



# BB Insurance



## **INSURANCE POLICY REVIEW**

**CREATED BY**  
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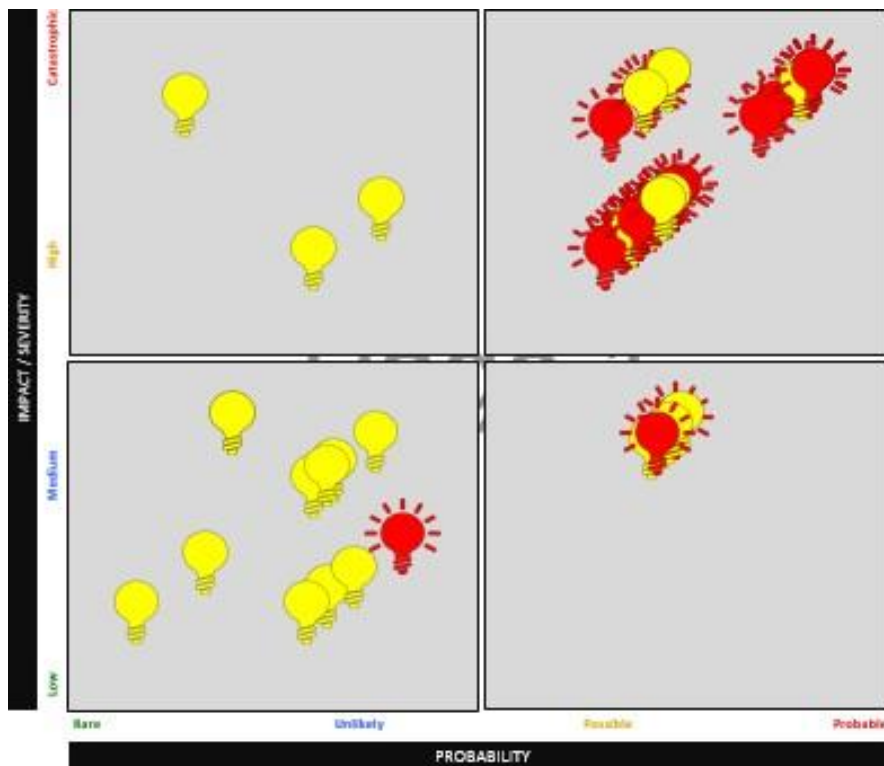
**UPDATED**  
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# THE BB INSURANCE METHOD



**Our proprietary process is designed to identify areas of improvement within insurance policies without prejudice. Each company has its own unique characteristics and each policy is written differently. We were able identify approximately 16 areas of improvement based specifically on your company's unique profile and the language of your insurance contract.**

## EMPLOYEE AS INSURED



### What is this for?

This commercial auto endorsement (CA 99 33) may be used to extend non-owner liability coverage to cover the individual liability of employees while they are using their own autos in the employer's business.

Alters the definition of "Who is an Insured" to include an employee while using an auto the company does not own.

The company's policy will extend coverage to the employee past the employee's personal insurance along with preventing your company's insurance carrier from **suing the employee.**



COMMERCIAL AUTO  
CA 99 33 02 99

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **EMPLOYEES AS INSURED**


This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM  
MOTOR CARRIER COVERAGE FORM  
TRUCKERS COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Liability Coverage, Paragraph A.1. Who Is An Insured** Provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.



**Here is the language that provides your employees the protection they need while conducting business in their own vehicles on behalf of your company.**

