

TABLE OF CONTENTS

Preface	v
About the Authors	vii
Chapter 1: Employment Practices Liability Policy Coverages and Exclusions	1
Core Principles.....	1
Advanced Analysis.....	5
Claims-Made vs. Occurrence	5
Reporting/Notice Requirements.....	9
Application Misrepresentations	14
Covered Wrongful Acts.....	17
Common Exclusions	21
Defense Restrictions.....	25
Package Policies and EPL Endorsements.....	27
Risk Management Overview.....	29
Chapter 2: Workers Compensation/Employers Liability	35
Core Principles.....	36
Advanced Analysis.....	36
Workers Compensation Coverage (Part A)	36
Civil Suits.....	38
Exclusive Remedy.....	40
Employer’s Liability Coverage (Part B)	52
Risk Management Overview.....	58
Chapter 3: Other Liability Policies	61
Core Principles.....	61
Advanced Analysis.....	62
CGL Policies	62
Coverage A – Bodily Injury and Property Damage.....	62
Coverage B.....	70
Coverage C.....	72
D&O Policies	74
E&O and Malpractice Policies.....	81
Homeowners Policies.....	83
Education Liability Policies	84
Umbrella/Excess Policies.....	86
Risk Management Overview.....	87

Chapter 4: Obtaining and Managing Insurance Defense	93
Core Principles	93
Advanced Analysis	93
Potential Claims	94
Duty to Defend	97
Defense Counsel	102
Settlement	108
Bad Faith	110
Defense Fees	110
Declaratory Judgment Fees	111
Reimbursement of Insurer Fees	112
Managing the Claims Process	113
Post Claim Loss Reduction	114
Risk Management Overview	115
Chapter 5: Avoiding Wage and Hour Claims	117
Core Principles	117
Advanced Analysis	120
Employee Misclassifications Under the FLSA	120
Considerations in Evaluating FLSA Liability	122
Does FLSA Apply?	122
Independent Contractor Exemption	125
Overtime Exemptions	135
Tip Wage Credit	143
Calculating Overtime	143
Overtime Exceptions	144
Exceptions to Working Time	144
Other “Time Worked” Issues	148
FLSA Recordkeeping Requirement	150
Risk Management Overview	150
Free Internet Resources Available	152
Chapter 6: Avoiding Discrimination and Harassment Claims	157
Core Principles	157
Advanced Analysis	159
Protected Groups	159
Discrimination Categories	160
Race and National Origin	164
Religion and Creed	167
Gender	170
Age	175

RFOA	179
Disability	181
Military Service.....	188
Genetic Information	190
Negligent Management	191
Permitted Practices.....	194
Risk Management Overview.....	195
Chapter 7: Avoiding Whistleblowers, Retaliation and Wrongful- Discharge Claims	201
Core Principles.....	201
Advanced Analysis.....	204
The Essential Elements of Most Whistleblowing/Reprisal Laws ..	204
Protected Conduct	204
Wrongful Discharge	213
Contractual Limits.....	214
Statutory Limits.....	217
Communication Limits.....	219
Risk Management Overview.....	221
Chapter 8: Employment Risk Management from A to Z.....	225
Core Principles.....	225
Advanced Analysis.....	225
Recruitment and Hiring.....	226
Employment Contracts and Handbooks.....	231
Performance Evaluation	234
Wage and Hour.....	236
Privacy.....	238
Investigating Complaints.....	240
Termination	241
Employment Practices Audit.....	244
Additional Resources	244
Employment Laws.....	245
Agencies.....	245
Glossary	247
Legal Definitions.....	247
Insurance Definitions	249

Appendix A: Additional Protected Categories and Lower Business Size Limits	257
Appendix B: Time Limit for Filing a Complaint	263
Appendix C: Potential Awards for Employment Discrimination	265
Appendix D: State Complaint Processes	269
Appendix E: Forms	285
Index	301