

## EMPLOYMENT PRACTICES LIABILITY ENDORSEMENT

In consideration of the additional premium paid of \$\_\_\_\_\_, the Insurer and **Named Insured** agree that the Certificate is amended to include coverage for **Wrongful Employment Practices** and that the following amendments are made part of the Certificate:

For the purposes of the coverage provided by this endorsement, the Certificate is amended as follows:

1. Section I. INSURING AGREEMENTS is amended by the addition of the following new paragraph:

### **D. EMPLOYMENT PRACTICES LIABILITY**

To pay on behalf of the **Insured** all sums in excess of the deductible which the **Insured** shall legally become obligated to pay as **Damages and Costs, Charges, and Expenses** by reason of any **Claim** first made against the **Insured** during the **Certificate Period** or **Discovery Coverage Extension** (if purchased) arising out of a **Wrongful Employment Practice**, whether committed or alleged to have been committed by the **Insured**; except as excluded or limited by the terms, conditions, and exclusions of this Certificate

2. Section III. DEFINITIONS K. **Damages** is amended to include the following new paragraph:

**K. Damages** shall not include equitable relief; amounts awarded pursuant to a labor or grievance arbitration pursuant to a collective bargaining agreement; or amounts awarded under an express contract of employment unless expressly provided for by Endorsement.

3. Section III. DEFINITIONS is amended by the addition of the following new paragraph:

**Z. Wrongful Employment Practice** shall mean the following acts committed by an **Insured** against an employee or person applying for employment with the **Named Insured**:

- i. actual or alleged discrimination by taking an adverse or differential employment action because of race, color, religion, age, sex, disability (as defined in the Americans with Disability Act of 1990), pregnancy, sexual orientation, national origin, or any other protected category or characteristic established pursuant to any applicable federal, state or local statute or ordinance; or
- ii. actual or alleged sexual harassment by unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a physical nature that explicitly or implicitly are made a condition of employment for such individual, are used as a basis for employment decisions affecting such individual, or create a work environment that unreasonably interferes with the individual's work performance; or creates an intimidating, hostile or offensive work environment; or
- iii. actual or alleged wrongful termination of an employment relationship, wrongful denial of a promotion, or wrongful demotion. Wrongful termination of an employment relationship, wrongful denial of a promotion, or wrongful demotion shall not include damages determined to be owing under an express contract of employment or an expressed obligation to make payments in the event of the termination of employment, denial of a promotion, or demotion unless provided for by endorsement.

The phrase "employee or person applying for employment" as used in this definition does not include volunteer, seasonal, temporary, or leased employees.

- 4. Section V. LIMITS OF LIABILITY is amended by the addition of the following new paragraphs:

The liability of the Insurers for **Damages and Costs, Charges, and Expenses** resulting from each **Claim** which is first made during the **Certificate Period** or **Discovery Coverage Extension** (if purchased) as a result of a **Wrongful Employment Practice** shall not exceed the amount stated in Item 6B. of the Declarations for each **Claim**.

The total liability of the Insurers for **Damages** and **Costs, Charges, and Expenses** resulting from all **Claims** made under this endorsement and under INSURING AGREEMENT I. D. EMPLOYMENT PRACTICES LIABILITY and which are first made during the **Certificate Period** or **Discovery Coverage Extension** (if purchased) as a result of **Wrongful Employment Practices** shall not exceed shall the amount stated in Item 6B. of the Declarations as “aggregate”; regardless of the number of **Insureds**, the number of **claims** made or suits brought, the entities or persons making such claims or bringing such suits, or the number of **Wrongful Employment Practices**.

Payment of **Damages** and **Costs, Charges, and Expenses** resulting from any **Claim** made under this endorsement and under INSURING AGREEMENT I. D. EMPLOYMENT PRACTICES LIABILITY and which are first made during the **Certificate Period** or **Discovery Coverage Extension** (if purchased) as a result of **Wrongful Employment Practices** shall reduce the total aggregate limit of liability of the Certificate as set forth in Item 6C. of the Declarations; regardless of the number of Insuring Agreements triggered by a claim.