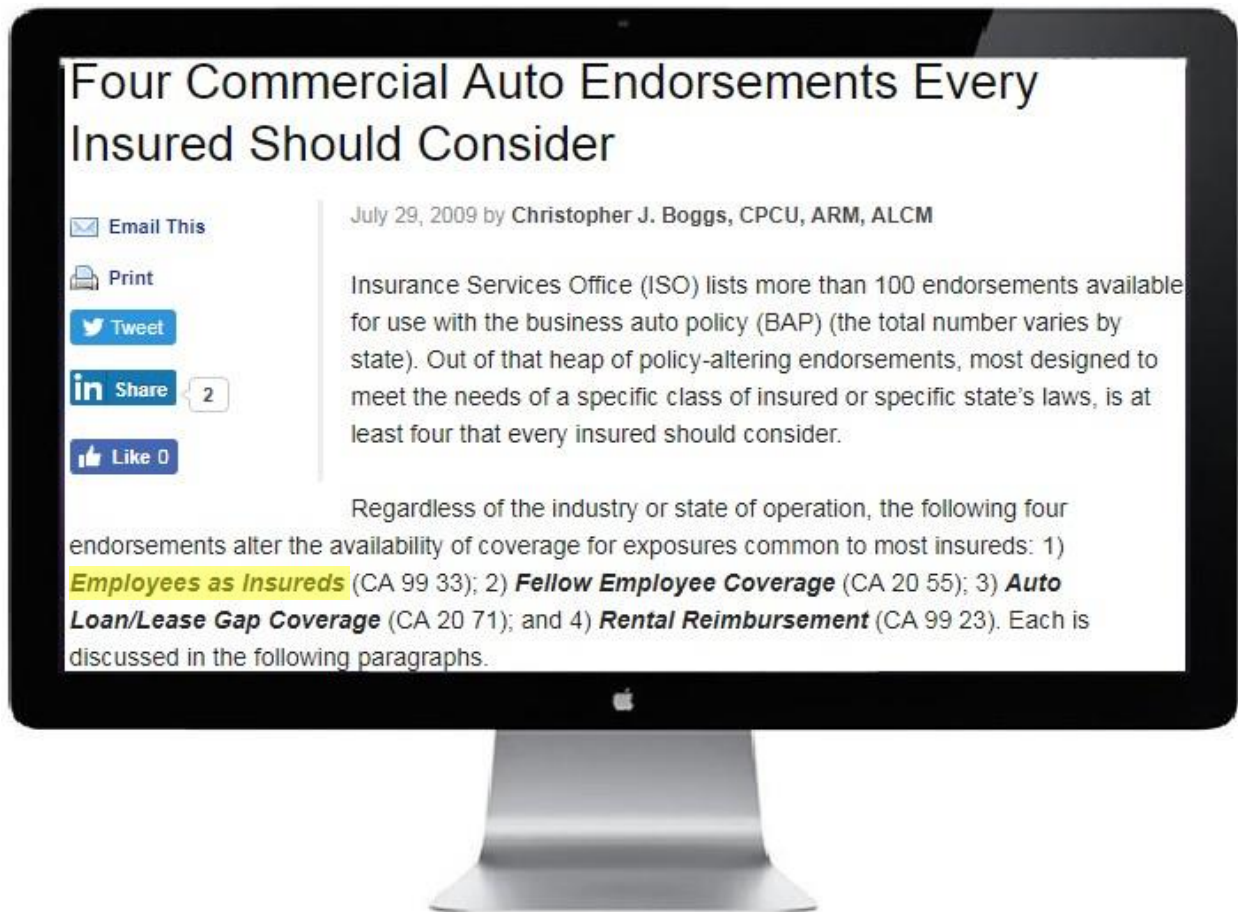


## WHAT DOES THIS MEAN FOR MY VALUED EMPLOYEES?

It is apparent that your company has employees in states across the area. These employees are at risk **every day** they are at work.

In event of an accident that the company is sued for, the carrier will have the right to subrogate against the employee for the loss in the accident.

There is no other protection for your employee since their personal auto policy limits have been exhausted in this accident.



## Our Recommendation

This may very well be the simplest solution we discuss today. We need to add the form CA 99 33. Why do you think this was not addressed in the past, it's because most brokers simply don't know about it. Funny enough this is something your current broker simply needed to recognize and request to have added by the carrier.

## Additional premium?



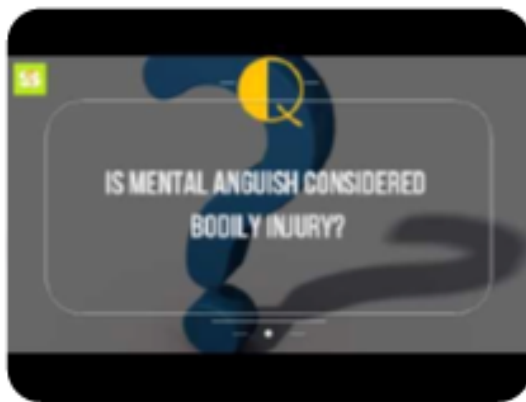
When considering what is covered under the general liability policy for “bodily injury”, we tend to think of physical injuries and sicknesses. Health issues that usually can be clearly diagnosable. What most insureds don’t realize (until it’s too late) is that they can be on the hook for mental and emotional injury sustained by a third party, or in other words, mental anguish.

