

# Loss Control Questionnaire: **Employment Practices Liability**

Provided by Reliance Insurance Agencies, Ltd.



## Examine Your Risk

Employment practices liability is a growing area of concern for organizations across the country. Lawsuits related to employment practices are on the rise. In fact, by some estimates, one out of every five cases in civil courts is an employment-related lawsuit.

Employment practices claims are among the most costly and time-consuming issues an employer can face. What's more, these claims pose a serious risk to an organization's stability, reputation and bottom line. No organization is immune to these exposures. Today, employment practices liability claims can originate from lawsuits related to, but not limited to:

- Wrongful termination
- Discrimination
- Harassment and sexual harassment
- Breach of contract
- Retaliation
- Failure to employ or promote
- Deprivation of career opportunity
- Wrongful discipline

Thankfully, a proactive approach to risk management goes a long way toward protecting organizations from employment practices liability claims. This questionnaire is designed to help organizations assess how adequate their loss control programs are by examining common employment-related exposures and the techniques, policies and procedures that can be applied to control these exposures. Remember, the best defence against employment practices liability claims is to prevent them from occurring in the first place.



**GENERAL BEST PRACTICES**

	Yes	No	N/A	Notes
Does your organization have a human resources (HR) department or dedicated employees who handle HR matters?				
Does your organization have an in-house legal department?				
Does your organization have access to legal services from outside counsel for employment-related matters?				
Does your organization have a process in place to ensure that it is aware of applicable compliance requirements on the local, provincial and federal levels?				
Does your organization have procedures in place to stay up to date on changes to employment laws and regulations at the local, provincial and federal levels?				
Does your organization have employment practices liability insurance (EPLI)?				
Does your organization review its EPLI policy on an annual basis with an insurance professional?				
Does your organization conspicuously display federal and provincial labour and employment law posters as required?				

**EMPLOYEE HANDBOOKS**

<b>Employee Handbooks – General</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Does your organization have an employee handbook?				
Does your organization distribute its employee handbook to all employees?				
Is your organization's employee handbook regularly reviewed by HR or an attorney?				
Does your organization follow the policies outlined in your employee handbook?				
Are all employee handbook policies applied consistently across the organization?				
Does your organization's employee handbook use clear and concise language?				
Does your organization's employee handbook include a provision that establishes your organization's right to modify the handbook?				
Does your organization communicate any changes to your employee handbook to employees when they are made?				
Does your organization's employee handbook include an acknowledgment form that employees must sign and return, indicating				

that they have received and understood the handbook?				
Does your organization's employee handbook outline standards of conduct and progressive disciplinary measures?				
<b>Employee Handbooks – Specific Policies</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Does your organization's employee handbook contain an equal employment opportunity statement?				
Does your organization's employee handbook contain an anti-harassment policy covering sexual harassment and other discriminatory harassment?				
If applicable, does your organization's employee handbook contain provisions for "employment at will?"				

**RECRUITING, HIRING AND ONBOARDING**

<b>Job Descriptions and Job Postings</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Does your organization develop job descriptions for each specific role?				
Do job descriptions identify the essential job functions that are integral to each specific role?				
Are your organization's job descriptions compliant with non-discrimination, disability and equal employment opportunity laws?				
Are job descriptions periodically reviewed by legal counsel with experience in employment law?				
Are job openings posted internally?				
Does your organization retain copies of job postings and external job advertisements?				
<b>Employment Applications</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Does your organization require all applicants to complete a uniform application form?				
Does your organization have a formalized process for collecting, reviewing and retaining job applications?				

Does your organization's application state that it is not an offer of employment?				
Does your organization's application include a provision requiring acknowledgment by the applicant that all the information included on the application is truthful?				
Does your organization's application state that your organization will not discriminate during the recruitment process or at any phase of employment?				
Does your organization's application include a section for an applicant to provide former employer contact information?				
Does your organization's application include a section that states the applicant releases the employer from liability resulting from the use of former employer contact information?				
Does your organization's application avoid inquiring about applicants' health, disability, criminal convictions or arrest records (or other inquires prohibited by law)?				
Is the organization's application form regularly reviewed by legal counsel with experience in employment law?				

