

This **Employment Practices Liability Coverage Section** only applies if shown as purchased on the Schedule.

AIG

PrivateEdge



## Employment Practices Liability Coverage Section

In consideration of the payment of the premium, or agreement to pay the premium, the **Insurer** and the **Policyholder** agree as follows:

The **General Terms and Conditions** are incorporated by reference into, made a part of, and are expressly applicable to this **EPL Coverage Section**.

All cover under this **EPL Coverage Section** is afforded solely with respect to **Claims** first made against the **Insured** during the **Policy Period** or **Discovery Period** and reported to the **Insurer** as required by the **General Terms and Conditions**.

The cover under this **EPL Coverage Section** is subject to the **Employment Practices Liability Limit of Liability**



Bring on tomorrow

## 1. Insurance Covers

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### 1.1. Employment Practices Liability

The **Insurer** will pay the **Loss** of each **Insured** arising from a **Claim** made against an **Insured** for an **Employment Practice Violation**.

### 1.2. Third Party Violation

The **Insurer** will pay the **Loss** of each **Insured** arising from a **Claim** made against an **Insured** for a **Third Party Violation**.

### 1.3. Wrongful Internet Activity

The **Insurer** will pay the **Loss** of each **Company** arising from a **Claim** made against a **Company** for its actual or alleged liability for any **Wrongful Internet Activity** of an **Employee**.

## 2. Definitions

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The following definitions are specific to this **EPL Coverage Section**. All other definitions set out within Section 5.2 (Definitions of General Applicability) of the **General Terms and Conditions** shall apply as stated.

### 2.1. Claim

- (i) a civil, regulatory, mediation, administrative, arbitration or other alternative dispute resolution proceeding including any counter-claim, seeking compensation or other legal remedy made or brought against an **Insured** for a specified **Employment Practice Violation** or a specified **Third Party Violation**;
- (ii) the receipt by an **Insured** of an ET1 or pre-conciliation notification from ACAS, for a specified **Employment Practice Violation**; or
- (iii) with regard to an **Insured Person**, an **Investigation**.

**Claim** shall not include any labour or grievance proceeding which is subject to a collective bargaining agreement.

### 2.2. Defence Costs

- (i) with regard to a **Claim** as defined in part (i) and (ii) of **Claim**:
  - (a) (a) reasonable fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent (except with respect to costs incurred through the Advice and Defence Legal Helpline pursuant to 3.4 (Insurer's Consent) of the **General Terms and Conditions**), by or on behalf of an **Insured** after a **Claim** is made, in the investigation, defence, settlement or appeal of such **Claim**;
  - (b) (b) reasonable fees, costs and expenses incurred for representing an **Insured**, with the **Insurer's** prior written consent, by or on behalf of an **Insured** of accredited experts, retained through defence counsel to prepare an evaluation, report, assessment, diagnosis or rebuttal of evidence in connection with the defence of a covered **Claim**;
- (ii) with regard to an **Investigation**, reasonable fees, costs and expenses incurred by an **Insured Person**, with the **Insurer's** prior written consent (except with respect to costs incurred through the Advice and Defence Legal Helpline pursuant to 3.4 (Insurer's Consent) of the **General Terms and Conditions**), solely in connection with his or her preparation for and response to an **Investigation** directed at such **Insured Person**, but excluding the costs of complying with any formal or informal discovery or other request seeking

documents, records or electronic information in the possession or control of any **Company**, the requester or any other third party.

**Defence Costs** shall not include any routine or regularly scheduled regulatory or internal supervision, inspection, compliance, review, examination, production or audit, including any request for mandatory information from a regulated entity, conducted in a **Company's** and / or **Official Body's** normal review or compliance or remuneration of any **Insured Person**, cost of their time or any other costs or overheads of any **Company**.

### 2.3. Director or Officer

any natural person who was, is or becomes a duly elected or appointed director or officer of a **Company** (or equivalent position).

