

## **Legal Defense Benefit (LDB) Frequently Asked Questions**

As a client of ADP TotalSource, Inc. (TotalSource), your company may be entitled to the Legal Defense Benefit (LDB) to help cover attorney's fees for an employment practices claim arising from an incident that occurred during the term of the Client Services Agreement (CSA). It is a valuable benefit provided by TotalSource to back up the guidance we provide to our clients.

Because we want to help ensure that your company obtains this benefit, it is important that clients review this document in its entirety. While the following list of questions is not all-inclusive, it does address some of the most frequently asked questions of this contractual benefit. If you would like further information regarding the LDB, please contact your Human Resource Business Partner (HRBP).

### **Q1: When is an LDB determination made?**

The LDB is a contractual benefit governed by your CSA in order to help protect your company's financial interests. A determination as to whether your company is entitled to the LDB will be made under the following circumstances:

- The Equal Employment Opportunity Commission or state equivalent decides to conduct an on-site investigation into a Charge of Discrimination, or your company chooses to mediate a Charge of Discrimination,
- your company receives a demand letter,
- your company receives a lawsuit, or
- your company receives an administrative wage claim

Please make certain to provide your HRBP with copies of any of the above types of claims your company may receive so that an LDB determination may be made. Please note, the LDB does not cover claims for workers compensation or unemployment. Those matters are handled separately.

### **Q2: What are the criteria my company must meet to be eligible for the LDB?**

Once a claim is received by TotalSource, a review will be made to determine whether your company is eligible for the LDB. Pursuant to the CSA, the following criteria must be met:

- 1) There are no conflicts of interest (e.g. TotalSource provided guidance your company chose not to follow)
- 2) All CSA conditions have been met, meaning that your company must:
  - Follow our procedures for employment practices
  - Contact us before taking an employment-related action that may be adverse to the Worksite Employee
  - Follow our recommendation(s) regarding the incident from which the claim arose
  - Comply with the CSA in all material aspects
  - Accept and cooperate with our choice of counsel
  - Sign a joint representation agreement with TotalSource and the law firm we choose
- 3) The CSA must be in effect.
- 4) The claim is covered under the Employment Practices Liability Insurance (EPLI) policy. For more information on the EPLI policy, please refer to the **Employment Practices Liability Coverage Information Summary**.

Please review your CSA for more details regarding LDB eligibility.

### **Q3: What types of claims are covered by the LDB?**

Employment practices claims grow out of wrongful employment practices that allegedly violate one or more employment laws. The following are some of the major statutes; this is not meant to be an all-inclusive list:

- Title VII of the Civil Rights Act of 1964
- The Age Discrimination in Employment Act
- The Equal Pay Act
- The American With Disabilities Act
- The Family and Medical Leave Act

The most common claims of wrongful employment practices involve alleged wrongful termination, discrimination and harassment (on the basis of race, color, religion, sex, disability, age, pregnancy, national origin, sexual orientation, or any other protected category or characteristic established under federal, state or local law).

#### **Q4: What types of claims are not covered by the LDB?**

The LDB is not insurance. It is a very valuable benefit provided by TotalSource to help “back-up” our services. Because we want to help ensure that our clients obtain this benefit, we want to remind you as a client contact, manager or supervisor that one of the conditions which must be met in order to receive the LDB is that your company *must contact their HRBP prior to taking an employment-related action and follow TotalSource’s recommendations*. In other words, if a TotalSource client involves their TotalSource HRBP in an employment related matter, and a claim is nevertheless made, TotalSource will “back-up” its services by providing the LDB assuming the other conditions are met.

What this all boils down to is that anytime you are contemplating a termination or want to counsel/demote an employee or an employee files a complaint, even if informal or the complaint is made in passing, you should contact your HR Professional for guidance before you take action. If you do, and the other conditions are met, your company will be eligible for the LDB. If you do not contact your HR Professional, the LDB will be denied.

It is important to understand that the LDB only covers claims where TotalSource was involved in addressing the particular incident from which the claim arose by providing a recommendation regarding such incident. LDB does not cover clients for claims that TotalSource was not involved in, regardless of whether the client was able to notify us or not.

Additionally, because our human resource services do not include the interpretation, drafting, or recommendations regarding contracts, agreements, or implied contracts, claims alleging breach of a contract or implied contract are not covered under the LDB.

Class action claims are also not covered.

