

**Note: This document applies to claims made on or after August 1, 2019.**

## **Employment Practices Liability Coverage Information Summary 2019**

**Effective August 1, 2019, coverage under ADP TotalSource's Employment Practices Liability (EPL) insurance policy through Zurich American Insurance Company will automatically be extended to you under a client company endorsement to this insurance policy because of your relationship with ADP TotalSource.**

Employment Practices Liability (EPL) grows out of wrongful employment practices that violate one or more employment laws. There are hundreds of federal, state and local 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 Rehabilitation Act of 1973
- The Equal Pay Act
- The Civil Rights Act of 1991
- The American With Disabilities Act
- The Family and Medical Leave Act
- The Reconstruction Era Civil Rights Act
- The Immigration Reform Control Act of 1986
- The Older Workers' Benefit Protection Act
- The Model Employment Termination Act

The most common claims of wrongful employment practices involve alleged Wrongful Termination and Discrimination (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). Wrongful employment practices include Wrongful Termination, Discrimination, Harassment and Workplace Torts (these are defined terms in the EPL policy). Workplace Torts include retaliation; defamation; infliction of emotional distress; invasion of privacy, wrongful discipline; wrongful reference; failure to grant tenure; employment related misrepresentation; wrongful failure to promote, wrongful deprivation of career opportunity or wrongful demotion; negligent hiring; negligent retention; negligent evaluation, negligent supervision, negligent training, work place harassment including without limitation offensive, intimidating, coercive, or unwelcome conduct, advances, contract or communications by any Insured resulting in any of the above.

EPL insurance provides coverage for an insured company for claims brought by an employee alleging Wrongful Termination, Discrimination, Harassment or Workplace Tort (see above for details of workplace tort). ADP TotalSource's EPL insurance policy provides coverage for you for claims brought by a Worksite Employee or job applicant alleging any of the above claims subject to the terms of the policy. (A Worksite Employee is an employee covered by the Client Services Agreement signed by you and ADP TotalSource.)

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### Coverage Summary

Carrier: Zurich American Insurance Company  
AM Best (A XV)

Limits of Insurance and retentions/deductibles:

- |  |   |
|--|---|
| a) Each Client Company Sublimit:                                   | Up to \$1,000,000 Each Insured<br>Event & Annual Aggregate                              |
| b) Policy Period Aggregate Limit:                                  | \$ 25,000,000*  |
| c) Self Insured Retention/Deductible:<br>(Settlements & Judgments) | \$ 25,000 All States other than California<br>\$ 100,000 California (refer to Q9 & Q10) |
| d) Self Insured Retention/Deductible:<br>(Defense Costs)           | \$ 75,000 All States other than California<br>\$ 100,000 California (refer to Q9 & Q10) |

\* Additional aggregate coverage in the amount of \$15,000,000 is also provided by Axis Insurance Company.

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## **EPL Insurance: Your Questions Answered**

**Q1: When is coverage provided under the ADP TotalSource EPL insurance policy?**

**A1:** This EPL insurance policy is a “claims-made” policy, which means for purposes of coverage:

1. the claim must be reported no later than 30 days after the expiration of the Policy Period, and
2. the claim must be reported prior to the termination of your Client Services Agreement (“CSA”) with ADP TotalSource, and
3. The claim must be reported in writing via facsimile, overnight mail or electronic mail to and received by the ADP TotalSource Legal Department or the Human Resources Business Partner assigned to you (see Q5 and Q6 for more details on your reporting obligations).

**Q2: Who is insured under the policy?**

**A2:** As an ADP TotalSource client, your company (and all entities that are identified in a Related Entity Addendum to the CSA) are insureds with respect to claims against your company that are brought by a Worksite Employee (as defined by the CSA) or job applicant. Coverage is also provided to Worksite Employees but only for the conduct of business within the scope of their Employment. Worksite Employees include a Self-Employed Individual or a Non-Paid Owner who has signed ADP TotalSource’s “Self-Employed Individual and Non-Paid Owner Participation Addendum.”

