



Employment Practices Liability Coverage Part

In consideration of the payment of the premium and subject to all terms, conditions and limitations of this Coverage Part and the **General Terms and Conditions for Liability Coverage Parts**, the **Insureds** and **Insurer** agree:

Section I Insuring Agreements

A. Side A Coverage: Non-indemnified Loss of Insured Persons

The **Insurer** shall pay on behalf of the **Insured Persons** all **Loss** as a result of a **Claim** first made against the **Insured Persons** during the **Policy Period** for a **Wrongful Employment Act** and reported to the **Insurer** as required by this Coverage Part, but only to the extent such **Loss** is not paid or indemnified by the **Insured Entity**.

B. Side B Coverage: Insured Entity Indemnification of Insured Persons Loss

The **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** for which the **Insured Entity** indemnifies the **Insured Persons**, as a result of a **Claim** first made against the **Insured Person** during the **Policy Period** for a **Wrongful Employment Act** and reported to the **Insurer** as required by this Coverage Part.

C. Side C Coverage: Insured Entity Claim

The **Insurer** shall pay on behalf of the **Insured Entity** all **Loss** as a result of a **Claim** first made against the **Insured Entity** during the **Policy Period** for a **Wrongful Employment Act** and reported to the **Insurer** as required by this Coverage Part.

Section II Coverage Extension

Additional Employment Practices Liability Defense Costs

Notwithstanding anything to the contrary in this Coverage Part, and if **Included** as shown on the Declarations, the Additional Employment Practices Liability Defense Costs shall be in addition to, and not part of the Aggregate Limit of Liability for this Coverage Part. Such Additional Employment Practices Liability Defense Costs shall attach only after the exhaustion of such Aggregate Limit of Liability and any amounts payable under any other insurance policies that are specifically written to apply in excess of this Coverage Part.

Section III Definitions

For purposes of this Coverage Part:

1. "Claim" shall mean:

- a. a written demand against an **Insured**:
 - i. for monetary or non-monetary (including injunctive) relief, including a request to toll any statute of limitations, or
 - ii. to engage in arbitration or mediation,

which shall be deemed first made upon receipt by the **Insured**;

- b. a civil, criminal, administrative or regulatory proceeding (other than an investigation) against an **Insured**, which shall be deemed first made upon:
 - i. the service of a complaint or similar pleading upon the **Insured**, or
 - ii. in the case of a criminal proceeding, an arrest, the return of an indictment or information, or the receipt or filing of notice of charges or similar document; or
 - iii. receipt of a notice of charges by the **Insured**; and
- c. an administrative or regulatory investigation when conducted by the Equal Employment Opportunity Commission ("**EEOC**"), or similar state, local or foreign agency, which shall be deemed first made upon the filing of a notice of charges, service of a complaint or similar document of which notice has been given to the **Insured**.

In no event shall the **Claim** include any labor or grievance proceeding which is subject to a collective bargaining agreement.

- 2. "**Employee**" shall mean any natural person who was, is or shall be a full- or part-time, seasonal or temporary employee of an **Insured Entity**. **Employee** shall also mean any natural person independent contractor for the **Insured Entity**, any natural person leased to the **Insured Entity**, or any intern or volunteer, but, in each instance, only to the extent that such individual is entitled to indemnification in the same manner and to the same extent as an **Employee**.
- 3. "**Employment Practices Violation**" shall mean any actual or alleged:
 - a. wrongful dismissal, discharge or termination (either actual or constructive) of employment, including breach of an implied contract;
 - b. sexual or workplace harassment of any kind, including but not limited to "quid pro quo", bullying or hostile work environment;
 - c. discrimination (including, but not limited to, discrimination based upon age, gender, race, color, national origin, religion, sexual orientation or preference, pregnancy, disability, genetic information or military status);
 - d. **Retaliation**;
 - e. employment-related misrepresentation(s) to an **Employee** of the **Insured Entity** or applicant for employment with the **Insured Entity**;
 - f. employment-related libel, slander, humiliation, defamation or invasion of privacy;
 - g. wrongful failure to employ or promote, wrongful deprivation of a career opportunity with the **Insured Entity** or wrongful demotion;
 - h. negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an **Employee** reference;

- i. wrongful discipline;
- j. failure to grant tenure; or
- k. with respect to any of the foregoing a-j of this definition: negligent hiring, retention, training or supervision; wrongful infliction of emotional distress or mental anguish; failure to provide or enforce adequate or consistent corporate policies and procedures; or violation of an individual's civil rights;

but only if the **Employment Practices Violation** relates to an **Employee**, or applicants for employment with an **Insured Entity**, whether committed directly, indirectly, intentionally or unintentionally.

