

I. Insuring Agreements

A. Employment Practices Liability

We will pay **Loss** the **Insured** is legally obligated to pay arising from a **Claim** first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period, and reported to us pursuant to the terms of this Policy, for a **Wrongful Act**.

B. Third Party Employment Practices Liability

We will pay **Loss** the **Insured** is legally obligated to pay arising from a **Claim** first made against the **Insured** during the **Policy Period** or any applicable Extended Reporting Period, and reported to us pursuant to the terms of this Policy, for a **Third Party Wrongful Act**.

C. Defense for Wage and Hour Actions

We will reimburse **Defense Costs** which the **Insured** is legally obligated to pay by reason of a **Wage and Hour Action** first made against the **Insured** during the **Policy Period** or, if applicable, the Extended Reporting Period and reported to us pursuant to the terms of this Policy, for a **Wage and Hour Wrongful Act** taking place prior to end of the **Policy Period**. The maximum sublimit of liability under this section for all covered **Defense Costs** for **Wage and Hour Actions**, combined, shall be the Wage and Hour Costs Sublimit of Liability set forth in the Declarations.

II. Definitions

A. "Claim" means:

1. A written demand against the **Insured** for monetary damages or non-monetary (including injunctive) relief, including a written demand to toll or waive a statute of limitations;
2. A civil, judicial, administrative, regulatory or arbitration proceeding or a formal governmental investigation against the **Insured** seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;
3. A civil proceeding against the **Insured** before the Equal Employment Opportunity Commission or any similar federal, state or local governmental body, commenced by the filing of a notice of charges, investigative order or similar document;
4. A criminal proceeding brought in a court outside of the United States against the **Insured**, commenced by a return of an indictment or similar document, or receipt or filing of a notice of charges; and
5. A written demand or request for arbitration, mediation, or other alternative dispute resolution, which shall be deemed first made upon the **Insured's** receipt of the demand

for a **Wrongful Act**, brought by or on behalf of any past, present, future or prospective **Employee**, or an applicant or prospective applicant for employment with the **Insured Organization**, in their capacity as such; or for a **Third Party Wrongful Act**.

However, **Claim** does not include a labor or grievance proceeding, which is pursuant to a collective bargaining agreement.

- B. "**Defense Costs**" means that part of **Loss** consisting of expenses, including attorneys' fees and experts' fees, incurred in the investigation, defense or appeal of a **Claim**.

Defense Costs include the premium for any appeal, attachment or similar bond, provided that we have no obligation to issue such bond.

Defense Costs does not include any compensation, benefit expenses, or any of the **Insured's** overhead.

- C. "**Insured**" means:

1. You;
2. Any **Insured Organization**; or
3. Any **Team Member**.

- D. "**Loss**" means the damages, judgments, settlements, front pay and back pay, pre-judgment or post-judgment interest awarded by a court, and **Defense Costs** incurred by the **Insured**.

Loss also includes liquidated damages awarded under the Age Discrimination in Employment Act, Equal Pay Act, or Family Medical Leave Act.

Loss does not include:

1. Taxes, fines or penalties except with respect to liquidated damages as provided above;
2. Matters or amounts uninsurable under the laws pursuant to which this Policy is construed;
3. The cost of any remedial, preventative or other non-monetary relief, including without limitation any costs associated with compliance with any such relief of any kind or nature imposed by any judgment, settlement or governmental authority;
4. Amounts owed under any employment contract, partnership, stock or other ownership agreement, or any other type of contract;
5. Disability, social security, workers compensation, medical insurance, retirement or pension benefit payments, or settlement amounts representing benefit payments;
6. The costs to modify or adapt any building or property to be accessible or accommodating, or to be more accessible or accommodating, to any disabled person;
7. The cost of creating or reinstating employment;
8. Any amount owed as wages, commissions, or salaries to any Employee, other than front pay or back pay; or
9. Any amount for which the **Insured** is not financially liable or legally obligated to pay.