**Q3: What constitutes a claim under the EPL policy?**

**A3:** A claim is a written demand or notice received by you where a Worksite Employee or job applicant alleges damages resulting from Wrongful Termination, Discrimination, Harassment or Workplace Torts. A claim can include:

- a civil action,
- an administrative proceeding,
- an alternative dispute resolution proceeding,
- an action brought by a person or entity acting on behalf of a Worksite Employee, or job applicant, or former worksite employee,

to which you must submit or to which you submit with Zurich’s consent. A claim shall include a proceeding for injunctive or non-monetary relief.

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**Q4: What types of claims are not covered under the EPL policy?**

**A4:** The following types of claims are **not covered** under the EPL policy:

- Workers' Compensation
- Contractual Liability
- Employee Retirement Income Security Act (Note: claims alleging retaliation in violation of Section 510 of ERISA may be covered, but Zurich will not pay as loss amounts the benefits, pensions, insurance or other rights sought by a Worksite Employee under any ERISA benefit plan)
- Losses or costs resulting from a strike or lockout (except for wrongful termination or retaliation as a result of a strike activity or union involvement)
- Workers' Adjustment and Retraining Notification Act
- Liability or costs incurred when modifying a building or property to make it more accessible or accommodating to any disabled person
- Express contract of employment or express obligation to make payments
- Fair Labor Standards Act and state equivalents (except for retaliation claims)
- Loss Amounts arising from, relating to or involving a business dispute, or to otherwise insured events arising from, directly or indirectly, or relating to in any way in whole or in part from such business disputes (e.g. a dispute regarding ownership and business interests of a company).

**Please note, EPL coverage will be denied for all Insureds if the Client Company made any misrepresentation to ADP TotalSource in its application process for a CSA regarding the Client Company's knowledge of any incidents, facts or circumstances which may result in an employment practices liability claim.** For example, a misrepresentation would be made in the following scenario: An employee is terminated and, on the way out the door, the employee tells the company he is going to file a lawsuit alleging wrongful termination. Before a lawsuit is actually filed, the company makes a written representation to TotalSource during the sales process that the company is not aware of any facts which may result in an employment practices-related claim being made against the company. This would be a misrepresentation as the company was on notice that there may be a claim for wrongful termination pending.

**Q5: What is an incident?**

**A5:** An incident is anything likely to give rise to a claim covered by the policy. While all incidents must be reported in writing to the ADP TotalSource Legal Department or Human Resources Business Partner assigned to you (see Q6 for further details), this does not preclude you from calling your Human Resources Business Partner for immediate guidance on how to handle the human resources issues stemming from that incident. In fact, not contacting your Human Resources Business Partner for guidance on how to handle the situation may impact your eligibility to receive ADP TotalSource's Legal Defense Benefit should this incident later become an employment practices related claim. (Please see the ADP TotalSource "Legal Defense Benefit Frequently Asked Questions" for further information.)

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**Q6: What are my duties in the event I have notice of an incident or claim?**

**A6:** For any covered claims to be insured under this policy, you must give ADP TotalSource notice as soon as practicable after you become aware of **any claim or incident** covered by the policy.

To give proper notice, you must notify, by facsimile, overnight mail or electronic mail (and include any relevant documents), your Human Resources Business Partner or the ADP TotalSource Legal Department. The address for the Legal Department is 10200 Sunset Drive, Miami, FL 33173.

For all claims, you should provide:

1. The identity of the person alleging Discrimination, Wrongful Termination, Harassment or a Workplace Tort,
2. The date the claim was received, and
3. Copies of the demand, notice, summons, or other legal papers received in connection with the claim.

All claims must be reported prior to the termination of the CSA.

For any incident, you should provide:

1. The identity of the person alleging Discrimination, Wrongful Termination, Harassment or a Workplace Tort,
2. The identity of the individual or company who allegedly committed the act,
3. The date the alleged incident took place, and
4. A brief description of the incident.

**Q7: What will happen after the claim is reported?**

**A7:** Claims are reported by ADP TotalSource to Zurich American Insurance Company to manage claims. Zurich conducts an initial assessment of each claim and works with the client company in its evaluation of the claim. Zurich will appoint defense counsel to represent the client when an ADP TotalSource client does not receive the ADP TotalSource Legal Defense Benefit. See Legal Defense Benefit Q&A.

