

Management liability

"An employee was promoted four times during her nine-year employment within a three-practitioner office but lodged a case for breach of contract, racial discrimination, and emotional distress when she was not promoted to office manager after the office merged with another practice. After four years of legal action, the practice settled the case for \$75,000 and defense costs in excess of \$272,000"



The owners and managers of a medical practice are exposed to complex and varied risks (it's not just about clinical risks). We see these types of employment claims and other management issues arise as often as clinical issues.

Your first line of defense in the above example is compliance with employment law. We highly recommend you use the AMA Queensland Workplace Relations Team, who provide dedicated support and advice for private practice members and also access to user-friendly manuals containing practical advice on the fundamentals on running an efficient and legally compliant medical practice (AMA Queensland also regularly provide extremely informative training courses that your practice manager and senior staff can benefit greatly from attending).

Your second line of defense should be appropriate insurance. Although you may consider an allegation to be completely baseless and without merit - without adequate insurance you risk funding your own expensive legal costs to successfully defend the allegation - and the compensation payout and costs if you lose.

Employment Practices Liability insurance is readily available and we believe the best way to purchase this product cover is through a 'Management Liability' policy. Management liability starts at circa \$1,500 per annum and increases on higher policy limits and business size.

Management Liability insurance not only covers Employment Practices Liability, but provides cover for a range of other management exposures including:

- ▶ **Directors and officer's liability:** Protects personal assets against losses arising from claims of wrongful acts by the businesses directors or officers.
- ▶ **Company reimbursement:** Your company can be reimbursed for payments it makes to indemnify directors or officers against claims relating to their actions as directors or officers
- ▶ **Corporate liability:** This covers wrongful acts of the company (not just of directors), officers and employees.
- ▶ **Statutory liability insurance:** Under Statutory Liability legislation there are over 5,000 legislative provisions that can result in fines or penalties and over 700 provisions that can find a director personally liable. Statutory liability covers the fines, penalties and legal fees that can result from an accidental breach of statute law. These may include occupational health and safety laws, environmental laws and employment laws
- ▶ **Crime:** provides cover for theft by employees and third parties. The rise of social engineering, phishing and cyber fraud are on the increase and we have seen clients transfer funds following a fraudulent invoice or a hacker changing the employee banking details in their accounting system resulting in funds being transferred overseas. Even the insurers that provide this cover aren't immune to employee theft, with one major insurer losing \$17 million to their national claims

manager through false invoicing- if it can happen to them it most certainly can happen to anyone!¹

- ▶ **Business crisis consultant fees:** Generally reimburses expenses incurred in responding to a business crisis event, including independent management consultants.
- ▶ **Tax audit costs:** Covers accounting costs and expenses arising from a tax audit.

The cover provided under the employment practices section of a management liability policy is of specific importance given the complex legislation surrounding employment related issues. A recent report published by the insurer Dual Australia determined over 59 per cent of management liability claims are related to employment practices breaches. The report noted that under the *Fair Work Act*, there are some 17,000 unfair dismissal claims per year being processed, with the average cost of each claim being in the region of \$50,000².

Employment claims can be made by employees, former employees, or even potential employees (during the interview process) and can include allegations of discrimination, wrongful termination of employment, sexual harassment, and myriad other employment-related claims.

There are some employment liability circumstances that are not covered. The most common exclusions are related to failure to meet your obligations to your staff in relation to employment benefits such as:

- ▶ leave entitlements;
- ▶ redundancy or bonus pay; and or
- ▶ underpayments or the back-pay of wages.

In simple terms, the policy will not cover entitlements you were required to pay under any employment contract or under any law.

In addition to the employment section, there are generally also requirements for the practice to have crime controls in place (e.g. dual authorities on payments, approved vendor lists, etc.)



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References

1. *Lessons Learnt from a \$17M Fraud* <https://www.insuranceandrisk.com.au/lessons-learnt-from-a-17m-fraud/>
2. *Management Liability: The Evolution of a Revolution: Jaydon Burke-Douglas* https://cdn2.hubspot.net/hubfs/2597761/DUAL%20Australia/AUS%20Assets/Docs/Evolution_White_Paper_260514.pdf?t=1500271175878