

Continental Casualty Company
CNA Plaza
Chicago, Illinois 60685
Employment Practices Liability Policy
Exclusively for CPA Firms

YOUR EMPLOYMENT PRACTICES LIABILITY POLICY IS WRITTEN ON A “CLAIMS-MADE” BASIS. IT PROVIDES COVERAGE FOR THOSE CLAIMS WHICH ARE FIRST MADE AGAINST YOU DURING THE POLICY PERIOD AND REPORTED TO US IN ACCORDANCE WITH SECTION V, PARAGRAPH C.

Throughout this Policy, the terms “we”, “us” and “our” refer to the Stock Insurance Company, named on the policy Declarations, providing this insurance.

I. DEFINITIONS

The following terms, shown in **bold face** type in this Policy will have only the meaning indicated below:

Bodily injury means injury to the body, including sickness or disease sustained by any person and death resulting from such injuries and all injuries that are a consequence of the foregoing. **Bodily injury** does not include **mental injury**.

Claim means any of the items listed in A, B, and C below that are made, brought, or maintained by or on behalf of any **claimant** provided that such items arise out of an actual or alleged **wrongful employment practice**:

- A. any written or oral demand for money or other remedy upon **you**;
- B. the service of suit or the institution of any alternative dispute resolution proceeding against **you**; or
- C. notice to **you** of any administrative, investigative, or other proceeding, including an **EEOC Proceeding**.

Claimant means any **employee, predecessor firm employees or third party claimant**.

Claim expenses are those fees charged by an attorney we designate or consent to, and all other fees, costs and expenses resulting from the investigation, adjustment, expert analysis, defense and appeal of a **claim**, if incurred by us or by the **Named Insured** with our written consent. **Claim expenses** include the cost of appeal bonds and the cost of bonds to release property being used to secure a legal obligation but only for bond amounts within the Limits of Liability and provided that we have no obligation to issue such bonds. **Claim expenses** do not include salaries of our employees, or fees and expenses of independent adjusters retained by us.

Damages are monetary judgments, awards and settlements, provided any settlement is negotiated by or with our assistance and approval, in connection with a covered **claim**.

Damages also include:

- A. prejudgment or post-judgment interest and statutory attorney fees awarded against **you** on such judgments or awards;

- B. back pay and front pay, whether by judgment, award or settlement, provided any settlement is negotiated by or with our assistance and approval;
- C. punitive or exemplary amounts where insurable under applicable law. Where **you** reasonably determine that punitive or exemplary damages are insurable under any applicable law, we shall not challenge that determination of insurability.

Damages do not include:

- A. civil or criminal fines, penalties, sanctions or forfeitures, imposed on **you** whether pursuant to law, statute, regulation or court rule;
- B. the multiplied portion of multiplied awards except for multiplied damages under the Age Discrimination in Employment Act of 1967 (ADEA);
- C. amounts owed under federal, state or local wage and hour laws, however this shall not apply to any **claim** under the Federal Equal Pay Act or similar state laws;
- D. earned but unpaid commissions, bonuses, profit sharing or benefits;
- E. those amounts for which **you** are liable due to breach:
 - 1. of any written or express contract of employment or partnership;
 - 2. any express obligation to make payments in the event of termination of employment, partnership, ownership, or other equity interest;
- F. amounts representing medical or insurance benefit **claim** payments; or
- G. plaintiff's attorneys fees associated with a. through f. above.

EEOC Proceeding means an investigative proceeding before the Equal Employment Opportunity Commission or an investigative proceeding before any similar federal, state or local government body whose purpose is to address **Wrongful Employment Practices**.

Employee means any individual whose labor or service is engaged by and directed by the **Named Insured** or an **owned entity**. This includes:

- A. former, present or future salaried, full-time, part-time, temporary, and seasonal personnel, including interns, and personnel leased or loaned to the **Named Insured** or **owned entity**;
- B. former, present or future partners, officers, directors, stockholder-employees, associates, managers and members; or
- C. any applicant for employment with the **Named Insured** or **owned entity**.

ERISA or any Similar Act means the Employee Retirement Income Security Act of 1974, as amended, or any similar common or statutory law of the United States, Canada, or their states, territories or provinces or any other jurisdiction anywhere in the world.