### 2.4. Employee

any natural person:

- (i) who is or was under a contract of employment (whether full-time, part-time or otherwise) with the **Company** and whom such **Company** compensates by way of salary, wages, and/or commission;
- (ii) **Director or Officer** whilst acting as or performing the duties coming within the scope of any such natural persons referred to in (i) above; or
- (iii) who is or was an independent contractor; seconded; volunteer; or student pursuing studies or gaining work experience, but only if and to the extent that:
  - (a) such natural person is under the direction and supervision of the **Company**; and
  - (b) the **Company** provides indemnification to such individual in the same manner as is provided to the natural persons referred to in (i) above;

### 2.5. Employment Practices Liability Limit of Liability

the amount specified in Item 4 of the Schedule for liability under this **EPL Coverage Section**.

### 2.6. Employment Practices Violation

any actual or alleged:

- (i) wrongful dismissal, unfair dismissal, discharge or termination (either actual or constructive) of employment, including breach of an express or implied contract;
- (ii) harassment (including workplace bullying, sexual harassment whether “quid pro quo”, hostile work environment or otherwise, including “same-sex” sexual harassment);
- (iii) discrimination (including, but not limited to, discrimination based upon age, gender, gender identity or expression, race, colour, national origin, religion, sexual orientation or preference, genetic information, pregnancy, military status or disability);
- (iv) **Retaliation**;
- (v) employment-related misrepresentation to an **Employee** or applicant for employment with the **Company**;
- (vi) employment-related libel, slander, humiliation, defamation or invasion of privacy;
- (vii) false arrest or false imprisonment;
- (viii) wrongful failure to employ or promote;

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- (ix) wrongful deprivation of career opportunity with the **Company**, wrongful demotion or negligent **Employee** evaluation, including the giving of negative or defamatory statements in connection with an employee reference;
- (x) employment-related breach, violation or non-compliance with the Data Protection Act 1998 (UK);
- (xi) any other claim pursuant to the Equality Act 2010 (UK) and the Employment Rights Act 1996 (UK); or
- (xii) with respect to any of the foregoing items (i) through (xi) of this definition: negligent hiring, retention, training or supervision, 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 a **Company**, whether committed directly, indirectly, intentionally or unintentionally.

## 2.7. Insured Person

- (i) **Director** or **Officer**; or
- (ii) **Employee** of a **Company**.

## 2.8. Insured

- (i) an **Insured Person**; or
- (ii) a **Company**.

## 2.9. Investigation

any formal or official hearing, investigation or inquiry by any **Official Body** concerning any **Employment Practices Violation** by any **Insured Person** in his capacity once the **Insured Person** is legally compelled to attend.

An **Investigation** shall be deemed to be first made when an **Insured Person** is first so requested or identified.

**Investigation** shall not mean routine regulatory supervision, inspections or compliance reviews, internal investigations or any investigation which is industry-focused rather than **Company** focused or **Insured Person** focused.

## 2.10. Loss

any **Defence Costs** and any other amount, including any awards of damages (including back pay and front pay, and any court order to pay compensation for damages), awards of costs or settlements, pre and post judgment interest on a covered judgment or award, and the multiplied portion or multiple damages, which an **Insured** is legally liable to pay resulting from a **Claim**. **Loss** is specifically extended to include aggravated damages awarded by a court or tribunal in the United Kingdom.

**Loss** shall not include: (i) civil or criminal fines or penalties imposed by law; (ii) taxes or national insurance; (iii) any amounts for which an **Insured** is not financially liable or which are without legal recourse to an **Insured**; (iv) employment-related benefits, stock options, perquisites, deferred compensation or any other type of compensation other than salary, wages or bonus compensation; (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. In no event shall **Loss** include amounts which the **Insurer** is prohibited from paying by law of the **Policy** or the law of the jurisdiction where the **Claim** was made.

**Defence Costs** shall be provided for items specifically excluded from **Loss** pursuant to subparagraphs 2.10(i) through 2.10(v) above of this Definition, subject to the other terms, conditions and exclusions of this policy.

#### **2.11. Official Body**

any regulator, government body, government agency or official trade body having legal authority to investigate an **Insured** in connection with an **Employment Practices Violation** including the Equal Opportunities Commission (UK), the Commission for Racial Equality (UK), or the Disability Commission (UK).

