

Liberty Prime Plus Policy

LIBERTY MUTUAL INSURANCE COMPANY

(A Stock Insurance Company, hereinafter the "Insurer")

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART

I. INSURING CLAUSE

The Insurer shall pay on behalf of the **Insureds Loss** which the **Insureds** become legally obligated to pay by reason of any **Claim** first made against the **Insureds** during the **Policy Period** or the **Discovery Period**, if exercised, for any **Wrongful Employment Practice** taking place prior to the end of the **Policy Period**, if such **Claim** is brought by an **Employee**.

II. DEFINITIONS

For purposes of coverage under this Coverage Part:

A. **Claim** means:

1. a written demand for monetary damages,
2. a civil proceeding commenced by the service of a complaint or similar pleading,
3. an arbitration proceeding,
4. a criminal proceeding commenced by a return of an indictment,
5. a formal administrative or regulatory adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document, including without limitation any such proceeding before the Equal Employment Opportunity Commission or the Office of Federal Contract Compliance Programs,
6. a formal civil, criminal, administrative or regulatory investigation commenced by the service upon or other receipt by the **Insured** of a written notice or subpoena from the investigating authority identifying the **Insured** as a person against whom a formal proceeding may be commenced, or
7. a request to the **Insured** by a prospective claimant to toll or waive any statute of limitation, or against any **Insured** alleging a **Wrongful Employment Practice**, including any appeal therefrom; however, a **Claim** shall not include a labor or grievance proceeding which is subject to a collective bargaining agreement.

All suits, complaints or similar proceedings arising out of the same facts are to be considered a single **Claim** under the Policy.

- ###### B. **Discrimination** means refusal to conduct business, refusal to sell, or to take any action against any individual with respect to his or her business because of race, color, religion, age, sex, disability, pregnancy, national origin, sexual orientation, or other protected category or characteristic established pursuant to any applicable United States federal, state or local statute or ordinance.

Liberty Prime Plus Policy

- C. **Employee** means an individual whose labor or services has been engaged or will be engaged and directed by a **Company**. This includes any or more persons who were, now are or shall be duly elected or appointed directors, trustees, shareholders, partners, managers or officers of the **Company**, full time, part-time, seasonal employees as well as students, committee members, individuals employed in a supervisory, managerial, or confidential position of the **Company**, or, with respect to an organization incorporated outside the United States, their functional equivalent. An individual who is leased to the **Company** shall be an **Employee**, but only while acting in the scope of their employment for the **Company**.

Independent Contractors will be considered to be **Employees**, provided, however, that coverage for **Independent Contractors** shall apply only (i) when said **Independent Contractor** is treated as a regular employee by the **Company** and (ii) while acting under the direct supervision of the **Company** and in the scope of their authorized services to be performed for or on behalf of the **Company**. Committee members and volunteers are also considered an **Employee**.

- D. **Independent Contractor** means any natural person working for a **Company** in the capacity of an independent contractor pursuant to an express contract or agreement with a **Company** governing the nature of such person's engagement.

- E. **Insureds**, either in the singular or plural, means:

1. the **Employee**, and
2. the **Company**.

- F. **Loss** means monetary compensation for a claimant's economic loss that is directly related to a "claim" including punitive, exemplary and multiplied damages where insurable by law.

Loss does not include:

1. any civil or criminal fines or penalties;
2. non-monetary, equitable, injunctive, or declaratory relief;
3. matters which are deemed uninsurable according to the applicable law;
4. amounts owed under an express contract of employment, or express obligation to pay moneys upon an **Employee's** termination;
5. salary, wages and any other benefit or obligation;
6. Any amount which is based upon, arising from, or in consequence of employment reinstatement of the claimant by the insured or the continued employment of the claimant; or
7. Any amount which constitutes front pay, future **Loss** or other future economic relief or equivalent thereof, if the **Insured** has the option pursuant to a judgment or other final adjudication but fails to reinstate the claimant as an **Employee**.

Liberty Prime Plus Policy

With respect to the insurability of punitive, multiplied or exemplary damages, if the **Company** determines, in good faith, that such **Loss** is insurable under applicable law, the **Insurer** will not raise as a defense to coverage the insurability of such **Loss**. However, in the event of a challenge to such a determination by any other person or entity, the **Company** shall be obligated to reimburse such **Loss** only if a court of competent jurisdiction specifically determines that such **Loss** is not insurable.

It is further understood and agreed that the enforceability of the foregoing shall be governed by such applicable law which most favors coverage for punitive, exemplary and multiplied damages.

G. **Potential Claim** means that if during the **Policy Period** or the **Discovery Period**, if purchased, the **Insureds** first become aware of a specific **Wrongful Employment Practice** which may reasonably give rise to a future **Claim** covered under a Coverage Part and during such **Policy Period** or **Discovery Period** give written notice to the Insurer of:

1. the names of the potential claimants and a description of the specific **Wrongful Employment Practice** which forms the basis of such potential **Claim**,
2. the identity of the specific **Insureds** allegedly responsible for such specific **Wrongful Employment Practice**,
3. the consequences which have resulted or may result from such specific **Wrongful Employment Practice**,
4. the nature of the potential monetary damages or non-monetary relief which may be sought in consequence of such specific **Wrongful Employment Practice** , and
5. the circumstances by which the **Insureds** first became aware of such specific **Wrongful Employment Practice**,

then any **Claim** which arises out of such **Wrongful Employment Practice** shall be deemed to have been first made during the **Policy Period** or **Discovery Period**, if purchased, in which such written notice was received by the Insurer.