Interrelated claims are all **claims** arising out of a single incident of **wrongful employment practice** or arising out of **interrelated wrongful employment practices**.

Interrelated wrongful employment practices means **wrongful employment practices** that are logically or causally connected by any common fact, circumstance, situation, transaction, event, advice or decision.

Management or supervisory employee means any:

- A. owner of a **Named Insured** or **owned entity** which is a sole proprietorship; or

- B. of the following personnel of the **Named Insured** or any **owned entity**: officers, directors, members of the Board of Managers or management committee members, supervisory or managing partners of the firm, in-house counsel, risk manager, or any person performing the human resource management function.

Mental injury means mental anguish, humiliation and emotional distress.

Named Insured means the individual or entity named on the Declarations as the **Named Insured**.

Newly acquired entity means any entity of which the **Named Insured** acquires, through acquisition, merger or formation, during the **policy period**, more than 50% of the ownership interest, but only upon the conditions that:

- A. within 60 days of such acquisition, we shall have been provided with full particulars of such acquisition;
- B. we, after receipt of such notice have agreed in writing to insure such acquisition beyond such 60 day period; and
- C. the **Named Insured** has paid any additional premium and has agreed to any amendment of the provisions of this Policy.

Owned entity means any entity:

- A. of which the **Named Insured** owns, either directly or indirectly, more than 50% of ownership interest and that is listed on the application for this Policy, or
- B. that is a **newly acquired entity**.

On the date during the **policy period** that the **Named Insured's** direct or indirect ownership interest in such entity becomes less than 50%, such entity shall cease to be a **owned entity** under the terms of this Policy. In such event, coverage will be provided under the Policy but only with respect to **wrongful employment practices** committed prior to such date in accordance with all other terms and conditions of this Policy. No coverage will be afforded under this Policy with respect to **claims** made against **you** based on any **wrongful employment practice** committed or allegedly committed on or subsequent to such date.

Policy period means the period of time from the effective date and time shown in the Declarations and the date and time of termination, expiration or cancellation of this Policy.

Predecessor firm means any firm that had been engaged in providing professional accounting services, which had dissolved prior to the inception date of this policy, and of which, upon dissolution, 50% or more of the partners, owners, shareholders, members, directors or officers joined the **Named Insured** as a partner, owner, shareholder, member, director or officer.

Predecessor firm employees are those individuals whose labor or service had been engaged by and directed by a **predecessor firm** prior to its dissolution.

Prior acts date, if any, is indicated on the Declarations. This Policy excludes from coverage all **claims** by reason of **wrongful employment practices** that happened or began before the **prior acts date**.

Prior insurer means an insurer, including us and any subsidiary or affiliate of ours, who has issued a policy that is applicable to a **claim**, such policy having an inception date prior to the **policy period**.

Property damage means injury to, or destruction of, any tangible property, including the loss of use resulting therefrom.

Third party claimant means any natural person, who is not an **employee**, whose **claim** against **you** alleges a **wrongful employment practice** which is an act of discrimination or sexual harassment. Coverage hereunder is provided solely for such allegations of discrimination or sexual harassment in accordance with all other terms and conditions of this Policy.

You and your means the **Named Insured**, and:

- A. any **owned entity**;
- B. any **employee** of the **Named Insured** or **owned entity** but only with respect to the conduct of the **Named Insured's**, **owned entity's** or **predecessor firm's** business; or
- C. the heirs, executors, administrators, assigns and legal representatives of any person or their estate as designated in A or B above in the event of such person's death, incapacity, insolvency or bankruptcy, but only to the extent that such person would have been provided coverage under this Policy.

While not within the definition of **you** or **your**, the spouses of those individuals identified in paragraph B. are insured under this Policy but only as respects their liability for **your wrongful employment practices**.