#### **2.12. Retaliation**

a retaliatory act of an **Insured** alleged to be in response to any of the following activities: (i) the disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by an **Insured** which act is alleged to be a violation of any federal, state, local or foreign law, common or statutory, or any rule or regulation promulgated thereunder; (ii) the actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under worker's compensation laws, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights; (iii) the filing of any claim under the Federal False Claims Act or any other national, federal, state, local or foreign "whistle-blower" law; or (iv) strikes of an **Employee**.

#### **2.13. Third Party Violation**

any actual or alleged harassment or unlawful discrimination, as described in subparagraphs 2.6(ii) and 2.6(iii) of the definition of **Employment Practices Violation** (Definition 2.6), or the violation of the civil rights of a person relating to such harassment or discrimination, when such acts are alleged to be committed against anyone other than an **Insured Person** or applicant for employment with the **Company**, including, but not limited to, students, patients, members, customers, vendors and suppliers.

#### **2.14. Wrongful Act**

any actual or alleged (i) Employment Practices Violation, (ii) Third Party Violation or (iii) Wrongful Internet Activity.

#### **2.15. Wrongful Internet Activity**

- (i) an **Employment Practices Violation** alleged by an **Employee**; or
- (ii) **Third Party Violation**,

when committed by an **Employee** by means of the internet, including, but not limited to, social networking activities, regardless of whether such internet activity is during or after work hours or on or off the work premises. For the purposes of the application of this definition, an individual is deemed to be an **Employee** regardless of whether such individual was acting in his or her capacity as an **Employee**.

### 3. Exclusions

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The following Exclusions are specific to this **EPL Coverage Section**.

The **Insurer** shall not be liable to make any payment for **Loss** under any Insurance Cover:

#### 3.1. Conduct

arising out of, based upon or attributable to:

- (i) the gaining of profit or advantage to which the **Insured** was not legally entitled; or
- (ii) the committing of any deliberately dishonest or deliberately fraudulent act by the **Insured**,

in the event that any of the above is established by final, non-appealable adjudication in any action or proceeding or by any formal written admission by the **Insured**.

#### 3.2. Prior Claims and Circumstances

arising out of, based upon or attributable to:

- (i) any facts alleged or the same or related **Wrongful Acts** alleged or contained in any circumstance of which notice has been given under any policy of which this **Policy** is a renewal or replacement or which it may succeed in time; or
- (ii) any pending or prior civil, criminal, administrative or regulatory proceeding, investigation, arbitration, mediation, other dispute resolution or adjudication as of the **Continuity Date**, or alleging or deriving from the same or essentially the same facts alleged in such actions; or
- (iii) any **Claim** that would otherwise constitute a **Single Claim** with any claim or other matter reported under any policy of which this **Policy** is a renewal or replacement or which it may succeed in time.

This Exclusion 3.2(i)(Prior Claims and Circumstances) shall not apply to any circumstances which have been notified to the **Insurer** under any earlier policy, but were not accepted by the **Insurer** as a valid notification, and where cover has been maintained continuously with the **Insurer** from the inception date of such earlier policy until the expiry date of this **Policy**.

#### 3.3. Bodily Injury and Property Damage

arising out of, based upon or attributable to bodily injury, sickness, disease, death, emotional distress or mental anguish of any natural person; or damage to, destruction, impairment or loss of use of any property.

This Exclusion 3.3 (Bodily Injury and Property Damage) shall not apply to any **Claim** for emotional distress or mental anguish with respect to an **Employment Practice Violation**.

#### 3.4. Other Claims

alleging, arising out of, based upon or attributable to any actual or alleged act or omission of an **Insured Person** serving in any capacity, other than as a **Director or Officer** or **Employee**.

#### 3.5. Claims Brought by any Insured

for any **Claim** which is brought by any **Director or Officer** of the **Policyholder**, unless such **Claim** is based solely on their capacity as an **Employee**.