**Q8: How much EPL protection do we get under this policy?**

**A8:** Effective August 1, 2019, your business will be protected against employment practices liability up to a maximum annual policy year aggregate limit of \$1,000,000 for all claims brought against you or any Insured covered under Coverage Parts B or C of this policy. The insurance is also subject to a policy period aggregate limit of \$40,000,000 (between the primary and additional aggregate insurance policies carried by ADP TotalSource). This covers all claims against all insureds under this policy and is not an individual aggregate. Of course, all coverage for defense costs, judgments and settlements are subject to the terms and conditions of the policy.

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**Q9: Is there a retention/deductible under the EPL protection plan?**

**A9:** For claims made outside the State of California, the retention/deductible under this plan is \$25,000 for settlement and/or judgment costs on each claim and the retention/deductible for defense costs is \$75,000.

For claims made in the State of California, the retention/deductible is \$100,000 for settlement and/or judgment costs on each claim and the retention/deductible for defense costs is \$100,000.

As a condition precedent to coverage under the policy, a client shall pay all sums for which it is responsible under the self-insured retentions.

Voluntary Payments, including defense costs and expenses incurred by the Client Company or obligations assumed by the Client company, without the consent of the insurer, will not be applied or reduce the Client Company's self-insured retention.

**Q10: Are any costs covered by ADP TotalSource under the EPL program?**

**A10:** The defense costs retention/deductible may be covered under ADP TotalSource's Legal Defense Benefit (LDB) for Worksite Employees provided you have fulfilled all of the conditions for the benefit. Also, for claims made in California, if a settlement or judgment is in excess of \$50,000, TotalSource may fund the remainder of the applicable retention/deductible provided you have fulfilled all the conditions for the LDB. (See the ADP TotalSource "Legal Defense Benefit Frequently Asked Questions" for more information on the LDB).

**Q11: Does the policy provide prior acts coverage?**

**A11:** Coverage is provided in accordance with the terms of the policy in the event a covered claim is presented after inception of the CSA and prior to its termination, provided that:

1. The claimant is an ADP TS Worksite Employee or former Worksite Employee
2. The first written allegation or demand is received by the Client Company during this period and reported to ADPTS.
3. The Client Company had no prior knowledge of any incidents, facts, or circumstances resulting in such claim.

**Q12: What happens if I already have EPL coverage?**

**A12:** You have two options:

1. You may keep your existing coverage for additional protection (see Q4 for claims which are not covered). If you want your policy to be primary and the Zurich policy to be excess, you must obtain approval from ADP TotalSource, and once approved, they will coordinate the change with AON. Additionally, if your policy is primary, you will not be eligible for the TotalSource Legal Defense

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Benefit.

2. If you elect not to keep your existing coverage, you may wish to purchase “tail” coverage covering claims that arose prior to contracting with ADP TotalSource.

**Q13: What other EPLI coverage enhancements can I purchase as a client of ADP TotalSource?**

**A13:** The TotalSource policy only covers claims by Worksite Employees and job applicants. As such, you may wish to explore the possibility of buying third party coverage under the Aon program exclusive to ADP TotalSource clients. You may also wish to explore buying excess limits and/or Wage & Hour Indemnity and Defense coverage under the Aon program, provided your Company meets certain qualifications.

**Q14: Does the TotalSource EPL policy include coverage for General Liability or Directors & Officer's Liability?**

**A14:** No.

**Q15: Does my existing General Liability or Director's & Officer's Liability Coverage include EPL coverage?**

**A15:** Most General Liability policies exclude Employment Related Practices Liability. As for your D&O policy, some include EPL coverage for the Directors & Officers, but may not provide coverage for the entity itself. You should also look to your other policies to answer this question.

**For more information about Employment Practices Liability protection, including details of the responsibilities of ADP TotalSource and your company, please call our office and ask for Kristy Daly at (800) 743-8130.**

***The descriptions of the insurance coverage provided by this policy do not amend, alter, or replace the terms, conditions, exclusions and other provisions of the policy nor do they amend, alter, or replace any applicable laws, regulations, rating rules, or plan.***