Wrongful Employment Practice means any of the following occurring in the conduct of the **Named Insured's**, **owned entity's** or **predecessor firm's** business:

- A. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
- B. employment-related misrepresentation;
- C. violation of any federal, state or local laws (whether common-law or statutory) concerning employment or discrimination in employment, including:
 - 1. the Americans with Disabilities Act of 1992;
 - 2. the Civil Rights Act of 1991;
 - 3. the Age Discrimination in Employment Act of 1967;
 - 4. Title VII of the Civil Rights Act of 1964 and the Civil Rights Act of 1866;
 - 5. the Uniformed Services Employment and Reemployment Rights Act of 1994; or
 - 6. The Family Medical Leave Act;
- D. sexual harassment or other unlawful harassment in the work place;
- E. wrongful deprivation of career opportunity, wrongful evaluation, or failure to employ or promote including failure or refusal to offer a partnership or shareholder interest to, or to name as a partner or shareholder, any **employee**;
- F. wrongful discipline of **employees**;
- G. retaliation against **employees** for the exercise of any legally protected right or for engaging in any legally protected activity;

- H. negligent hiring, training, retention or supervision of **employees**;
- I. failure to adopt adequate workplace or employment policies and procedures;
- J. employment-related defamation, false imprisonment, or invasion of privacy; or
- K. employment-related wrongful infliction of **mental injury**.

II. COVERAGE AGREEMENTS

- A. We will pay on **your** behalf all sums in excess of the deductible, up to our limits of liability, that **you** become legally obligated to pay as **damages** because of a **claim** that is both first made against **you** and reported to us during the **policy period** by reason of **wrongful employment practices** by **you** or by any person for whom **you** are legally liable provided that:
1. **you** did not give notice to a **prior insurer** of any such **claim**, an **interrelated claim**, or the circumstance of any such **wrongful employment practice** or any **interrelated wrongful employment practice**;
 2. prior to the effective date of this Policy or the first such policy issued and continuously renewed by us, no **management or supervisory employee** had a basis to believe that any such **wrongful employment practice**, or **interrelated wrongful employment practice** might reasonably be expected to be the basis of a **claim**; and
 3. such **wrongful employment practice** happened subsequent to the **prior acts date**, if any.

Subject to the limits of liability, we will also pay all **claim expenses** in connection with any **claim**.

- B. We have the right and duty to defend any **claim**, even if any of the allegations of the **claim** are groundless, false or fraudulent. We will investigate any **claim** as we deem appropriate. We will not settle any **claim** without the **Named Insured's** written consent. If we recommend a settlement or compromise to **you** which is acceptable to the **claimant**, and **you** withhold consent to such settlement or compromise and elect to contest the **claim**, our limit of liability for such **claim** under this Policy shall be reduced to the amount for which the **claim** could have been settled or compromised, including **claim expenses**, incurred up to the time we made the recommendation, plus 50% of covered **damages** and **claim expenses** in excess of such amount. However, in no event shall our total obligation exceed the each **claim** limit of liability specified in Section III.A.
- C. We are not obligated to investigate, defend, pay or settle a **claim** after the applicable limit of our liability has been exhausted by payment of **damages** or **claim expenses** or by any combination thereof, or after we have tendered the remaining available limits of liability into a court of competent jurisdiction. In such case, we shall have the right to withdraw from the further investigation, defense or settlement of any **claim** by tendering control of said investigation, defense or settlement to the **Named Insured**. We will initiate, and cooperate in, the transfer of control to the **Named Insured** of any **claims** that were reported to us prior to the exhaustion of such limit. The **Named Insured** must cooperate in the transfer of control of such **claims**. We agree to take the necessary steps, as we deem appropriate, to avoid a default in such **claims** until such transfer has been completed, provided the **Named Insured** is cooperating in completing such transfer.

The **Named Insured** must reimburse us for expenses we incur in taking those steps we deem appropriate to avoid a default.

- D. If we conclude that the limit of liability applicable to any **claim** may become exhausted prior to the conclusion of the **claim**, we will notify the **Named Insured** in writing as soon as practicable to that effect. When the limit of liability applicable to any **claim** has actually been exhausted prior to the conclusion of the **claim**, we will notify the **Named Insured** in writing as soon as practicable that such limit has been exhausted.

III. LIMITS OF LIABILITY

A. Each **Claim**

Subject to B. below, the limit of liability for **damages** and **claim expenses** for each **claim** shall not exceed the amount stated in the Declarations as “Per **claim**.”