The unendorsed ISO policy definition for “bodily injury” is as follows:

*“Bodily Injury” means bodily injury, bodily sickness or bodily disease sustained by a person, including death resulting from any of these at any time.”*



Ambiguity in policy terms and conditions is far too common in the insurance industry, and is why agents need to pay very close attention to the verbiage in the entire policy. Most will miss this because they do not have a **process** like ours.



The unendorsed ISO definition of “bodily injury” above is infamous for its ambiguity. There is jurisdiction that supports both sides of the argument, depending on which state you are in. This leads us to only one reasonable outcome: **We cannot be certain that a court will uphold the definition of “bodily injury” to include mental anguish.** This uncertainty is exactly what we want to avoid when constructing a strong insurance program. We want to protect you against uncertainty, not live with it.

## It Could Happen to You: The Proof

*National Casualty Co. v. Great South West Fire Insurance Co.* 833 P.2d 741 (Colo.1992):

The Supreme Court of Colorado explained that unambiguous policy provisions "[must be given [their] plain and ordinary meaning," and "mere disagreement of the parties does not establish an ambiguity." Great Southwest at 744 and 746. The court agreed with the majority view that the term "bodily injury" "covers physical injury and does not include claims for purely nonphysical or emotional harm."



*Trinity Universal Insurance Co. v. Cowan*, 945 S.W.2d 819 (Tex. 1997):

"The Supreme Court of Texas explained that "'bodily injury' ... does not include purely emotional injuries ... and unambiguously requires an injury to the physical structure of the human body. Our decision comports with the commonly understood meaning of 'bodily,' which implies a physical, and not purely mental, emotional, or spiritual harm."

*American States Insurance Co. v. Cooper*, 518 So. 2d 708, 710 (Ala. 1987) (citing *Morrison Assurance Co. v. North American Reinsurance Corp.*, 588 F. Supp. 1324, 1327 (N.D. Ala. 1984)):

"Mental anguish is included within the ordinary meaning of sickness because "one may experience "sickness" or "disease" without first experiencing a physical touching."

The first two cases above ruled that mental anguish is not included in the definition of "bodily injury", leaving the insureds **not covered** by their insurance to drown in hundreds of thousands of dollars in legal fees and judgment payments. The third case is contrary, mental anguish was deemed included in the definition of "bodily injury". **How can you be certain we will be covered? Do you want to take the chance?**





As you can see, this topic is very difficult to determine whether or not you would have coverage in the event of a claim. Most courts will say you're out of luck, leaving you with big checks to write. You could even say you might suffer from some mental anguish yourself if that were to happen. Let's avoid the big checks and the mental distress.



You are currently **NOT COVERED** for mental anguish. This is a screenshot of your current policy, which has the unendorsed, unfavorable wording that we examined previously:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.**

We can endorse your policy to include mental anguish in the definition of "bodily injury". We can often do this for **no additional premium**. See below for the endorsed, favorable wording that we suggest you amend to:

#### **Bodily Injury Redefined**

Under **Section V – Definitions**, definition 3., **"bodily injury" is replaced in its entirety** with the following:

- 3. "Bodily injury" means bodily injury, sickness or disease sustained by a person. This includes mental anguish, mental injury, shock, fright or death resulting from "bodily injury", sickness or disease.**

## **Notice & Knowledge**

### **What is it?**

When a claim happens, it needs to be reported to the insurance company immediately. The reporting can be done by any number of individuals in the company. However, most policies have a notice and knowledge condition requiring specific people to report a claim. Often the wording is very broad, causing anyone who views a potential claim to be responsible for reporting it. This can include any and all employees. The insurance policy ultimately stipulates who is required to report.

### **Significance**

ANYONE in the company, including all employees, can be held responsible for reporting a claim. This means that although the executive officers of the company (or the person normally in charge of reporting occurrences) did not know of the claim but a regular employee did, there could be no coverage. If the claim is not reported and a suit is tendered to you it provides the insurance company wiggle room to get out of paying the claim and/or defending you in court.

### **Problem**

According our analysis, you have wording in your general liability and umbrella policies that requires all individuals, including employees to report a claim if they become aware of one.. If the claim does not get reported to the carrier, the claim could be DENIED and there would be NO COVERAGE.