### 3.6. Employee Retirement Income Security Act 1974 (USA) and others

alleging, arising out of, based upon or attributable to any actual or alleged violation of the responsibilities, obligations or duties imposed by the Employee Retirement Income Security Act of 1974 (USA), the Fair Labor Standards Act (except the Equal Pay Act (USA)), the National Labor Relations Act (USA), the Worker Adjustment and Retraining Notification Act (USA), the Consolidated Omnibus Budget Reconciliation Act (USA), the Occupational Safety and Health Act (USA), the Health and Safety at Work Act 1974 (UK), the Pensions Act 1995 (UK), the Pensions Act 2004 (UK) Pension Act 2007 (UK); Pension Act 2008 (UK); Pension Act 2011 (UK), Pension Act 2014 (UK); Pensions Schemes Act 2015 (UK) or any similar provisions of the common law.

This Exclusion 3.6 (Employee Retirement Income Security Act 1974 (USA) and others ) shall not apply to **Loss** arising from a **Claim** for **Retaliation**.

### 3.7. Fair Labour Standard Act

arising out of, based upon or attributable to or in any way relating to:

- (i) the refusal, failure or inability of any **Insured** to pay wages or overtime pay (or amounts representing such wages or overtime pay) for services rendered (as opposed to tort-based back pay or front pay damages for torts other than conversion);
- (ii) improper payroll deductions taken by an **Insured** from any **Employee** or purported **Employee**; or
- (iii) failure to provide or enforce legally required meal or rest break periods;

This Exclusion 3.7 (Fair Labour Standard Act) shall not apply to **Loss** arising from a **Claim** for **Retaliation**.

### 3.8. Benefits

arising out of, based upon or attributable to any obligation pursuant to any minimum wage regulations, workers' compensation, disability benefits, redundancy or unemployment benefits or compensation, unemployment insurance, retirement benefits, social security benefits or any similar law or obligation whatsoever.

This Exclusion 3.8 (Benefits) shall not apply to **Loss** arising from a **Claim** for **Retaliation**.

### 3.9. Employee Reinstatement

alleging, arising out of, based upon or attributable to any judgment or order of a court or tribunal for the reinstatement of an **Employee**.

This Exclusion 3.9 (Employee Reinstatement) shall not apply to **Defence Costs** incurred in the court or tribunal proceedings.

### 3.10. Securities Claims

alleging, arising out of, based upon or attributable to any **Claim** brought by a securities holder of a **Company** or an affiliate of the **Policyholder** in their capacity as such in the form of a shareholder class or group action or direct or derivative action on behalf of such **Company** or affiliate.

### 3.11. Contractual Claims

for any **Claim** brought in, or alleging a violation of any regulation or law of the United States of America, Canada or any territory or possession thereof and related to, arising out of, based upon or attributable to any actual or alleged contractual obligation or liability of the **Company** or any other **Insured** under any express (written or oral) contract or agreement including, but not limited to, any severance agreement or golden parachute agreement, or any compensation agreement payable upon the termination of any **Insured**.

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This Exclusion 3.11 (Contractual Claims) shall not apply to

- (i) liability which would have attached in the absence of such express contract or agreement; or
- (ii) **Defence Costs.**

## 4. EPL Retention Waiver

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### 4.1. EPL Retention Waiver

This section 4.1 (EPL Retention Waiver) is applicable only where the **Claim** is governed by the laws of the United Kingdom of Great Britain, Northern Ireland, Channels Islands and the Isle of Man.

No **Retention** shall apply with respect to any **Claim** under this **EPL Coverage Section** provided that:

- (i) the **Company** has a formal written grievance procedure in place; and
- (ii) with respect to the dispute which is the subject of the **Claim**, the **Company** has followed the advice of a panel firm from the Advice and Defence Legal Panel as listed in Item 9 of the Schedule; and
- (iii) with respect to the defence of any **Claim**, the **Insured** appoints a panel firm from the Advice and Defence Legal Panel as listed in Item 9 of the Schedule, and the **Claim** is defended in accordance with Section 3.3 (Defence/Settlement) of the **General Terms and Conditions.**