B. Aggregate

Subject to A. above, the limit of our liability for **damages**, and **claim expenses** for all **claims** shall not exceed the amount stated in the Declarations as “Aggregate.”

C. Deductible

1. Our obligation to pay **damages** and **claim expenses** as a result of a **claim** is in excess of the applicable amount of the deductible. The deductible does not reduce the applicable limits of liability. The **Named Insured** agrees to pay all **damages** and **claim expenses** up to the amount of such deductible. The deductible amount applies on a per **claim** basis. Payment of the deductible or portions thereof shall be made by the **Named Insured** as **claim expenses** are incurred or **damages** are paid.
2. The deductible will be reduced by 25% for a **claim** for wrongful termination in the event that **you** consulted with and followed the recommendations of labor or employment law counsel of our choice prior to the actual termination of an **employee**.

D. Multiple Insureds, **claims** and **claimants**

The limit of liability shown in the Declarations and subject to the provisions of this Policy is the amount we will pay as **damages** and **claim expenses** regardless of the number of **you**, **claims** made or persons or entities making **claims**. If **interrelated claims** are subsequently made against **you** and reported to us, all such **interrelated claims**, whenever made, shall be considered a single **claim** first made and reported to us within the policy period in which the earliest of the **interrelated claims** was first made and reported to us.

E. Defendants Reimbursement

We agree to pay those of **you** who are individual non-complainants \$50.00 per hour to attend a trial, court hearing, mediation or arbitration proceeding at our request, when such trial, court hearing, mediation or arbitration proceeding involves a **claim** for which coverage exists under this policy. Any amounts paid hereunder are in addition to, and not a part of, the Limit of Liability. The deductible will not apply to any payment hereunder.

IV. EXCLUSIONS

This policy does not apply to any **claim**:

- A. for **property damage** or **bodily injury** regardless of cause;
- B. for:
 - 1. any **wrongful employment practice** of any **owned entity**, or by **employees** of such **owned entity**, occurring before the date such entity became a **owned entity**, or
 - 2. any other **wrongful employment practice** whenever occurring, which, together with a **wrongful employment practice** described in 1. above, would constitute **interrelated wrongful employment practices**;
- C. based on or arising out of **your** assumption of the liability of others in any oral or written contract or agreement, unless such liability would have attached to **you** in the absence of such agreement;
- D. based on or arising out of a collective bargaining agreement, lockout, strike, picket line, replacement or other similar actions resulting from labor disputes or labor negotiations, or the Workers' Adjustment and Retraining Notification Act, Public Law 100-379 (1988), or any amendment thereto, or any similar federal, state, local or common law;
- E. based on or arising out of any actual or alleged violation of, or obligation under, (i) **ERISA or any Similar Act**, (ii) any law governing workers' compensation, unemployment insurance, social security, disability or similar law, (iii) the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), (iv) the Fair Labor Standards Act (except the Equal Pay Act), (v) the National Labor Relations Act, (vi) the Occupational Safety and Health Act of 1970 (OSHA), or (vii) any similar federal, state or local law. However this exclusion shall not apply to any **claim** for retaliatory treatment on account of an **employee's** exercise of legal rights related to such laws;
- F. based on or arising out of a fraudulent or criminal act by any of **you**. We shall provide **you** with a defense of such **claim** unless or until the fraudulent or criminal act has been determined by any trial verdict, court ruling, regulatory ruling or legal admission, whether appealed or not. Such defense will not waive any of our rights under this Policy. Criminal proceedings are not covered under this Policy regardless of the allegations made against **you**; or
- G. for declaratory or injunctive relief, including without limitation costs incurred by **you** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person as mandated by any federal, state, or local law, any amendments to such laws, or any regulations promulgated under any such law. We shall provide **you** with a defense of such **claim**. Such defense will not waive any of our rights under this Policy.

V. POLICY CONDITIONS

A. Coverage Territory

This policy applies to **wrongful employment practices** taking place anywhere in the world, provided that the **claim** is made and suit is brought against **you** within the United States of America, its territories, possessions, Puerto Rico or Canada.

