

## Workforce Protection

by Bruce Simmons, Public Company EPLI and Fidelity Manager



### **ECONOMIC TURMOIL DOESN'T NECESSARILY BRING OUT THE BEST IN PEOPLE.**

Overall, in a poor economic climate, the general population is not feeling too warm and fuzzy inside. In less-than-prosperous times, there seems to be more news of workforce reductions and bankruptcies, and lawsuits filed by employees against their employers. These employee-vs-employer actions result from a number of things — terminations, reductions in force or bankruptcy filings, and include class actions brought by laid-off employees under the federal Worker Retraining and Notification or "WARN" Act.

Employee/employer courtroom drama can be found easily in today's headlines, for instance:

- A federal court jury in Montgomery, Alabama recently returned a \$5.79 million dollar judgment against Hyundai Motor Manufacturing Alabama and one of its mid-level managers for harassment, negligence and retaliation. The jury awarded \$795,000 in compensatory damages and \$5 million in punitive damages against Hyundai, and \$10,000 in punitive damages against the manager.

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- Tullytown, Pa.-based Meenan Oil Co. recently agreed to pay \$80,000 to settle an age discrimination lawsuit after the U.S. Equal Employment Opportunity Commission (EEOC) charged the company, a distributor of home heating oil, with unlawfully firing a 71-year-old sales representative.
- Seattle-based retailer Nordstrom will pay \$292,500 to 10 former employees in Florida as part of a legal settlement with the EEOC, which had filed a lawsuit against the company because a manager made racially derogatory comments and had chastised the store's tailors for speaking Spanish to each other. The settlement also

requires that the company distribute its policy regarding unlawful harassment to all employees, provide harassment training, post information about the lawsuit's resolution and submit a semiannual report to the EEOC on any harassment complaints made during the next two years.

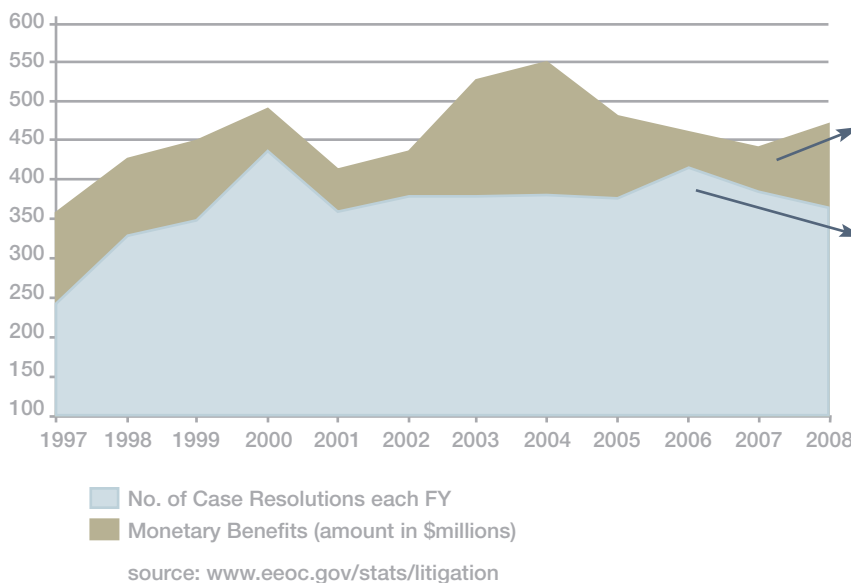
No company or industry is immune to such lawsuits. According to the EEOC, in 2008, they received more than 95,000 charges of discrimination, a 15.2% increase from FY 2007. Employment issues comprise 30% of all civil litigation in the U.S. Court and overall, judgments in many of these cases can be substantial.

Taking necessary precautions is an integral part in managing an employer's risk. Employees are wiser today about how they are being treated, have a heightened awareness of lawsuits and will not hesitate to address it if they felt they were being mistreated.

That is why a company's efforts to create a safe, friendly and non-biased work environment are important. To prevent employee lawsuits, many businesses try to minimize their exposure to employee complaints by:

- Creating effective hiring and screening programs to avoid discrimination in hiring
- Posting corporate policies throughout the workplace
- Distributing employee handbooks so policies are accessible to everyone
- Establishing a code of conduct or harassment policy
- Setting up a complaint structure which gives employees both formal and informal options to let a complaint be known and handled appropriately
- Carefully documenting everything that can help prevent and solve employee disputes

EEOC Litigation Statistics- FY 1997 through 2008



Many leading providers of Employment Practices Liability insurance (EPLI) coverage, like XL Insurance, offer their clients loss prevention services to help its clients' mitigate their employment practices exposure. For instance, prior to

providing a policy, an EPLI underwriter may review in-place policies and procedures and offer clients loss prevention services that may include in-house or on-line employee training or risk management audits of wage-hour and overtime practices, harassment avoidance programs, union-avoidance programs, recordkeeping advice, and other compliance help.

Anyone can sue and can claim damages. But win or lose, in every case, a company is faced with the risk of incurring defense costs, hurting employee morale, or damaging its reputation.

No matter what financial climate they are operating in, businesses are wise to pay close attention to their own policies and procedures, employee concerns and actions, and take advantage of the tailored EPLI solutions available in the market today that can be customized to fit their business and is often accompanied by valuable guidance and advice on workforce issues.



#### *About the Author*

*Bruce Simmons is the Public Company EPLI and Fidelity Manager with the Professional Liability group of XL Insurance. XL Insurance represents the global insurance operations of XL Capital Ltd (NYSE: XL). The XL Insurance companies' Professional group offers a broad portfolio of Professional Liability products including public, private and non-profit D&O liability, EPLI, fiduciary and fidelity coverage. More information about XL Insurance is available at [www.xlinsurance.com](http://www.xlinsurance.com)*



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