- 4. **"Executive"** shall mean any natural person who was, is or shall be:
 - a. a duly elected or appointed director (including shadow directors and *de facto* directors), officer, in-house general counsel, risk manager, controller, trustee, regent or governor of an **Insured Entity**;
 - b. a manager, member of any board of managers or the equivalent executive of an **Insured Entity** that is a limited liability **Insured Entity** or a joint venture; or
 - c. an official of an **Insured Entity**, including an **Insured Entity** organized or operated in a **Foreign Jurisdiction**, while serving in a functionally equivalent position to those described in subsections a. or b. above;
- 5. **"Insured"** shall mean any **Insured Persons** or **Insured Entity**.
- 6. **"Insured Entity"** shall mean the **Company**.
- 7. **"Insured Persons"** shall mean any:
 - a. **Executive** of an **Insured Entity**; or
 - b. **Employee** of an **Insured Entity**.
- 8. **"Loss"** shall mean those amounts any **Insured** is legally obligated to pay as a result of a **Claim**, including, but not limited to:
 - a. compensatory, punitive, exemplary and multiple damages;
 - b. settlements and judgments, including back pay, front pay, costs and fees awarded pursuant to a covered judgment and pre-judgment and post-judgment interest on that portion of a covered judgment; and
 - c. **Defense Costs**.

Loss (other than **Defense Costs**) shall not include any of the following:

- i. taxes, fines or penalties;
- ii. future salary, wages, commissions or any employment-related benefits of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement of, order in or other resolution of any **Claim**;

- iii. any amount for which an **Insured** is legally absolved from payment;
- iv. employment-related benefits (including but not limited to, perquisites, fringe benefits, deferred compensation, payments in connection with any employee benefit plan and any other payment to or for the benefit of an **Employee** arising out of the employment relationship) or any amount equivalent to or substantially equivalent to such employment-related benefits; stock, stock warrants, stock appreciation rights, phantom stock plans or arrangements, stock options; bonuses; any type of monetary payments which constitute severance payments or payments pursuant to a notice period; or any other type of compensation other than salary or wage;
- v. any liability or costs incurred by any **Insured** to modify any building or property in order to make said building or property more accessible or accommodating to any disabled person, or any liability or costs incurred in connection with any educational, sensitivity or other corporate program, policy or seminar;
- vii. any amount incurred to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
- viii. matters which may be deemed uninsurable under the law pursuant to which this Coverage Part may be construed.

The insurability of matters otherwise included within this definition shall be determined under the law of the applicable jurisdiction most favorable to such insurability, including, without limitation, the jurisdiction in which the **Parent Company**, the **Insured Persons**, the **Insurer** or such **Claim** is located.

10. **“Retaliation”** shall mean a retaliatory act against an **Employee** of an **Insured Entity** on account of such **Employee**:

- a. disclosing or threatening to disclose to a superior or to any governmental agency any act by an **Insured** which act is alleged to be in violation of any federal, state, local or foreign statutory or common law, or any rule or regulation promulgated thereunder;
- b. actually or attempting to exercise any right that such **Employee** has under law;
- c. refusing to violate any law or opposing any unlawful practice; or
- d. assisting, testifying in or cooperating with a proceeding or investigation regarding alleged violations of law by an **Insured**.

11. **“Third Party Violation”** shall mean any actual or alleged:

- a. sexual harassment, as described in subparagraph **b.** of the definition of **Employment Practices Violation**; or
- b. discrimination, as described in subparagraph **c.** of the definition of **Employment Practices Violation**

when such acts are alleged to be committed against anyone other than an **Employee** or an applicant for employment with the **Insured Entity**.

12. **“Wrongful Act”** shall mean any **Wrongful Employment Act**.

13. **“Wrongful Employment Act”** shall mean any actual or alleged:

- a. **Employment Practices Violation**; or
- b. **Third Party Violation**.