#### **Q5: How much is the LDB?**

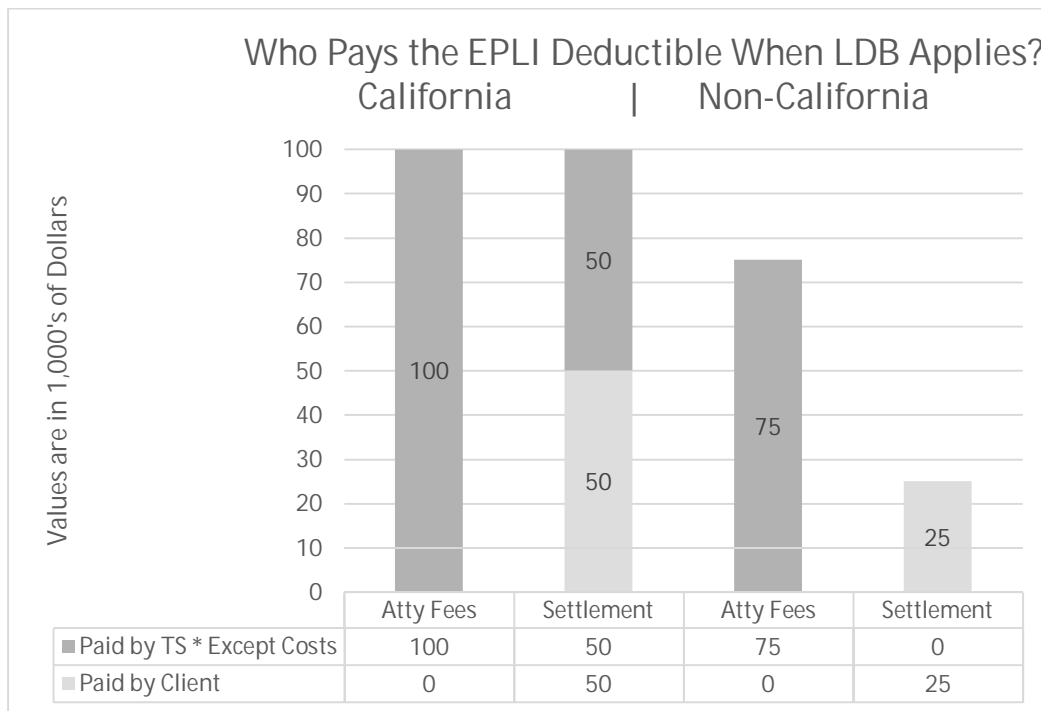
The LDB is \$75,000 per covered employment claim in all states except California.  
The LDB is \$100,000 per covered employment claim in California.

The LDB covers attorney’s fees only. Out-of-pocket costs (e.g., including but not limited to travel costs, mediation expenses, deposition transcripts, filing fees, copying expenses, etc.) are not covered.

Settlement or judgment amounts are also not covered except for California claims –

If a covered EPLI claim filed within the State of California results in a settlement or judgment in excess of \$50,000, TotalSource will fund the remainder above \$50,000 of the applicable Self-Insured Retention/Deductible for Settlements and Judgments for such claim if (i) the requirements for the LDB set forth in the CSA are satisfied with respect to such claim such that the Client is eligible for the LDB at the time of the applicable settlement or judgment, (ii) the Client has paid the first \$50,000 of the Self-Insured Retention/Deductible for Settlements and Judgments with respect to such claim, and (iii) the CSA is in effect and has not been terminated by either party. In no event will TotalSource’s payment towards the Self-Insured Retention/Deductible for Settlements and Judgments exceed \$50,000.

If the claim is also covered under the EPLI policy, the above payments by TotalSource also act to erode the EPLI Retentions/Deductibles as set forth in the below chart:



### **Q6: Is the LDB insurance?**

No, the LDB is NOT insurance. The LDB is a contractual benefit that is governed by your CSA with TotalSource.

TotalSource currently has Employment Practices Liability Insurance (EPLI) coverage covering claims brought by worksite employees and job applicants. Under this EPLI policy, all current TotalSource clients are additional insureds under the policy. This EPLI policy may cover defense fees and/or settlement or judgement payments, once certain retentions are met. EPLI coverage determinations are made solely by the insurance company and not by TotalSource. Additionally, while a client may receive both EPLI coverage and the LDB for the defense of a claim, these two do not necessarily work in tandem. For more information on the EPLI policy, please feel free to contact our insurance broker, Aon Risk Services, Kristy Daly at [Kristy.Daly@aon.com](mailto:Kristy.Daly@aon.com).

