

EMPLOYMENT LAW

COVID and Beyond: Addressing Challenges and Avoiding Claims



NARdotRealtor



nar.realtor



TODAY'S TOPICS

- Update on OSHA vaccine policy ETS
- COVID-related employment policies
- Return to office and other frequently asked questions
- EPL Assist™ legal hotline and other resources

WHY ARE WE HERE?



**EPL claims ranked
#3 in claims filed
for 2021**



**EPL claims payments
increased 120% from
2017 to 2019**

ARE WE COVERED?

NAR Institutes, Societies & Councils

- State and Local Chapters
- Subsidiaries

State and Local REALTOR® Associations

- Foundations (501(c)(3) and 501(c)(4))
- Political Committees
- Educational Endeavors

MLSs wholly-owned and operated by two or more Associations

ARE WE COVERED?

Employment Practices Liability (EPL):

- Employment-related discrimination;
- Employment-related harassment, including gender, racial, religious, sexual orientation, pregnancy, disability, age, or national origin-based
- Harassment, or unlawful workplace harassment, including workplace harassment by any nonemployee;
- Abusive or hostile work environment;
- Wrongful dismissal or discharge or termination of employment, whether actual or constructive;
- Breach of an actual or implied employment contract;
- Wrongful deprivation of a career opportunity, wrongful failure or refusal to employ, promote, or grant tenure, or wrongful demotion;

ARE WE COVERED?

Employment Practices Liability (EPL), contd.

- Employment-related defamation, libel, slander, etc.;
- Wrongful failure or refusal to adopt or enforce workplace or employment practices, policies or procedures;
- Wrongful discipline;
- Employment-related wrongful infliction of emotional distress, mental anguish, or humiliation;
- Retaliation;
- Negligent evaluation; or
- Negligent hiring, supervision, retention or training.

Claim limit is \$500,000 per claim.

ARE WE COVERED?

Exclusions:

- Claims arising from Worker's Compensation Law, Unemployment Compensation Law, Employers Liability Law, Disability Benefits Law.
- Claims attributable to the administration of, participation in contributions to, or payments from any pension or benefits plan or trust fund.
- Claims for wages, salaries, commissions, fees, bonuses, promotions, profit sharing, pensions or other employee benefits earned in the normal course of employment.

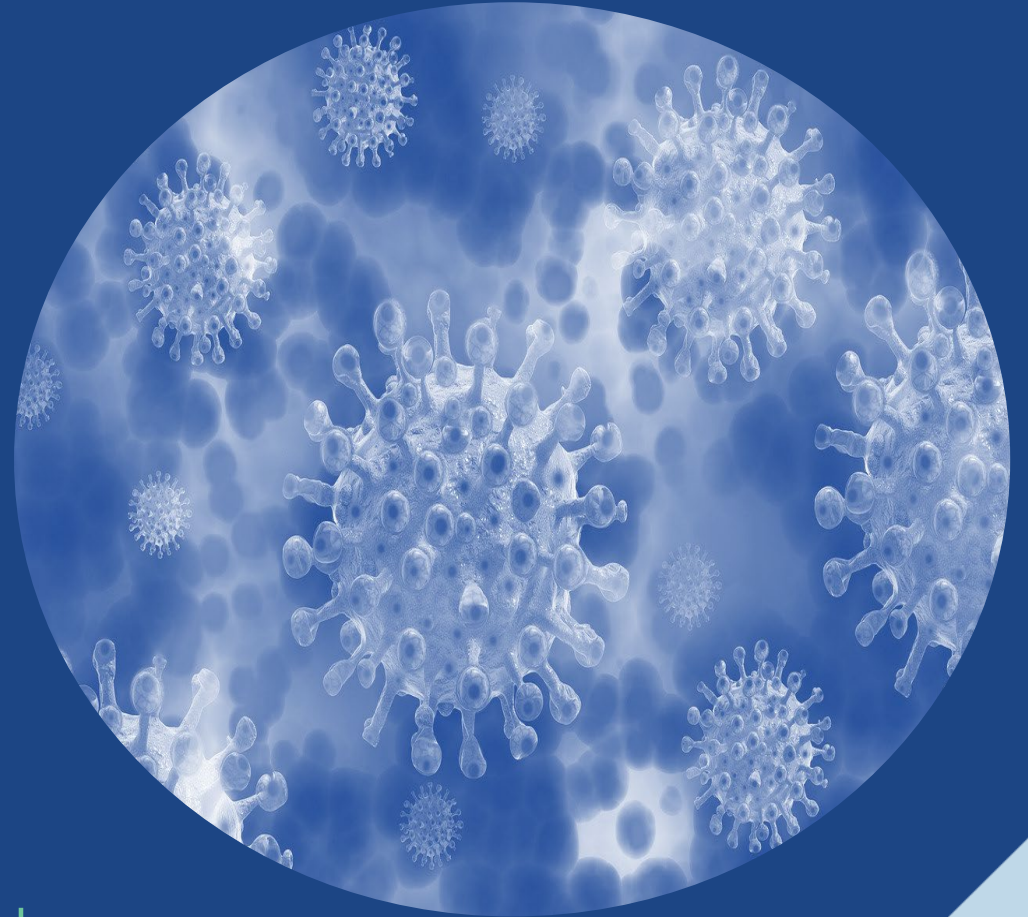
ARE WE COVERED?

Is COVID covered?

- “Bodily Injury” (sickness, disease, death) is NOT covered,

HOWEVER

- Discrimination, retaliation, wrongful termination and
- Wrongful failure or refusal to adopt or enforce workplace practices, policies or procedures may be covered even if arising from a COVID-related issue.





