectively. The 'Documents & Templates' section is expanded to show four categories: Onboarding, Continuing Employment, End of Employment, and General Guidance. Each category has a list of sub-resources. Below the main content area are four expandable sections, each with a plus icon and the category name: Onboarding, Continuing Employment, End of Employment, and General Guidance.

**Littler** Home Littler GPS\* - 50 State Surveys ComplianceHR Logout Free Hotline: 1-888- CHUBB

Documents & Templates Forms & Notices Reference Learning News & Analysis Search

**Documents & Templates**

**STATE INFO** **VIDEOS** **HOTLINE**

**Onboarding**  
Pre-Hire Resources  
Hiring Resources

**Continuing Employment**  
Template Policies  
Performance Management  
Time Off and Leaves of Absence  
Wages, Hours and Pay Practices

**End of Employment**  
Termination Resources

**General Guidance**

⊕ Onboarding

⊕ Continuing Employment

⊕ End of Employment

⊕ General Guidance

## To register for EPL Assist™

1. Visit [www.EPLAssist.com/user/register](http://www.EPLAssist.com/user/register).
2. Enter your contact information and the name of your association or MLS.
3. Enter the policy number MPB G23658240 016.

\*If you register in 2024, enter policy number MPB G23658240 17

***It may take up to a week to receive account approval.*** You will receive an email with information on how to log in and set a password.

# QUARTERLY RISK REPORT

Available at  
[nar.realtor/nar-insurance-program](https://nar.realtor/nar-insurance-program)



# QUARTERLY WEBINARS

Available on  
[nar.realtor/nar-insurance-program](https://nar.realtor/nar-insurance-program)

## Session Replays



October 6, 2023  
**Financial Guardrails for Associations**



June 23, 2023  
**Antitrust for Associations**



March 24, 2023  
**The Impact of DEI on Risk Management**



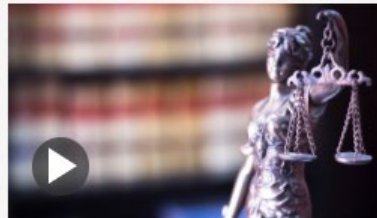
December 8, 2022  
**Trending Employment Law Issues**



September 15, 2022  
**Cybersecurity: Risk & Opportunities for...**



June 10, 2022  
**ADA Websites: What Associations Need to Know**



March 25, 2022  
**Defending Professional Standards Decisions in Court**



December 10, 2021  
**Employment Law: COVID and Beyond**



September 21, 2021  
**Copyright: Best Practices to Avoid Costly Claims**

## **MORE INFORMATION**

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NAR INSURANCE PROGRAM

**[nar.realtor/nar-insurance-program](https://nar.realtor/nar-insurance-program)**

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# THANK YOU.



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