Interviewing	Yes	No	N/A	
Do hiring managers receive training on proper interviewing and hiring techniques?				
Does your organization have a prewritten list of interview questions to ask applicants?				
Does your organization understand what interview questions are illegal to ask under federal, provincial and local laws?				
During the interview process, are your employees asking only legitimate job-related questions?				
Are all applicants for the same position asked the same or similar job-related questions?				
Are interview questions designed to avoid identifying an applicant's age, sex, disability, minority status or any other protected status?				
Does your organization's recruiting or HR department conduct pre-screening interviews prior to inviting a candidate to interview with hiring managers?				

<b>Testing</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Does your organization conduct drug and alcohol testing of applicants?				
Do applicants sign a “consent to drug and alcohol testing” form?				
Does all drug and alcohol testing comply with provincial, local and federal laws?				
Does all drug and alcohol testing comply with collective bargaining agreements, if applicable?				
Does legal counsel review all drug and alcohol testing procedures and policies on an annual basis?				

<b>Background and Reference Checks</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Does your organization screen all prospective employees by conducting thorough background checks?				
Is authorization for employee credit and consumer reports lawfully obtained according to applicable laws?				
If your organization uses a third party to conduct a background check, are applicants prompted to complete a “Disclosure and				

Authorization to Obtain Consumer Reports” form?				
Are your organization’s background checks designed to check only for information needed for security or job-related information?				
Are your organization’s background checks conducted with the same rigour for all applicants and employees?				
Prior to making employment decisions, does your organization provide applicants with a copy of the consumer report with a written description of the applicant or employee’s rights?				
After making an employment decision based on a consumer report, does your organization provide the applicant or employee with a notice of the adverse action, in addition to other legally-required disclosures?				
Does your organization screen all prospective employees by conducting thorough reference checks?				
Did your organization obtain the applicant’s written authorization before checking their listed references?				

<b>Offers of Employment</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Are your organization's hiring decisions made by, or subject to, the approval of more than one individual?				
Are your organization's offer letters drafted to specify the terms of employment?				
Are your organization's offer letters drafted to include the start date and salary?				
Are your organization's offer letters reviewed to ensure they provide for "at-will" employment?				

<b>Onboarding</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	
Does your organization have a formal orientation or onboarding program for all employees?				
Are all your organization's new hires given a packet of necessary documents on their first day, including a training schedule and software logins?				
Does your organization provide new hires with all necessary tax documentation?				

Does your organization provide new hires with all relevant HR-related forms, for example, direct deposit and emergency contact forms?				
Does your organization's orientation or onboarding program provide education on the company's culture, expectations and policies?				

**PERFORMANCE EVALUATIONS, DISCIPLINE AND TERMINATIONS**

<b>Performance Evaluations</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Does your organization conduct performance evaluations for all employees at regular intervals?				
Are the criteria for your performance evaluations job-related and as objective as possible?				
Are your managers trained on how to conduct proper performance evaluations in compliance with employment law?				
Does HR or management review all performance reviews before presenting them to employees?				
Are employees allowed to review their performance evaluations with their manager?				
Are employees allowed to comment on their performance evaluations?				
Are employees required to sign their performance evaluations?				

Discipline - General	Yes	No	N/A	Notes
Does your organization have clearly expressed, written disciplinary standards?				
Does your organization apply your disciplinary standards uniformly throughout the organization?				
Does your organization provide notice of deadlines that disciplined employees must comply with to avoid further discipline?				
Does your organization use a progressive discipline system to provide a chance for employees to correct their behaviour?				
Does your organization meet with the disciplined employee in private to discuss the discipline?				
Does your organization selectively use language that explicitly describes the offending conduct, without reference to the employee's character or condition?				
Are warnings issued orally memorialized in employees' personnel files?				
Does your organization maintain written records of warnings, issues and prior discipline,				

with dates and a signed acknowledgment by the offending employee?				
Are your organization's written records drafted in plain, accurate language that covers the offending conduct in total?				
Do your organization's written records detail the manner in which the offending employee can improve their conduct?				
Do your organization's written records detail the consequences of additional offending conduct?				