### What is the language used in your policy?

#### Exhibit A:

##### **SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS**

###### **1. Bankruptcy**

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

###### **2. Duties In The Event Of Occurrence, Offense, Claim Or Suit**

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

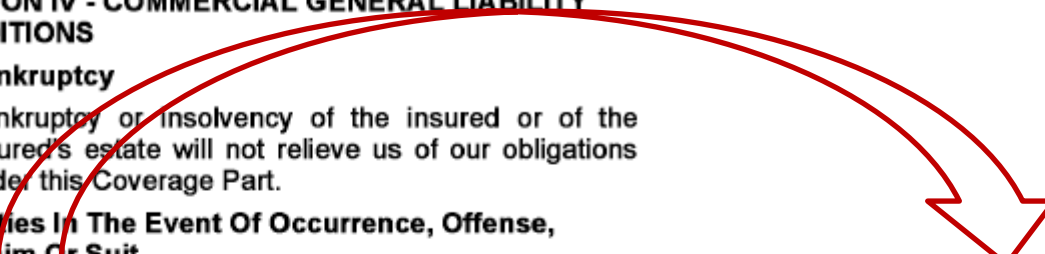
- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

This language can be found on page 75, 171, 182 .... Many times within your policy. (page 75 under liability is particularly interesting must be an additional insured)



Here is the evidence that the wrong language is used in your policy. The word "You" is not specified. Therefore, ALL of your employees are responsible

Exhibit B:

**This is the type of language we want to see in your policy**

**KNOWLEDGE OF OCCURRENCE**

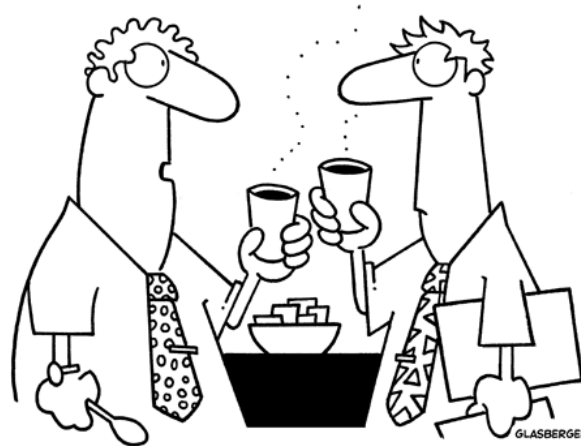
Under 2. **Duties In The Event Of Occurrence, Offense, Claim, Or Suit**, paragraph a. is deleted and replaced and paragraphs e. and f. are added as follows:

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. Knowledge of an "occurrence" or an offense by your "employee(s)" shall not, in itself, constitute knowledge to you unless one of your partners, members, "executive officers", directors, or managers has knowledge of the "occurrence" or offense. To the extent possible, notice should include:

**Why provide wiggle room for the carrier to get out of paying a claim if we don't have to?**



## EMPLOYMENT PRACTICES LIABILITY INSURANCE (EPLI)



“Our sexual harassment policies are too strict. I got in trouble for trying to embrace change.”

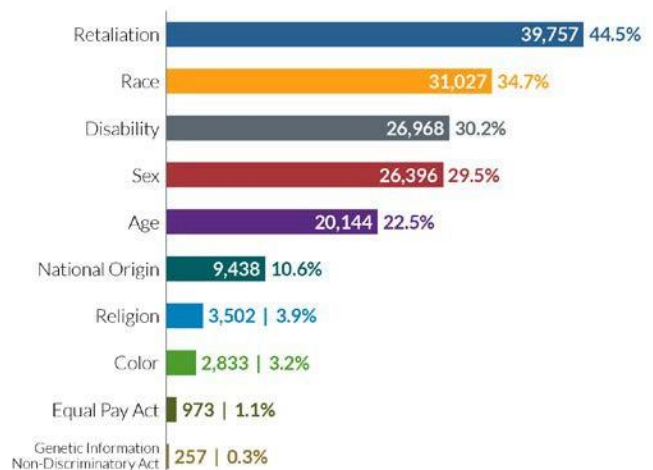
### What does this mean?

EPLI is type of liability insurance covering wrongful acts arising from the employment process. The most frequent types of claims covered under such policies include.

- Wrongful Termination
- Discrimination
- Sexual Harassment
- Retaliation

In addition, the policies cover claims from a variety of other types of inappropriate workplace conduct, including (but not limited to) employment-related: defamation, invasion of privacy, failure to promote, deprivation of a career opportunity, and negligent evaluation. The policies cover directors and officers, management personnel, and employees as insureds.