No coverage is provided for fees and expenses incurred prior to the time such notice results in a **Claim**.

H. **Sexual Harassment** means unwelcomed sexual advances and/or requests for sexual favors and/or other verbal and/or physical and/or written conduct of a sexual nature that: (a) are made a condition of employment and/or (b) are used as a basis for employment decisions and/or (c) create a work environment that interferes with performance or creates an intimidating, hostile, or offensive work environment.

I. **Wrongful Employment Practice** means any actual or alleged:

1. wrongful dismissal or discharge or termination of employment, whether actual or constructive;
2. employment-related misrepresentation; by an **Insured** against the **Employee** or an applicant for employment;
3. violation of any federal, state or local laws (whether common law or statutory) concerning employment;
4. sexual harassment or other unlawful harassment in the workplace, including quid pro quo and hostile work;

Liberty Prime Plus Policy

5. wrongful deprivation of a career opportunity or failure to employ, promote or grant tenure;
6. wrongful discipline or demotion of employees;
7. retaliatory treatment against an **Employees** for exercising his or her rights under the law or for engaging in any legally protected activity;
8. wrongful evaluation, supervision, negligent training or negligent retention of employees;
9. failure to adopt, comply with or enforce adequate workplace or employment policies and procedures;
10. employment-related libel, slander, defamation, humiliation or invasion of privacy; or
11. employment-related wrongful infliction of emotional distress.
12. **Discrimination** and **Sexual Harassment** by an **Insured** against the **Company's** customer(s), client(s) or any other individual with whom the **Insured** interacts in the course of business.

III. EXCLUSIONS

The Insurer shall not be liable for **Loss** on account of any **Claim** made against any **Insured**:

1. based upon, arising out of, or attributable to any fact, circumstance or situation which has been the subject of any written notice given under any policy of which this **Policy** is a direct or indirect renewal or replacement;
2. based upon, arising out of, or attributable to any written demand, proceeding or investigation against any **Insured** which was made or pending on or before the applicable Prior Litigation Date set forth in the Coverage Schedule in Item VI (A) of the Declarations, or the same or substantially the same fact, circumstance or situation underlying or alleged therein;
3. for bodily injury, sickness, mental anguish, emotional distress, disease or death of any person, or for damage to or destruction of any tangible property including loss of use thereof, however, this exclusion shall not apply to mental anguish or emotional distress as part of a **Wrongful Employment Practice**;
4. based upon, arising out of, or attributable to (a) the actual, alleged or threatened discharge, release, escape, seepage, migration or disposal of **Pollutants** into or on real or personal property, water or the atmosphere; or (b) any direction or request that the **Insureds** test for, monitor, clean up, remove, contain, treat, detoxify or neutralize **Pollutants**, or any voluntary decision to do so; however, this exclusion shall not apply with respect to any **Claim** for retaliatory treatment of the claimant by the **Insured** on account of the claimant's actual or threatened disclosure of the matters described in (a) or (b) of this exclusion;
5. for **Wrongful Employment Practice** actually or allegedly committed or attempted by a **Subsidiary** or its **Insured Persons** before the date such **Subsidiary** became an **Insured**;
6. for an actual or alleged violation of the responsibilities, obligations or duties imposed by (i) any law governing workers' compensation, unemployment insurance, social security, disability benefits or similar law, (ii) Employee Retirement Income Security Act of 1974, as amended, (iii) the Fair Labor Standards Act (except the Equal Pay Act), (iv) the National Labor Relations Act, (v) the Worker Adjustment and Retraining Notification Act, (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985, (vii) the Occupational

Liberty Prime Plus Policy

Safety and Health Act, or (viii) rules or regulations promulgated under any of such statutes or laws, amendments thereto or similar provisions of any federal, state or local statutory law or common law; however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant by the **Insured** on account of the claimant's exercise of rights pursuant to any such law, rule or regulation;

7. based upon, arising out of, or attributable to any actual or alleged breach of any contract or agreement specifying the terms of the **Company's** engagement of an **Independent Contractor**; or
8. if such **Loss** constitutes:
 - a. the cost of any non-monetary relief including without limitation (i) any costs associated with compliance with any injunctive relief of any kind or nature imposed by any judgment or settlement, or (ii) any costs associated with providing any reasonable accommodations required by, made as a result of, or to conform with the requirements of, the Americans with Disabilities Act and any amendments thereto or any similar federal, state or local statute, regulation, or common laws; however, this exclusion shall not apply to **Defense Costs**.
 - b. compensation earned by the claimant in the course of employment but not paid by the **Company**, including any unpaid salary, bonus, hourly pay, overtime pay, severance pay (Puerto Rico Law 80 of 1976, as amended), retirement benefits, vacation days, sick days, prerequisites, stock options or similar rights;
 - c. damages determined to be owing under an express written contract with or express written severance obligation of the **Company**; but this exclusion shall not apply if and to the extent that liability would have attached to the **Insureds** in the absence of the written contract with or obligation of the **Company**; however, this exclusion shall not apply to Defense Costs; or
 - d. medical or insurance benefits to which the claimant allegedly was entitled or would have been entitled had the **Company** provided the claimant with a continuation or conversion of insurance; or
9. Any liability alleging, arising out of, based upon or attributable to the committing in fact of any criminal or deliberate fraudulent act by the **Insured**.



PRESIDENT
Timothy M. Sweeney



SECRETARY
Damon Hart