PROTECTING YOUR CHARITY AGAINST EMPLOYMENT DISPUTES

As with any business, charities and not-for-profit organisations can encounter disputes with their employees. Cost pressures within the sector can mean that employee resources might be stretched which can lead to sickness absence or disagreements over holiday pay. Performance issues might also arise which need to be addressed in the correct way.

Even if you have dedicated HR resource with comprehensive grievance and disciplinary policies, some issues may be irreparable or compromised by less experienced managers trying to handle them. The time and expense in dealing with these issues, particularly if the matter progresses to a tribunal, can impact heavily on a charity's cash flow and resource.

Insurance is available to help organisations navigate the necessary processes as well as cover the associated legal costs and compensation awards. There are a couple of products that can help, Legal Expenses Insurance (LEI) or Employment Practices Liability (EPL), each providing a different level of advice and protection.

As a charity insurance specialist, Gambit Insurance Solutions can arrange cover to best support your needs, including:

- Access to legal guidance and advice
- Cover to align with your employment law experience and procedures
- Indemnity limits and excess options

Please contact the team on 0330 236 6407 to discuss your requirements.

The following demonstrates the strengths and weaknesses of each policy at different stages of an employment dispute.

LEGAL EXPENSES INSURANCE

EMPLOYMENT PRACTICES LIABILITY

Initial dispute handling (Internal Disciplinary & Grievance process)

Insurance cover is not available to cover the cost of handling the initial dispute. It is your responsibility to implement your internal disciplinary and grievance process to deal with the employee's concerns, performance or, in the worst case, dismissal process. Policies may provide access to a legal advice helpline, which in some cases you must consult, but if you choose to appoint an external HR consultant, the costs are your responsibility.

Often the Insurer will **insist that you obtain and follow advice from their Legal Advice Service** as a condition of cover should a claim arise later down the line.

Therefore, policies generally provide access to a legal advice helpline which will provide guidance on how to handle the issue with the employee. Sometimes web-based content and templates are also part of the package for extra support when drafting letters, etc.

Policies are not as prescriptive when it comes to following the Insurer's legal advice.
However, you should follow best practice in the interests of protecting your position should the matter escalate to a tribunal action.
Some policies have 'Excess Waiver' clauses which remove the need to pay an excess if you have followed the ACAS Guidelines or contacted the Insurer's legal advice helpline.

Claim Notification (Matter Progressing to Employment Tribunal)

If having completed and exhausted your internal grievance and disciplinary process, the employee indicates that they intend to take matters further, invoke the ACAS dispute resolution process or present an Employment Tribunal Application, then this triggers an insurance claim.

Insurers will generally appoint a legal firm to represent you, which will be an employment law specialist with competitive pre-agreed hourly rates. The firm will be familiar with the insurers processes, and the low hourly rate means that your limit of indemnity goes further.

Some Insurers will allow you to choose your preferred legal firm but subject to their agreement on hourly fees and regular contact about the progress of the claim.
There may be a higher excess applicable if you choose not to use the Insurer's recommended firm.

Prospects of Success

The Law firm's assessment of your prospects of successfully defending a claim will drive the direction and strategy. This will include the circumstances alleged by the employee and the process you followed in responding to their grievance or dealing with a disciplinary situation.

Claims are only accepted if the prospect of defending your case successfully at tribunal is assessed as more the 50%.

The Insurer will also review whether you complied with the terms of the policy in obtaining and following legal advice from their helpline service.

If prospects are less than 51% or you haven't followed the correct advice, then cover will not be available – or at best limited to exclude compensation awards.

The EPL policy will support you irrespective of the prospects of success. In cases where the assessment is less than 51% the Legal firm will recommend a settlement agreement which the policy will also cover.

You may be liable for an excess as part of the claim, unless you have been able to comply with any 'Excess Waiver' conditions that exist in the policy.

Key Considerations

The Employment Practices Liability product offers wider protection, especially in cases where prospects of success are less than 51%, and without the need to verify your actions with insurers during the internal grievance or disciplinary process. However, this cover comes at a higher cost and with higher excesses. Legal Expenses insurance however provides low-cost protection and might suit those who are happy to lean on the insurer's advice which should increase the prospects of success in the event of a claim.

Low premium cost option
Requirements to use the Insurer's Legal Advice
Helpline throughout the grievance process
Prospects of success must exceed 50%
Low or no excesses applicable
Other types of legal disputes covered

Flexibility to follow your own internal grievance processes
Prospects of success do not drive acceptance of the claim
Settlement agreements covered
Excesses apply (£2,500+)