B. Sole Agent

The **Named Insured** shall be the sole agent of all of **you** for the purpose of effecting or accepting any notices hereunder, any amendments to or cancellation of this Policy; for the completing of any applications; for the making of any statements, representations and warranties; for the payment of any premium and the receipt of any return premium that may become due under this Policy; and for the exercising of, or declining to exercise any right under this Policy.

C. Duties in the event of a **claim**

1. The **Named Insured** must give us written notice as soon as reasonably possible after a **management or supervisory employee** becomes aware of such **claim** and during the **policy period** of any **claim** made against **you**.

We agree that **you** may have up to, but not to exceed, 60 days after the Policy expiration to report to us a **claim** made against **you** during the **policy period** if the reporting of such **claim** is as soon as reasonably practicable.

2. **You** must:

- a. immediately forward all documents received in connection with the **claim** to us;
- b. fully cooperate with us or our designee in the investigation, the making of settlements, the conduct of suits or other proceedings, or enforcing any right of contribution or indemnity against another who may be liable to **you** in connection with a **claim**;
- c. attend depositions, hearings and trials, assist in securing and giving evidence and obtaining the attendance of witnesses; and
- d. refuse, except at **your** own cost, to admit any liability, assume any **damages**, voluntarily make any payments, or incur any **claim expenses**.

D. Duties in the event of a potential **claim**

If, during the **policy period**, a **management or supervisory employee** becomes aware of a circumstance for which coverage may be provided hereunder, the **management or supervisory employee** must give written notice to us as soon as reasonably possible during the **policy period**. Such notice must state the reasons for anticipating a **claim**, with full particulars, including but not limited to:

1. the specific **wrongful employment practice**;
2. the dates and persons involved;
3. the identities of anticipated or possible **claimants**; and
4. the circumstances by which **you** first became aware of the possible **claim**.

If such notice is given, then any such **claim** that is subsequently made against **you** and reported to us shall be deemed to have been made at the time such written notice was given to us.

In the event we determine there is an opportunity to avoid a **claim** arising out of a potential **claim you** have reported to us and we incur legal or expert expenses to do so, such expense will be at our cost and not be subject to **your** deductible.

E. Notice

Notice of any **claim** or potential **claim** should be reported to the address specified on the Declarations.

F. Changes/Transfer of Interest

Notice to any of our agents or knowledge possessed by any such agent or any other person shall not act as a waiver or change in any part of this Policy. **You** agree to first obtain our written consent to make any changes, transfers or assignments of this Policy. None of the provisions of this Policy will be waived, changed or modified except by written endorsement issued to form a part of this Policy.

G. Entire contract

This Policy includes the Declarations, all endorsements attached to this Policy, the completed and signed application and all supplementary information and statements **you** have provided to us.

By acceptance of this Policy **you** agree that all of the information and statements provided to us by **you** are true, accurate and complete. This Policy has been issued in reliance upon the truth and accuracy of those representations.

No concealment, misrepresentation or fraud shall avoid or defeat recovery under this Policy unless such concealment, misrepresentation or fraud was material. A material misrepresentation means concealment, misrepresentation or fraud in the procurement of this insurance policy, which if known by us would have led to refusal by us to make this contract or provide coverage for a **claim** hereunder.

Notwithstanding the foregoing, we agree not to rescind the policy because of such concealment, misrepresentation or fraud unless a **management or supervisory employee** is responsible for or knew or should have known of such concealment, misrepresentation or fraud.

H. Other Insurance

If **you** have other valid and collectible insurance that applies to the **claim**, this insurance shall be excess over any other insurance, self-insurance, self-insured retention or similar programs, whether primary, excess, contingent or on any other basis.

If no other insurer defends a **claim** that we have an obligation to defend, we will do so, but we will be entitled to **your** rights against all those other insurers.

We will pay only our share of the amount of the loss, if any, that exceeds the sum of the total amount that all such other insurance would pay in absence of this insurance and the total of all deductible and self-insured amounts under all such other insurance or other available programs. This provision does not apply to other insurance that was purchased by **you** specifically to apply in excess of the limits of liability shown on the Declarations of this Policy.