Section IV Exclusions

The **Insurer** shall not be liable to make any payment for **Loss** in connection with any **Claim** made against any **Insured**:

A. Prior Notice

based upon, arising out of or attributable to any **Wrongful Employment Act**, fact, circumstance or situation which has been the subject of any written notice given before the inception of the **Policy Period** under any employment practices, fiduciary, or directors and officers liability policy or similar coverage part, provided the insurer of such policy or coverage part does not reject such notice as invalid.

B. Pending and Prior Litigation

based upon, arising out of or attributable to essentially the same facts, circumstances, situations, transactions or events underlying or alleged in any litigation, any administrative or regulatory proceeding, any investigation or any alternative dispute resolution proceeding that was pending on or prior to the **Pending or Prior Date** shown on the Declarations.

C. Bodily Injury/Property Damage

for any actual or alleged bodily injury (other than mental anguish and emotional distress), sickness, disease, death or damage to or destruction of any tangible property, including the loss of use thereof.

D. Violations of Law

for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by:

- 1. the Employee Retirement Income Security Act of 1974, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Occupational Safety and Health Act of 1970 (OSHA), the Fair Labor Standards Act, the Workers’ Adjustment and Retraining Notification Act, the National Labor Relations Act, each of the foregoing as

amended, or any similar provisions of any federal, state, local or foreign statutory or common law; or

2. any law governing workers' compensation, unemployment insurance, unemployment compensation, social security, retirement benefits, disability benefits or similar provisions of any federal, state, local or foreign statutory or common law;

provided, however, this exclusion shall not apply to the extent a **Claim** is for **Retaliation**.

E. Wage and Hour/Misclassification

notwithstanding anything to the contrary in **Section IV Exclusions D. Violations of Law** above, based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any violation of any of the responsibilities, obligations or duties imposed by any federal, state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act), or any amendments thereto or regulations promulgated thereunder, governing wage, hour and payroll policies and practices (except the Equal Pay Act) including, without limitation:

1. the refusal, inability or failure of an **Insured Entity** or **Insured Person** to pay wages or overtime pay, or any amounts representing such wages or pay, for services rendered or time spent in connection with work-related activities;
2. improper pay deductions taken by an **Insured Entity** or **Insured Person** from any employee or purported employee;
3. improper classification of any employee or purported employee; or
4. failure to provide or enforce any legally required rest or meal breaks;

provided, however, this exclusion shall not apply to the extent a **Claim** is for **Retaliation**.

F. Securities Exclusion

based upon, arising out of, or attributable to any **Claim** brought by any security holder of an **Insured Entity**, in their capacity as such, whether directly, by class action, or derivatively on behalf of an **Insured Entity**.

G. Contract

based upon, arising out of, or attributable to any actual or alleged contractual liability of an **Insured** under any express contract or agreement; provided, however, this exclusion shall not apply to:

1. an **Insured's** liability that exists in the absence of such contract or agreement; or
2. **Defense Costs**.

Section V Wage and Hour, Non-Duty to Defend and Allocation

- A.** Notwithstanding anything to the contrary in **Section VII Defense and Settlement A.1.** and **C.** of the **General Terms and Conditions**, it shall be the duty of the **Insureds** and not the **Insurer** to defend any **Claim** which is in part excluded from coverage pursuant to **Section IV Exclusions E. Wage and Hour/Misclassification**.

- B. For the part of the **Claim** that is otherwise covered under this **Employment Practices Coverage Part**, the **Insureds** shall select a law firm to defend such part of such **Claim** from the **Insurer's** list of approved employment law firms for the jurisdiction in which such part of such **Claim** is pending.
- C. If the **Insureds** and the **Insurer** cannot agree on an allocation of **Defense Costs** for any such **Claim** as described in this **Section V**, the **Insurer** shall advance **Defense Costs** which the **Insurer** believes to be covered under this Coverage Part until a different allocation is negotiated, arbitrated or judicially determined. In such event, such allocation shall be applied retroactively to all **Defense Costs**.

Section VI Notice of Claims

The **Insureds** shall, as a condition precedent to their rights under this Coverage Part with respect to a **Claim**, give the **Insurer** notice in writing of any **Claim** which is made during the **Policy Period**. Any notice provided pursuant to this section shall be given as soon as practicable after the Chief Executive Officer, Chief Financial Officer, In-House General Counsel, Director of Human Resources or equivalent position of the **Insured Entity** first learns of such **Claim**, but in no event later than sixty (60) days after the end of the **Policy Period**.

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