

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUBLIC ENTITY PAK EMPLOYMENT PRACTICES LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SCHEDULE

Coverage	Limits Of Insurance		Deductible
Employment Practices Liability Coverage	\$	Each Employment Practices Wrongful Act	\$
	\$	Annual Aggregate	

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This endorsement provides an additional insuring agreement and, as indicated, makes changes to the Commercial General Liability Coverage Form. Except as expressly provided in this endorsement the terms and conditions of the Commercial General Liability Policy continue to apply to the coverage provided by this endorsement.

A. The following is added **SECTION I – COVERAGES**:

COVERAGE G – EMPLOYMENT PRACTICES LIABILITY

1. Insuring Agreement

a. We will pay those sums the insured becomes legally obligated to pay as "damages" resulting from an "employment practices wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those "damages". However, we will have no duty to defend the insured against any "suit" seeking "damages" because of an "employment practices wrongful act" to which this insurance does not apply. We may, at our discretion, investigate and settle any "claim" or "suit" resulting from an "employment practices wrongful act". But:

- (1) The amount we will pay for "damages" is limited as described in Paragraph **D.** (Section III – Limits Of Insurance); and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments, settlements or "defense expenses".

We have no other obligation or liability to pay "damages" or perform other acts or services except as explicitly provided for under **Supplementary Payments**.

b. This insurance applies to an "employment practices wrongful act" only if:

- (1) The "employment practices wrongful act" takes place in the "coverage territory"; and
- (2) The "employment practices wrongful act" was first committed during the policy period.

c. An "employment practices wrongful act" will be deemed to have been first committed at the earliest time when any insured described under Paragraph **C.1.** (Section II – Who Is An Insured) or any "employee" acting in an official or managerial capacity for you:

- (1) Reports the "employment practices wrongful act" to us or any other insurer;
- (2) Receives a written or verbal demand for services or "claim" for "damages" because of the "employment practices wrongful act"; or
- (3) Becomes aware by any other means that the "employment practices wrongful act" has been committed.

- d. All injury or "damages" resulting from an "employment practices wrongful act" will be covered only under the policy in effect at the time the "employment practices wrongful act" was first committed.

2. Exclusions

This insurance does not apply to:

a. Dishonest, Fraudulent, Criminal Or Intentional Wrongful Act

Any "claim" or "suit" based upon, arising out of, or attributable to any intentionally wrongful, dishonest, fraudulent, criminal or malicious act, error or omission, committed by any insured, including but not limited to the willful or reckless violation or any statute or regulation.

b. Contractual Liability

Any "claim" or "suit" based upon, arising out of, or attributable to the breach of a contract or agreement or any obligation to pay "damages" by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to:

- (1) Liability for "damages" that the insured would have in the absence of the contract or agreement; or
- (2) Liability resulting from an "insured contract" for mutual aid services between the insured and another unit of government.

c. Workers' Compensation And Similar Laws

Any "claim" or "suit" based upon, arising out of, or attributable to any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

d. Cost Of Alterations

Any "claim" or "suit" seeking to compel the physical alteration of any structure to accommodate or afford accessibility to any person.

e. Strikes And Lockouts

Any "claim" or "suit" based upon, arising out of, or attributable to any "employment practices wrongful act" committed against any striking or locked-out "employee", or to an "employee" who has been temporarily or permanently replaced due to any labor dispute.

f. Unlawful Profit Or Gain

Any "claim" or "suit" based upon, arising out of, or attributable to an insured's unjust enrichment, or gaining of any personal profit, remuneration or advantage to which the insured was not legally entitled.

g. Deliberate Violation of Statute, Law Or Ordinance

Any "claim" or "suit" based upon, arising out of or attributable to an insured's actual or alleged deliberate violation of any federal, state or local law, statute, ordinance, rule or regulation.

h. Bodily Injury or Property Damage

Any "claim" or "suit" based upon, arising out of, or attributable to "bodily injury" or "property damage" including any diminution in value. However, this exclusion does not apply to preclude coverage for a "claim" or "suit" seeking to recover "damages" for emotional distress, mental anguish or humiliation resulting from an "employment practices wrongful act".

i. Assault And Battery

Any "claim" or "suit" based upon, arising out of, or attributable to assault and battery.

j. Civil Rights Violation

Any "claim" or "suit" based upon, arising out of, or attributable to "discrimination" or any violation of civil rights other than employment related "discrimination" or employment related violations of civil rights.

k. Non-Monetary Relief

Any "claim" or "suit" seeking equitable or other forms of non-monetary relief including, but not limited to:

- (1) Any cost, expense, or expenditure of any kind incurred in the investigation, handling or defense of a "claim" or "suit" seeking equitable or non monetary relief except as provided under **Supplementary Payments**;
- (2) Any cost, expense or expenditure of any kind which is incurred by you to comply with any federal, state, or local law or regulation;
- (3) Any cost, expense or expenditure of any kind incurred by you to implement or enforce any program or policy; or
- (4) Attorneys' fees or costs awarded to the party, entity, or person bringing the "claim" or "suit" seeking non-monetary relief or which are included as part of any settlement of that "claim" or "suit".

l. Various Federal Employment Laws

Any "claim" or "suit" seeking "damages" or other relief based upon, arising out of, or in any way involving any rights protected by or remedies provided under the following Acts or any similar state law protecting the same or similar rights or providing the same or similar remedies:

- (1) The Employment Retirement Income Securities Act of 1974;
- (2) The National Labor Relations Act;
- (3) The Fair Labor Standards Act (except the Equal Pay Act);
- (4) The Worker Adjustment and Retraining Notification Act;
- (5) The Occupational Safety and Health Act; or
- (6) The Consolidated Omnibus Budget Reconciliation Act of 1985.

This exclusion will not apply to any "claim" or "suit" based solely on allegations that an Insured retaliated against an "employee" based upon the exercise of the rights protected by the Acts described in subparagraphs (1) through (4) or any state equivalent.

m. Fiduciary Liability

Any "claim" or "suit" seeking "damages" based upon, arising out of, or attributable to:

- (1) Any action taken by an insured in a "fiduciary capacity"; or
- (2) Any "employee benefit plan," welfare plan or retirement plan, or self insurance fund.

n. Prior or Pending Litigation

Any "suit" resulting from an "employment practices wrongful act" that was pending on, or existed prior to the effective date of the policy to which this endorsement is attached.

o. Prior Knowledge

Any "claim" or "suit" based upon, arising out of, or attributable to any "employment practices wrongful act" that any insured described under paragraph **C.1.** (Section II – Who Is An Insured) or any "employee" acting in an official or managerial capacity for you could reasonably foresee would result in a "claim" or "suit" prior to the effective date of the policy to which this endorsement is attached.

p. Personal or Advertising Injury

Any "claim" or "suit" based upon, arising out of, or attributable to "personal or advertising injury" except as specifically provided for under the definition of "employment practices wrongful act".

q. Professional Services

Any "claim" or "suit" based upon, arising out of, or attributable to the providing or failing to provide a professional service. For the purposes of this exclusion professional services include but are not limited to accounting, architectural, engineering, legal or medical services and any other service involving the exercise of skill, training or judgment.

B. For the purposes of the coverage provided by this endorsement, the **Supplementary Payments provisions are deleted and replaced by the following:**

We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:

1. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
2. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
3. Up to \$100,000 for reasonable and necessary legal expenses incurred by the insured in the investigation or defense of a legal proceeding which seeks only equitable; injunctive; or non-monetary relief as a result of an "employment practices wrongful act."

These payments will not reduce the limit of insurance nor be subject to the deductible described in **D.2. Deductible**.

C. For the purposes of the coverage provided by this endorsement, **Section II – Who Is An Insured is deleted and replaced by the following:**

1. If you are designated in the Declarations as a public entity, emergency service organization or a not-for-profit organization you are an insured.
2. Your "executive officers" and "employees" are also insureds.
3. Your former "employees" are also insureds, but only with respect to "employment practices wrongful acts" committed while in your employ.
4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. You must notify us of such acquisition or formation as soon as practicable. However, coverage under this provision:
 - a. Is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier; and
 - b. Does not apply to a "employment practices wrongful act" committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

D. For the purposes of the coverage provided by this endorsement, **Section III – Limits Of Insurance is deleted and replaced by the following:**

1. Limits Of Insurance

- a. The Limit of Insurance shown in this endorsement or in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - (1) Insureds;
 - (2) "Claims" made or "suits" brought;
 - (3) Persons, organizations or government agencies making "claims" or bringing "suits"; or
 - (4) "Employment practices wrongful acts".

- b. The Annual Aggregate Limit is the most we will pay for all "damages" and "defense expenses" because of all "employment practices wrongful acts" to which this insurance applies.
- c. Subject to b. above, the Each Employment Practices Wrongful Act Limit is the most we will pay for all "damages" and "defense expenses" attributable to a "claim" or "suit" based upon, arising out of, or in any way involving any "employment practices wrongful act".