<b>Termination - General</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Does your organization have a termination process that addresses issues starting from the communication of the termination through to its conclusion?				
Does your HR department conduct a full investigation of misconduct or performance sufficient to draw a complete and logical conclusion?				
Does your organization consult with legal counsel when faced with unfamiliar and complex termination-related issues?				
Does your organization ensure that the decision at the culmination of the investigation				

is equivalent to decisions made in other similar circumstances in your workplace?				
Does your organization create a detailed script to follow prior to terminating an employee?				
Does your organization's script contemplate what happens after the termination decision is made, including action items such as returning employer property?				
Does your organization ensure that there are at least two organization representatives to witness the termination meeting?				
Does your organization have a reference policy that requires all reference requests to be made in writing and forwarded to HR, not to employees' direct supervisors?				

**HARASSMENT, DISCRIMINATION AND RETALIATION**

<b>Harassment and Discrimination – General</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Does your organization have a written policy prohibiting unwelcome conduct in the workplace that is based on, or motivated by, the victim's membership in a protected class?				
Does your organization have a separate written policy prohibiting discrimination based on a protected characteristic?				
Do your organization's policies address the potential liability for harassment and discrimination based on all of the following: race, colour, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information, among others?				Provincial laws may prohibit harassment and/or discrimination based on additional characteristics.
Does the policy include a statement of zero tolerance with regard to harassment and discrimination?				
Does the policy give explicit examples of conduct that constitutes harassment and discrimination?				
Does the policy include a thoroughly developed complaint reporting procedure?				
Does the policy require prompt reporting of all harassing or discriminatory conduct?				

Does the policy provide a procedure to allow a complainant to bypass a supervisor if that supervisor was the alleged harasser or discriminator?				
Does the company have an internal policy or procedure for thoroughly and promptly investigating employee complaints?				
Do your organization's investigators confirm to the complainant the confidential nature (to the extent possible) of the harassment/discrimination investigation?				
Does your policy include a statement of non-retaliation that effectively allows a complainant to make a claim without fear of retribution?				
Does your organization submit your statement to every employee, both physically and electronically?				
Does your organization require employees to acknowledge in writing their receipt of the harassment policy?				
Does your organization conduct annual training of managers and employees about the company's non-discrimination, harassment and non-retaliation policies?				
Does your organization review, at least annually, your operating procedures and policies to eliminate discrimination and				

harassment on the basis of a protected characteristic?

<b>Responding to Reports of Harassment and Discrimination</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
After receipt of a harassment or discrimination complaint, does your organization promptly commence an investigation to take remedial action?				
Does your organization take interim measures, when necessary, to avoid further harassment or discrimination during the investigation?				
Does your organization select or designate a neutral and properly trained individual to conduct the investigation?				
Does your organization preserve extensive documentation, including the employee's signed harassment or discrimination policy acknowledgment, notes regarding when the complaint was made and to whom, and the dates of the alleged harassment or discrimination?				
Upon completion of the investigation, does your organization take immediate corrective action that reflects the severity of the conduct, if necessary?				

Retaliation	Yes	No	N/A	Notes
Does your organization have a non-retaliation policy, allowing a complainant to make an accusation without fear of negative consequences?				
Does your non-retaliation policy provide that retaliation is not tolerated, must be reported and will be investigated in a similar manner to harassment and discrimination complaints?				

**RECORD-KEEPING**

<b>General</b>	<b>Yes</b>	<b>No</b>	<b>N/A</b>	<b>Notes</b>
Are your organization's records maintained based on a written record retention policy?				
Are all appropriate documents maintained in personnel files to defend against potential lawsuits, including employee applications, general employment files, evaluations and payroll documents?				
Are all employment-related warnings regarding performance and/or disciplinary issues documented in writing?				
Are medical files stored in a confidential manner wholly separate from other personnel documents?				
Are all documents related to personnel actions kept for at least one year from the date of the action?				
Are all records related to terminated employees kept for at least one year after the date of discharge?				
Are personnel files reviewed annually for compliance according to federal and provincial requirements?				