

## Employment Practices Liability

The vast majority of companies in New Zealand employ people to provide and sell products and services.

The common cliché is that your employees are your greatest asset. They can also be your biggest liability.

Some 54% of all Liability claims in New Zealand are employment related: the employee who claims unjustified or constructive dismissal, the employee who is overlooked for promotion, the employee who is harassed in the workplace. All of these scenarios can lead to actions being taken against employers that incur defence costs and damages.

For the aggrieved employee there is always assistance available, often via pro-bono advocates who work on a “pay if paid” basis. Should the employee achieve a settlement then the advocate will get paid a percentage of the settlement plus costs.

For the employer insurance cover is available via Employment Practices Insurance. Cover is provided for defence costs and damages. Often settlements are small to medium size but the costs of defending, whether mediated or via the Employment Relations Authority can be more substantial. Due to this many claims are settled out of court on the basis that provided the employer pays the costs to the advocate/employee and damages to the employee, publicity is avoided.

These damages awards are usually based around “hurt feelings” and “loss of employment opportunity” and often the reasons are emotive. There are items not covered and these are quite logical: entitled wages and holiday pay for example, and redundancy is not indemnified.

As with most insurance policies the idea is to protect the balance sheet of a business and ensure continuity and viability of that business. Should the business have to pay out of its own reserves or facilities then the balance sheet is weakened. Not insuring adequately or at all can potentially lead to the end of the business.

No business should be without this cover.

Apex can provide cover for all of your insurance needs, whether Property, Liability, Marine, Accident & Health, Trade Credit and beyond.

We tailor-make to your requirements dependant on your business needs.

## Claims examples:

### WRONGFUL DISMISSAL

**A bar discovered that its newly employed bar manager, had a history of gambling and alcohol abuse. He was responsible for the till and the alcohol in the bar. When the managers found out about his history they immediately terminated his employment for lying in his employment application. The bar manager took an action through the Employment Relations Authority against the bar for unfair dismissal. After consulting with the insurer, the bar decided to pay a settlement to the bar manager, rather than going through the courts, as there were issues over the procedural steps they took in terminating his employment. The legal costs amounted to \$8,500 and the settlement for hurt and humiliation was \$10,000.**

### PERSONAL GRIEVANCE

**A company changed hours of one of its employees and required the employee to work away from home and this was outside of the provisions of the employment contract. The employee asked for the employment contract to be reviewed as this was going to cause hardship for him and his family. The company told him it was a requirement of the job description that was being re-written and if he (the employee) didn't agree then the employee would have to take a pay-cut. The employee discovered that the company had already made the decision that he was to be replaced and had employed another person to take his place. He took a case to the Employment Relations Authority and was awarded damages for hurt and humiliation along with costs.**

To discuss further or for any queries, please contact your Apex Broker or our Technical Manager, Mark Robb:  
[markr@apexinsurance.co.nz](mailto:markr@apexinsurance.co.nz)