2. Deductible

- a. We will not pay for our share of "damages" or "defense expenses" until the amount of the "damages" or "defense expenses" exceeds the Deductible shown in the Schedule or in the Declarations. We will then pay the amount of "damages" or "defense expenses" in excess of the Deductible up to the Limit of Insurance.
- b. The Deductible amount shown in the Schedule or in the Declarations, applies to all "claims" arising out of an "employment practices wrongful act".
- c. We may at our discretion pay any part or the entire deductible amount toward the settlement of any "claim" or "suit" and you shall, at our request, promptly reimburse us for the amount of the deductible we paid.

- E. For the purposes of the coverage provided by this endorsement, Conditions 2. and 4. of **Section IV – Commercial General Liability Conditions** are deleted and replaced by the following:

2. Duties In The Event Of A Claim Or Employment Practices Wrongful Act That May Result In A Claim

- a. If a "claim" is received by any insured, you must:
 - (1) Immediately record the specifics of the "claim" and the date received; and
 - (2) Notify us, in writing, as soon as practicable.
- b. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
 - (2) Authorize us to obtain records and other information; and
 - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit".
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of an "employment practices wrongful act" to which this insurance may also apply.
- c. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.
- d. If you have knowledge of an "employment practices wrongful act" which has or may result in a "claim" or "suit" you must notify us, in writing, as soon as practicable. The notice must include:
 - (1) A description of the "employment practices wrongful act";
 - (2) The names of the persons involved in the "employment practices wrongful act", including the names of the potential claimants;
 - (3) Your reasons for anticipating a "claim" may result from the "employment practices wrongful act";
 - (4) The nature of the alleged or potential "damages" arising from the "employment practices wrongful act"; and
 - (5) The circumstances through you were made aware of the "employment practices wrongful act."

4. Other Insurance

If other valid and collectible insurance is available to the insured, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary. We will not seek contribution from any other insurance available to you or the involved insured unless the other insurance is specifically designed to provide coverage because of liability arising out of a "employment practices wrongful act". Then we will share with that other insurance through one of the methods described below.

b. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

The method chosen for the handling of other valid insurance will not affect your responsibility to share with us as specified under paragraph **D.2. Deductible**.

F. For the purposes of the coverage provided by this endorsement the following is added to **Section IV – Commercial General Liability Conditions**:

10. Two Or More Coverages Or Coverage Forms

If more than one insuring agreement or coverage part contained in this policy apply to the same "claim" or "suit", our maximum limit of liability under all insuring agreements and coverage forms shall not exceed the highest applicable limit of liability under any one insuring agreement or coverage form. The deductible applicable to the coverage form providing the highest applicable limit of liability will be the deductible applied to the "claim" or "suit". If the limits are the same for all coverage forms, the maximum limit of liability under all coverage forms shall be one limit, and the lowest applicable deductible will apply.

11. If You Are Permitted To Select Defense Counsel

If, by mutual agreement or under applicable law, the insured is given the right to select defense counsel and the Limit of Insurance has not been used up, the following provisions apply:

a. We retain the right, at our discretion, to:

- (1) Settle, approve or disapprove the settlement of any "claim"; and
- (2) Appeal any judgment, award or ruling at our expense.

b. You and any other involved insured must:

- (1) Continue to comply with Condition 2. **Duties In The Event Of A Claim Or Employment Practices Wrongful Act That May Result In A Claim** as well as the other provisions of this endorsement; and
- (2) Direct defense counsel to:
 - (a) Furnish us with the information we may request to evaluate the "suit"; and
 - (b) Ensure that you and counsel you select cooperate with any counsel we may select to monitor or associate in the defense of those "suits".

c. If we defend you under a reservation of rights, both your and our counsel will be required to maintain records pertinent to your "defense expenses". These records will be used to determine the allocation of any "defense expenses" for which you may be solely responsible, including defense of an allegation not covered by this insurance.

d. If we agree to defend you under a reservation of rights and it is subsequently determined that we had no duty to defend the "suit" you agree to reimburse us for the "defense expenses" we paid.

