

TRENDING EMPLOYMENT LAW ISSUES

December 6, 2022

Featuring:

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NAR Deputy General Counsel and Vice
President of Legal Affairs and Antitrust
Compliance

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TOPICS

- Coverage & claims
- Discrimination and harassment
- Current trends in discrimination laws
- Sexual harassment investigations
- Q & A

Photo by [Damir Kopezhanov](#) on [Unsplash](#)

WHY ARE WE HERE?



**EPL claims ranked
#1 in claims filed
for 2022**

Data as of 12/1/22.



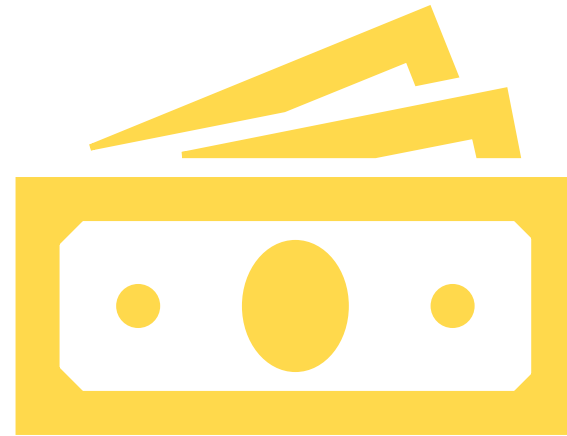
**EPL claims
increased 88%
over 2021**

WHY ARE WE HERE?



**EPL claims comprise
38% of all claims
in 2022**

Data as of 12/1/22.



**EPL claims payments
increased 120% from
2017 to 2019**

CLAIMS HISTORY - 2022

- 7 Discrimination
- 6 Harassment
- 4 Wrongful Termination
- 2 Hostile Work Environment
- 1 Breach of Employment Agreement

Data as of 12/1/22.

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 and operated 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.*

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.



JONATHAN D. ASH, ESQ.

Fox Rothschild | Chubb EPL
Panel Counsel



LESLEY MUCHOW

NAR Deputy General Counsel AND
Vice President of Legal Affairs
and Antitrust Compliance



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](#)

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.



EPL ASSIST™

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

Onboarding

Pre-Hire Resources

Hiring Resources

VIDEOS

Continuing Employment

Template Policies

Performance Management

Time Off and Leaves of Absence

Wages, Hours and Pay Practices

HOTLINE

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.
2. Enter your contact information and the name of your association or MLS.
3. Enter the policy number MPB G23658240 015.

*If you register in 2022, enter policy number MPB G23658240 016.

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 on
nar.realtor/nar-insurance-program

NAR INSURANCE PROGRAM
QUARTERLY RISK REPORT
Q3 2022

IN THE SPOTLIGHT:
WORKPLACE SAFETY

A safe workplace is sound business. By keeping staff safe, associations and MLSs can reduce the risk of worker compensation claims and foster a positive and safe work environment.

Employers have a legal responsibility to provide a workplace that is safe and free from serious, recognized hazards that are likely to cause serious physical harm. Workplaces must comply with the standards, rules and regulations issued by [OSHA](#) and applicable state agencies.

To ensure OSHA compliance, a good first step is engaging in a [risk assessment](#) to identify any known or serious hazards in the workplace. Working with a local expert can help identify hazards, and provide vulnerability assessments and risk mitigation strategies. Human-caused hazards like crime and workplace violence can be more difficult to predict.

The National Institute for Occupational Safety and Health (NIOSH) defines workplace violence as the act or threat of violence, ranging from verbal abuse to physical assaults, directed toward people at work or on duty.

In 2017, OSHA concluded that failure to recognize workplace violence hazards could violate the general duty clause. Therefore, in addition to the physical safety of the conditions an employee works in, associations should also think about what measures they can take to be proactive about the potential for other threats to employees' safety, including workplace violence.

CLAIMS REPORTED: 8
7 active demands/lawsuits and 1 potential claim

- 3 Employment
- 1 Professional Standards
- 1 Antitrust
- 1 MLS
- 1 Defamation
- 1 Crime Loss

OSHA has determined that threats of workplace violence arise from crime; individuals served by the business, such as members; current and former employees; and individuals connected with employees.

Additionally, according to [OSHA guidance](#), these employment situations may pose higher risks of workplace violence:

- Duties that involve the exchange of money.
- Working alone or in small numbers.
- Working late at night or during early morning hours.
- Working in high-crime areas.
- Working in a location with uncontrolled public access to the workplace.

By being proactive, employers can mitigate the risk of workplace violence. Some states even require employers to create a workplace violence prevention plan, and to train their employees on the plan.

The NAR Insurance Program provides professional liability and limited patent coverage to all eligible associations, affiliates, and MLSs.

NATIONAL ASSOCIATION OF REALTORS®

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ANNUAL MAILING

COMING EARLY JANUARY 2022

Mail
Email
nar.realtor

*Excess purchase period is
January 7 – April 3, 2023*

HELP! WE'VE BEEN SUED OR SOMEONE HAS
THREATENED TO SUE. WHAT SHOULD I DO?



EXCESS COVERAGE APPLICATION INSTRUCTIONS

ASSOCIATION PROFESSIONAL LIABILITY INSURANCE POLICY

(Association Directors' and Officers' and Errors and Omissions Coverage)

NATIONAL ASSOCIATION OF REALTORS®

(A National Professional Trade Association herein called "Named Insured")



NATIONAL ASSOCIATION *of* REALTORS®

CHUBB®

THIS IS A **CLAIMS MADE POLICY**. PLEASE REVIEW THE POLICY CAREFULLY. THE POLICY IS LIMITED FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD UNLESS, AND TO THE EXTENT, THE EXTENDED REPORTING PERIOD OPTION APPLIES.

Master APLI Policy

Duplicate copy of Master APLI Policy MPB G23658240 014 issued to the National Association of REALTORS® in Illinois, the original of which is on file and available for inspection at the headquarters office of the National Association of REALTORS®, 430 N. Michigan Avenue, Chicago, Illinois

POLICY EFFECTIVE 12:01 AM JANUARY 1, 2021 – 12:01 AM JANUARY 1, 2022.

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APRIL 1, 2021.

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rely on the appointed

compliance with NAR

local REALTOR®



MORE INFORMATION

NAR INSURANCE PROGRAM

nar.realtor/nar-insurance-program

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THANK YOU.



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THAT'S WHO WE 

 NATIONAL
ASSOCIATION OF
REALTORS®