I. Legal Action Limitation

You agree not to bring any legal action against us concerning this Policy unless **you** have fully complied with all the provisions of this Policy, and the amount of **your** obligation to pay has been finally decided. Such amount can be decided by final judgment against **you** or by written agreement between **you**, the **claimant** and us.

You agree to bring any such action within two years, or during any applicable statute of limitations for the bringing of such action, whichever is longer.

No individual or entity, or their legal representative, is entitled to recover under this Policy until they have secured such judgment or written agreement. Recovery is limited to the extent of the insurance afforded by this Policy. No individual or entity has any right under this Policy to include us in any action against **you** to determine **your** liability, nor will **you** or **your** representative bring us into such an action.

J. Subrogation

In the event of any payment under this Policy, we shall be subrogated to all of **your** rights of recovery thereof against any person or organization, including any rights **you** may have against any other person insured under this policy who is involved in dishonest, fraudulent, criminal, malicious or intentional conduct. **You** shall execute and deliver instruments and papers and do whatever else is necessary to secure and collect upon such rights. **You** shall do nothing to prejudice such rights.

K. Premium

Premiums for this Policy are payable to us in advance. They may be paid to our authorized representative or us. The premium is due on the effective date of this Policy.

L. Reimbursement

While we have no duty or obligation to do so, if we advance any amounts in payment of **damages** or **claim expenses** within the amount of the applicable deductible or in excess of the applicable limit of liability, **you** agree to be jointly and severally liable to us for such amounts. Upon demand, **you** agree to immediately repay such amounts to us.

M. Bankruptcy/Insolvency

The insolvency or bankruptcy of **you**, or the insolvency of **your** estate, shall not release us from the payment of **damages** or **claim expenses** recoverable under this Policy.

N. Cancellation/Non-Renewal

Your rights and ours are stated in the attached State Provisions endorsement.

O. Acquisition/Merger of **Named Insured**

If any person or business organization acquires an ownership interest in the **Named Insured** which is greater than fifty percent (50%) then we shall deem this Policy to have ceased with respect to **claims** made against **you** based on any **wrongful employment practice** committed or allegedly committed on or subsequent to the time and date of said acquisition. In such event, the **policy period** shall remain unaltered and coverage will continue but only with respect to **wrongful employment practices** committed prior to the time and date of such acquisition in accordance with all other terms and conditions of this Policy.

P. **Extended Claim Reporting Period**

As used herein, **extended claim reporting period** means the period of time after the end of the **policy period** for reporting **claims** to us that are made against **you** during the applicable **extended claim reporting period** by reason of a **wrongful employment practice** that happened prior to the end of the **policy period** and is otherwise covered by this Policy. It is understood and agreed that the **extended claim reporting period** shall not be construed to be a new policy and any **claim** submitted during such period shall otherwise be governed by this Policy. The Limits of Liability for any **claim** reported during any **extended claim reporting period** shall be part of and not in addition to the limits of liability for the **policy period** as set forth in the Declarations and Section III, Limits of Liability of this Policy.

1. Automatic **extended claim reporting period**

If this Policy is canceled or non-renewed by either us or by the **Named Insured**, we will provide to the **Named Insured** an automatic, non-cancelable **extended claim reporting period** starting at the termination of the **policy period** if the **Named Insured** has not obtained another policy of employment practices liability insurance. This automatic **extended claim reporting period** will terminate after sixty (60) days.

2. Optional **extended claim reporting period**

If this Policy is canceled or non-renewed by either us or by the **Named Insured**, then the **Named Insured** shall have the right to purchase an optional **extended claim reporting period**. Such right must be exercised by the **Named Insured** within sixty (60) days of the termination of the **policy period** by providing written notice to us. Once purchased, the optional **extended reporting period** premium is fully earned and the **extended reporting period** is non-cancelable.

3. Elimination of right to any **extended claim reporting period**

There is no right to the optional **extended claim reporting period** if we cancel or refuse to renew this Policy due to non-payment of premiums or any material misrepresentations in the application for this Policy.

IN WITNESS WHEREOF, we have caused this Policy to be executed by our Chairman and Secretary, but this Policy shall not be binding upon us unless completed by the attachment of the Declarations.

Chairperson *John H. Haff*

Secretary *John M. Haff*