The 2015 EEOC charge numbers show the following breakdowns by bases alleged\*



## WHY DO I NEED THIS?

Employee lawsuits can be much more than just an inconvenience. They are expensive, distracting for your management team, and can quickly erode productivity and employee morale. Employee lawsuits are becoming much more common, making employment practices liability insurance (EPLI) a necessity for businesses large and small. Over the last 20 years, employee lawsuits have risen roughly 400%, with wrongful termination suits jumping up more than 260%. Oddly enough, you are more likely to be sued by an employee these days than to have a fire at your facility.

It's not just large corporations that are being hit. Roughly 41.5% of employee lawsuits are brought against private companies with less than 100 employees. The financial damage of employee lawsuits can be dramatic; the cost of settling out of court averages \$75,000, and the average jury award hits \$217,000 if you go to court and lose.

### Wrongful termination and defamation — \$1,750,000

A former nurse filed a lawsuit against a hospital and the VP of Human Resources for wrongful termination, invasion of privacy and defamation. The plaintiff alleged that after complaining to management about wage and hour issues the plaintiff was retaliated against, suspended and eventually terminated. The plaintiff stated the hospital suspended the plaintiff for alleged abandonment of a patient. Upon returning to work after the suspension, the hospital terminated the plaintiff for the unauthorized taking of a broken piece of medical equipment, which the plaintiff had given to a physician associate. The plaintiff's complaint included allegations that the VP of Human Resources acted with malice when they advised the plaintiff's spouse and other employees of the hospital that the termination of employment was for stealing, thereby implying that the plaintiff was a criminal. The plaintiff prevailed in binding arbitration on a count of defamation and was awarded \$750,000. Defense expenses exceeded \$1,000,000.

### Discrimination and retaliation — \$1,192,500

Three certified nursing assistants filed EEOC charges and later a lawsuit alleging harassment, race discrimination, retaliation, failure to prevent harassment, and wrongful termination in violation of public policy. They alleged that their supervisor had made inappropriate comments relating to race and after complaining about the comments they were terminated. All three claims settled during mediation for a total of \$1,192,500.



## WHAT DOES MY POLICY SAY?

### EMPLOYMENT PRACTICES LIABILITY

COVERAGE: FORM SS 09 01

EACH CLAIM LIMIT

\$ 100,000

DEDUCTIBLE - EACH CLAIM LIMIT

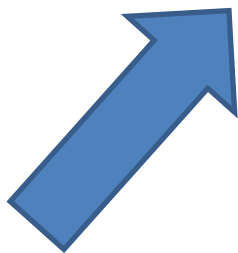
\$5,000

*On page 20 of your policy you will find the above limitation of your EPL Insurance*

*It is purchased but only for \$100,000*

**Item 3. Limits of Liability:**

(A) Insuring Clause (A) Employment Practices Liability Coverage:	\$1,000,000.00
(B) Insuring Clause (B) Third Party Liability Coverage:	\$1,000,000.00



**This is what we want!!**

## WHAT DOES THIS MEAN FOR MY COMPANY?

Quite simply you do not have enough protection. For a company of your size and wide spread operational localities this could present a **major problem.**

If there is a claim arising out of any of the items mentioned in the previous pages you will not be covered appropriately.

Even if the suit is *frivolous* you are still required to defend yourself in court. The defense costs alone could be hundreds of thousands of dollars and the suit could extend for years.

***“Oh no, what do we do now!?”***





## Our Recommendation

All companies, regardless of size, should look to their personnel policies as the first line of defense against both the number and severity of employment-related claims. EPLI coverage is another valuable tool in a comprehensive risk-management arsenal.

The cost of EPLI coverage will vary based on the type, size and risk profile of your business. The insurance company may also want to see your written personnel policies to help them determine the risk and cost of your EPLI policy.

Following are additional factors that affect the value and cost of EPLI coverage. It is important to review these exclusions and coverage limitations when evaluating your policy:

- You can generally purchase EPLI coverage with limits ranging from \$250,000 to \$25 million, we recommend a limit of \$1,000,000.
- Most employment practices liability insurance policies include a deductible. In addition, the cost of legal defense is typically included in the aggregate insurance limits, along with the costs of judgments and settlements.
- Not all policies are created equal and you will want to be sure to include 3<sup>rd</sup> Party Coverage

Since the limit you have purchased is lower than what the court costs alone would afford, we recommend an increase to at least \$1,000,000 as soon as possible.