- G.** For the purposes of the coverage provided by this endorsement, Definitions **4.**, **5.**, **6.**, and **18.** in the **Definitions** Section are deleted and replaced by the following:
- 4.** "Coverage territory" means:
 - a.** The United States of America (including its territories or possessions) and Puerto Rico; or
 - b.** All parts of the world if the insured's responsibility to pay "damages" is determined in a "suit" on the merits brought in the territory described in **a.** above or in a settlement we agree to.
 - 5.** "Employee" includes a "leased worker", a "temporary worker" and a "volunteer worker" but does not include an independent contractor.
 - 6.** "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document. This includes Board Members and Trustees.
 - 18.** "Suit" means a civil proceeding in which "damages" because of a "employment practices wrongful act" to which this insurance applies are alleged, including:
 - a.** An arbitration proceeding in which such "damages" are claimed and to which the insured must submit or does submit with our consent;
 - b.** Any other alternative dispute resolution proceeding in which such "damages" are claimed and to which the insured submits with our consent; or
 - c.** Any administrative proceeding or hearing conducted by a governmental agency (federal, state or local) having the proper legal authority over the matter in which such "damages" are claimed.
- H.** For the purposes of the coverage provided by this endorsement, the following Definitions are added to the **Definitions** Section:
- 1.** "Claim" means a demand made by a current, former or prospective "employee" for "damages" because of an alleged "employment practices wrongful act".
 - 2.** "Damages" mean monetary judgments, awards and settlements entered into with our prior written consent, but does not include amounts:
 - a.** Representing disgorgement or restitution;
 - b.** Representing civil or criminal fines, sanctions, penalties or forfeitures, whether awarded pursuant to law, statute, regulation or court rule;
 - c.** Representing punitive or exemplary damages;
 - d.** Representing the multiplied portion of an award;
 - e.** Amounts incurred or that would be incurred in complying with any order granting equitable, injunctive or declaratory relief;
 - f.** Representing damages for breach of oral or written contract; or
 - g.** That are uninsurable under applicable law.
 - 3.** "Defense expenses" means reasonable and necessary fees and costs incurred in the investigation, handling or defense of a "claim" or "suit" covered by this insuring agreement, including:
 - a.** Legal Fees.
 - b.** Other litigation or administrative hearing expenses, including fees or expenses of expert witnesses.
 - d.** Expenses incurred by the insured at our express written request to assist in the investigation or defense of the "claim" or "suit", including actual loss of earnings up to \$500 a day because of time you are required to take away from work.
 - e.** Costs, other than legal fees, taxed against the insured in the "suit".

Except as provided under Paragraph **d.** "defense expenses" do not include salaries and expenses of our "employees" or your "employees".

Reference

4. "Discrimination" means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations.
5. "Employee benefit plan" means a plan or program providing some or all of the following benefits to "employees":
 - a. Group life insurance, group accident or health insurance, dental, vision and hearing plans, and flexible spending accounts, provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to those "employees" who satisfy the plan's eligibility requirements;
 - b. Employee savings plans and pension plans provided that no one other than an "employee" may subscribe to such benefits and such benefits are made generally available to all "employees" who are eligible under the plan for such benefits;
 - c. Unemployment insurance, social security benefits, workers' compensation and disability benefits; and
 - d. Vacation plans, including buy and sell programs; leave of absence programs, including military, maternity, family, and civil leave; tuition assistance plans; transportation and health club subsidies.
6. "Employment practices wrongful act" includes "related employment practices wrongful acts" and means one or more of the following offenses, but only when they are the basis for "claims" or suits by your "employees":
 - a. Wrongful demotion or failure to promote, negative evaluation, reassignment, or discipline of your current "employee" or wrongful refusal to employ;
 - b. Wrongful termination, meaning the actual or constructive termination of an "employee":
 - (1) In violation or breach of applicable law or public policy; or
 - (2) Which is determined to be in violation of a contract or agreement, other than any employment contract or agreement, whether written, oral or implied, which stipulates financial consideration if such financial consideration is due as the result of a breach of the contract;
 - c. Wrongful denial of training, or wrongful deprivation of career opportunity;
 - d. Retaliatory action against an "employee" because the "employee" has:
 - (1) Declined to perform an illegal or unethical act;
 - (2) Filed a complaint against you with a court or governmental authority;
 - (3) Testified against you or any other insured at a legal proceeding; or
 - (4) Notified a proper authority of any aspect of your business operation which is illegal;
 - e. Employment related "discrimination;" or
 - f. Employment related "personal or advertising injury".
7. "Fiduciary capacity" means managing the money or property of others under circumstances where special obligations are imposed by law or contract and includes, but is not limited to, acting as an administrator or manager of any benefit plan, welfare plan, retirement plan or self insurance fund.
8. "Related employment practices wrongful act" means any and all "employment related wrongful acts" that arise out of or are related to the same or similar decisions, determinations, events, practices, transactions, statements or representations without regard to the number of "employees" who may be affected.