- E. **“Retaliation”** means an **Insured’s** actual or alleged adverse or harmful action in return for perceived injuries or wrongs perpetrated as a response to:
1. The disclosure or threat of disclosure by an **Employee** to a superior or to any governmental agency of any act by the **Insured** where such act is alleged to be a violation of any federal, state local or foreign law, whether common or statutory, or any rule or regulation promulgated thereunder;
 2. The actual or attempted exercise by an **Employee** of any right that such **Employee** has under law, including rights under any worker’s compensation law, the Family and Medical Leave Act, the Americans with Disabilities Act or any other law relating to employee rights;
 3. The filing of any claim under the Federal False Claims Act or any similar federal, state, local or foreign “whistleblower” law or “whistleblower” provision of any law; or
 4. Any legally-protected employee work stoppage or slowdown.
- F. **“Team Member”** means any:
1. **Executive**; or
 2. **Employee**.
- G. **“Third Party Wrongful Act”** means any actual or alleged discrimination or harassment, whether sexual or otherwise, in violation of a person’s civil rights, committed by the **Insured** against any natural person who is a customer, vendor, service provider, client, or other business invitee of the **Insured Organization** other than a past, present or future **Team Member**.
- H. **“Wage and Hour Action”** means:
1. A written demand against the **Insured** for damages or other relief; or
 2. A civil, judicial, administrative, regulatory, or arbitration proceeding or a formal governmental investigation against you seeking damages or other relief, commenced by the service of a complaint or similar pleading, including any appeal therefrom;
 3. brought by or on behalf of one or more Employees alleging any **Wage and Hour Wrongful Act**.
- I. **“Wage and Hour Wrongful Act”** means any actual or alleged violation(s) of state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act or Wage Payment and Collection Act), or any amendments thereto, or rule or regulations promulgated thereunder governing wage, hour and payroll policies and practices including, but not limited to:
1. The refusal, inability or failure of an **Insured Organization** or **Team Member** to pay wages or overtime pay, off-the-clock work, on-call time compensation, compensation for waiting time and dressing time, minimum wage compensation, reimbursement of expenses or any amounts representing such wages or pay or expenses, for services rendered or time spent in connection with work related activities;
 2. Improper pay deductions taken by an **Insured Organization** or **Team Member** from any employee or purported employee, including but not limited to garnishments and withholdings;

3. Improper classification of any **Employee** or purported **Employee** or improper or failure to maintain accurate records;
4. Child labor;
5. Pay equity or comparable worth;
6. Failure to provide or enforce any legally required rest or meal breaks; or
7. Any similar practices, policies, or procedures.

However, **Wage and Hour Wrongful Act** does not include actual or alleged violations of the Equal Pay Act of 1963, and any amendments thereto.

J. **“Wrongful Act”** means any:

1. Wrongful dismissal, discharge or termination of employment, including but not limited to dismissal, discharge or termination resulting from a breach of an express or implied contract relating to employment, whether actual or constructive;
2. Harassment, including any type of sexual or gender harassment as well as racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based harassment, or unlawful workplace harassment, including workplace harassment by any non-employee;
3. Employment discrimination of any protected status established under federal, state or local law, ordinance or public policy;
4. **Retaliation**;
5. Abusive or hostile work environment;
6. Employment-related misrepresentation;
7. Wrongful failure to employ or promote, wrongful deprivation of career opportunity, wrongful demotion, wrongful discipline, or failure to grant tenure;
8. Negligent employee evaluation;
9. Violation of the Uniformed Services Employment and Reemployment Rights Act or the Family and Medical Leave Act;
10. Employment related wrongful infliction of emotional distress, mental anguish, or humiliation;
11. Failure to provide or enforce adequate or consistent employment policies and procedures relating to any matters described in paragraphs 1 - 10;
12. Violation of an individual's civil rights if such conduct relates to matters described in paragraphs 1 - 9, including, but not limited to, any violation of the Civil Rights Act of 1866 or 42 U.S.C. Section 1983;
13. Libel, slander, defamation, false or wrongful imprisonment, invasion of privacy and other personal injury allegations, but only if such conduct is alleged in addition to or as part of any matters described in paragraphs 1-9; or

14. Negligent hiring, retention or supervision, but only if such conduct is alleged in addition to or as part of any matters described in paragraphs 1-9

actually or allegedly committed by an **Insured** in such capacity.