5. Section VI. DEDUCTIBLE is amended by the addition of the following new paragraph:

The deductible amount stated in Item 7B. of the Declarations is applicable separately to each **Claim** which is first made during the **Certificate Period** or **Discovery Coverage Extension** (if purchased) under this endorsement and under INSURING AGREEMENT I. D. EMPLOYMENT PRACTICES LIABILITY as a result of a **Wrongful Employment Practice** and will apply to any sum or sums paid by the Insurers as **Damages** inclusive of **Costs, Charges, and Expenses**, whether or not a loss payment is made.

6. Section IX. EXCLUSIONS APPLICABLE TO ALL INSURING AGREEMENTS O. is amended by the addition of the following new paragraph:

This exclusion does not apply to INSURING AGREEMENT I. D. EMPLOYMENT PRACTICES LIABILITY.

7. The following Section is added to the Certificate:

**XXX. EXCLUSIONS APPLICABLE ONLY TO INSURING AGREEMENT I. D. EMPLOYMENT PRACTICES LIABILITY)**

Insuring Agreement I. D. Employment Practices Liability shall not apply to **Claims, Damages, and Cost, Charges, and Expenses** for or arising out of or in any way involving:

- JJ.** A **Wrongful Employment Practice** where it is established in fact that the **Wrongful Employment Practice** was committed by an **Insured** knowingly, intentionally, deliberately, willfully or maliciously; For the purpose of determining the applicability of this exclusion the acts of any one individual **Insured** shall not be imputed to any other **Insured**;
- KK.** Any violation of the Workers' Adjustment and Retraining Notification Act A.R.N.) (Public Law 100-379) or any similar federal, state or local law;
- LL.** The failure or refusal to promote or elect such employee to a partner or shareholder level position;
- MM.** Any lockout, strike, picket line, replacement or other similar actions resulting from labor disputes, collective bargaining agreements or labor negotiations or any protections contained within the National Labor Relations Act, or any related federal law or similar state or local law or rule or regulation;
- NN.** Any allegations made by or solely for the benefit of a claimant's domestic partner, spouse, child, parent, brother or sister;
- OO.** Any violation of the Fair Labor Standards Act of 1938 (except the Equal Pay Act), or any amendments thereto, or any similar federal, state or local law, rule or regulation;
- PP.** Any violation of the Occupational Safety and Health Act of 1970 (29 U.S.C. 651, et. Seq.), or any amendments thereto, or any similar federal, state or local law, rule or regulation;
- QQ.** Any violation of the Consolidated Omnibus Budget Reconciliation Act of 1985, or any amendments thereto, or any similar federal, state or local law, rule or regulation;
- RR.** Any reorganization, restructuring, reduction in force, change in

number of employees, downsizing operations or closure of one or more plants or places of business operations which results in the termination, or other change in employment terms, within any 60 day period of more than 10% of the total number of employees measured at the inception of the Certificate, or five (5) employees, whichever is the greater. However, this exclusion shall not apply if prior to such downsizing, reorganization, restructuring, reduction in force, change in number of employees or closure, the **Named Insured** consulted with and followed the recommendation of legal counsel experienced in employment law; and

- SS.** Any **Claim** brought by or on behalf of multiple plaintiffs or multiple claimants, including class action suits based upon, arising out of, directly or indirectly, in connection with, related to, or in any way alleging violation of any federal, state or local wage and hour law, regardless of whether any such **Claim** also includes allegations otherwise covered by this Certificate, or any **Claim** by an individual claimant or plaintiff alleging violation of any federal, state or local wage and hour law, however, in the event such **Claim** also alleges a **Wrongful Employment Practice** otherwise covered by this Certificate, notwithstanding the provisions of Section III. Defense, Settlement, Cooperation paragraph (a), and subject to all other terms, conditions and exclusions contained in this Certificate, Insurers agree to pay **Damages** solely for that portion of the **Claim** involving such **Wrongful Employment Practice**.