### **Q7: What happens once LDB is approved?**

An LDB offer letter will be sent to your company for review and acceptance. Upon acceptance by your company of the LDB, a skilled employment law attorney will be selected and will contact your company upon receipt of the assignment.

Also, the assigned attorney will prepare a joint representation agreement, an agreement which must be signed when an attorney is representing more than one client in a matter. By signing this agreement, TotalSource, the client company, and the attorney agree to this multiple representation.

### **Q8: Will TotalSource's Legal Department be representing my company?**

No. TotalSource's in-house attorneys actually have just one client: TotalSource, and are ethically precluded from representation of anyone other than TotalSource.

### **Q9: Can I use my own attorney?**

If you prefer to choose your own attorney, you are free to do so. However, the LDB is not available to cover those legal fees. If you want your attorney to serve as co-counsel with the attorney we have selected to represent you on an LDB matter, you can do so. Under those circumstances, while you would not have to pay for the assigned attorney under the LDB, you would have to pay for your own attorney.

If you do not receive the LDB, you will be represented by counsel appointed by the EPLI carrier for claims covered under the EPLI policy. To obtain any coverage under the EPLI policy that may be available may require that you retain counsel either assigned or approved by the EPLI carrier.

### **Q10: How are administrative charges treated under the LDB?**

When a Client receives a Charge of Discrimination from the EEOC/ state equivalent or OSHA, TotalSource will offer the “HR Service” product which includes drafting the initial response (also known as a “position statement”). TotalSource provides the HR Service to current clients when there is no conflict of interest between TotalSource and the client (e.g. a conflict would arise if we provided guidance the Client failed to follow) for claims brought by a current or former Worksite Employee or job applicant. The Client will be assigned an EEO Specialist who will:

- Work with your company to gather the relevant information needed to prepare the position statement
- Draft the position statement
- Work with your company to implement revisions, comments or suggestions
- Instruct your company on how to file the position statement with the agency

The HR Service is *not* part of the LDB. It is not contingent upon a client following our guidance (unless, as stated above, we provide guidance the client affirmatively failed to follow). This means that a client may be offered the HR Service, but may not necessarily receive the LDB at a later time.

**Other Methods of Investigation.** After the submission of a position statement, the investigator may want to interview witnesses, conduct an on-site investigation, or hold a fact-finding or other conference. The Client must notify TotalSource if a request for addition investigation is received. We recommend that our Clients be represented by counsel during these steps. As such, at this point, TotalSource will determine whether the Client has met the conditions for receiving the LDB.

**Mediation.** The agency may extend an invitation to the Client to mediate a Charge of Discrimination. The decision to mediate is completely voluntary. Mediation is an informal and confidential way for the parties to resolve disputes with the help of a neutral mediator. The mediator does not decide who is right or wrong or issue a decision. Instead, the mediator helps the parties work out their own solutions to problems. If the Client chooses to mediate, counsel must be assigned. At this point, TotalSource will determine whether the Client has met the conditions for receiving the LDB.

### **Q11: What are common reasons the LDB may be denied?**

The following list, which is not all-inclusive, highlights the most common reasons why clients do not receive the LDB for certain claims:

- The claim is against an entity that is not a TotalSource client.
- The complainant is not a current or former worksite employee.
- We discover that the granting of the LDB was based on untruthful or inaccurate information (e.g., facts were misrepresented or deliberately withheld about the employment decision).
- TotalSource was not aware of the alleged incident from which the claim arose.
- If your company prefers to select its own counsel.
- The CSA has terminated. If your company terminates, the LDB will be immediately terminated as well, even if a claim is pending. Similarly, LDB is not available for new claims filed against your company once the CSA has terminated, regardless of our involvement.

### **Q12: LDB has been denied for my company. Now what?**

Once an LDB determination has been made, but LDB has been denied, Zurich will assign the claim to a Zurich representative (referred to as Claims Counsel). The role of this representative is to make a coverage determination. If there is coverage, Claims Counsel will assign the matter to defense counsel to represent and defend the Client going forward. Thereafter, the role of Claims Counsel is to monitor the matter and communicate directly with defense counsel.

If the claims are not covered under the EPLI policy and you are not eligible for LDB, you can retain your own counsel without limitations. If you need a referral to legal counsel, your HRBP is able to provide it.

### **Q13: Wait! I have more questions!**

If you have additional questions regarding the LDB, please contact your HRBP.

***The descriptions of the LDB and other related benefits provided by the CSA does not amend, alter, or replace the terms, conditions, exclusions and other provisions of the CSA nor do they amend, alter, or replace any applicable laws or regulations.***