III. Exclusions

For the purpose of determining the applicability of any Exclusion set forth in this Exclusions Section, the **Wrongful Act** or knowledge of any **Team Member** shall not be imputed to any other **Team Member**, and only the **Wrongful Act** or knowledge of the Chief Executive Officer or functionally equivalent of the **Insured Organization** shall be imputed to the **Insured Organization**.

We shall not be liable under this **Coverage Part** to pay any **Loss** on account of that portion of any **Claim** made against you:

A. Bodily Injury and Property Damage

For bodily injury, sickness, emotional distress, mental anguish, humiliation, disease or death of any person, other than employment-related mental anguish, humiliation, or emotional distress; or damage to or destruction of any tangible property or electronic data, including loss of use of any such property or data whether or not it is damaged or destroyed.

B. Violation of Labor Law

For an actual or alleged violation of any law governing or regulating:

1. the rights of **Employees** with respect to unions, unionizing, or collective activities in the workplace, or any obligations of employers with respect to such **Employee** activities, including but not limited to the National Labor Relations Act or any similar law;
2. the obligations of an employer to notify, discuss, or bargain with its employees or others in advance of any plant or facility closing or mass layoff, or any similar obligation, including, but not limited to, the Worker Adjustment and Retraining Notification Act or any similar law;
3. workplace safety and health, including, but not limited to, the Occupational Safety and Health Act or any similar law;
4. workers' compensation, unemployment insurance, social security, or disability benefits, or any similar law; or any actual or alleged violation of the Consolidated Omnibus Budget Reconciliation Act of 1985 or any similar law; or
5. duties or obligations under the Employment Retirement Security Act of 1974 (except section Section 510 thereof) or any similar law;

except this exclusion does not apply to any **Claim** for **Retaliation** covered under the Employment Practices Liability **Coverage Part**.

C. Prior Notice

Based upon, arising out of, or attributable to any fact, circumstance, or **Wrongful Acts** that, before the inception date of this Policy, was the subject of any notice given and accepted under any prior employment practices liability or comparable insurance policy.

D. Contractual Liability

Based upon, arising out of, or attributable to any liability under any written contract or agreement, provided this exclusion shall not apply to:

1. The extent that liability would have been incurred in the absence of such contract or agreement; or

2. **Defense Costs**

E. Labor Disputes

Based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any lockout, strike, picket line, hiring of replacement workers or other similar actions in connection with labor disputes or labor negotiations.

F. Conduct

Based upon, arising out of, or attributable to any willful violation of law, or any dishonest, deliberately fraudulent or criminal act committed by any Insured; if evidenced by a final and non-appealable adjudication in the underlying action or proceeding.

G. Wage & Hour

Based upon, arising out of, or attributable to any **Wage and Hour Wrongful Act**, provided this exclusion shall not apply to:

1. The Equal Pay Act of 1963 and any amendments thereto;
2. Any **Claim for Retaliation**; or
3. **Defense Costs** provided under and limited to the Wage and Hour Cost Sublimit of Liability under Insuring Agreement I.C (Defense for Wage and Hour Actions).

IV. Additional Conditions

A. Other Insurance

Coverage under this **Coverage Part** shall apply only in excess of any other valid and collectible insurance, unless such other insurance is written specifically excess of this **Coverage Part** by reference to this Policy's Policy Number.

B. Non-Rescission

We shall not have the right to rescind this **Coverage Part**.