NIA DUGGINS

*NAR Senior Policy
Representative,
Business Issues*

Vaccine Mandate Updates

- On September 9th, President Biden made several announcements regarding the “Path Out of the Pandemic” Plan to combat COVID-19 and to get approximately 80 million Americans vaccinated at that time, when infection rates from the Delta variant were on the rise.
- As part of President Biden’s announcement, the President directed the U.S. Department of Labor’s Occupational Safety & Health Administration (OSHA) to develop an Emergency Temporary Standard (ETS) requiring all employers with 100 or more employees to ensure their workforce was fully vaccinated.
- The Occupational Health and Safety Act empowers OSHA to issue an Emergency Temporary Standard, because of the high risk of infection rates employees faced due to COVID-19.

Vaccine Mandate Updates

- The ETS was issued on November 5, 2021, and became effective immediately requiring employers to:
 - Notify employees about OSHA's Emergency Temporary Standard and provide information to employees regarding the benefits of vaccination;
 - Conduct an assessment of their workforce to determine the vaccination status of all employees and maintain records and a roster of the vaccination of all employees;
 - Establish a vaccination policy;
 - Provide up to 4 hours of paid leave for workers to receive each vaccination dose, and this leave cannot be taken from the employee's existing paid leave balance;
 - Employers must also provide workers with sick leave to recover from any side effects from each dose of the vaccination.

Vaccine Mandate Litigation & Recent News

- On November 12, 2021, the U.S. Court of Appeals for the Fifth Circuit blocked OSHA from implementing and enforcing the Emergency Temporary Standard (ETS).
- On November 16, 2021, the U.S. Court Appeals for the Sixth Circuit was selected to handle all challenges filed throughout the country challenging the vaccine ETS.
- There is a current notice and comment period for stakeholders to weigh on the rule until January 19, 2022.
- On December 6, 2021, Mayor Bill de Blasio announced that New York City will require all private employers implement vaccination mandates effective December 27, 2021.
- The NYC vaccination requirement will likely be challenged and litigated.

Current State of Play

- Although, the OSHA rule is halted, many private employers have developed vaccination policies or are in the process of developing vaccination policies.
- Stakeholders are currently encouraged to comment on the current Emergency Temporary Standard until January 19, 2022, and provide any insight or recommendations regarding the ETS and vaccine mandates for employees.
- Some state and local governments are re-imposing mask requirements, and vaccination mandates for both public sector and private sector employees.
- Legal challenges regarding vaccine mandates will continue, and it is likely that the U.S. Supreme Court will hear cases involving the ETS.

Vaccine Mandate Resources

- [OSHA Covid-19 Vaccination and Testing Emergency Temporary Standard \(DOL\)](#)
- [OSHA Vaccination ETS Frequently Asked Questions \(FAQs\) \(DOL\)](#)
- [OSHA COVID-19 Vaccination and Testing Emergency Temporary Standard \(DOL\)](#)
- [White House Fact Sheet on Biden Administration Vaccination Policies \(White House\)](#)
- [COVID-19 Vaccination & Testing ETS Overview \(DOL\)](#)
- [COVID-19 Vaccination and Testing: Emergency Temporary Standard](#)

Vaccine Mandate Resources

- [COVID-19 Vaccine Facts](#) (CDC)
- [COVID-19 Vaccine Frequently Asked Questions](#) (CDC)
- [Vaccinations for individuals who previously had COVID-19 infection](#) (CDC)
- [Benefits of Getting a COVID-19 Vaccine](#) (CDC)
- [Emergency Use Authorization for Vaccines Explained](#) (FDA)
- [Is the COVID-19 Vaccine Safe?](#) (Johns Hopkins University)
- [Information for People Worried about COVID-19 Vaccination](#) (CDC)
- [Immunizations and the COVID-19 Vaccines](#) (Center for Black Health and Equity in partnership with the American Lung Association)
- [Herd Immunity, Explained](#) (Journal of the American Medical Association)
- [Coronavirus Rumor Control](#) (FEMA)
- [COVID-19 Vaccines: Myth Versus Fact](#) (Johns Hopkins University)



LESLEY MUCHOW

*Deputy General Counsel
and Vice President of Legal
Affairs and Antitrust
Compliance*



CAROLE KAPTUR

*Consultant, Strategic
Association Management*

EMPLOYMENT LAW RESOURCES

NAR RESOURCES - COVID

Re-entry Checklist: <https://www.nar.realtor/covid-19-workplace-re-entry-checklist>

Workplace Vaccination Policy Guidance:
<https://www.nar.realtor/coronavirus/covid-19-guidance-for-workplace-vaccination-policies>

Making Your Workplace COVID Safe:
<https://www.nar.realtor/window-to-the-law/making-your-workplace-covid-safe>

NAR RESOURCES – GENERAL EMPLOYMENT

Employer/Employee Guidelines: <https://www.nar.realtor/ae/manage-your-association/association-policy/employer-employee-guidelines>

HR for Associations: <https://www.nar.realtor/ae/manage-your-association/hr-for-associations>

Human Resources Toolkit: <https://www.nar.realtor/ae/manage-your-association/human-resources-toolkit>

Employment Practices Legal Hotline:
<https://www.nar.realtor/legal/nar-insurance-program/employment-practices-legal-hotline>

NAR RESOURCES – HARASSMENT

Good Sense Governance - Harassment: <https://www.nar.realtor/about-nar/policies/good-sense-governance/good-sense-governance-harassment>

Preventing and Addressing Sexual Harassment:
<https://www.nar.realtor/videos/preventing-and-addressing-sexual-harassment>

Sample Anti-Harassment Policy: <https://www.nar.realtor/ae/manage-your-association/board-of-directors-orientation-toolkit/risk-management/supplement-sample-anti-harassment-policy>

Best Practices for Internal Harassment Investigations:
<https://www.nar.realtor/legal/best-practices-for-conducting-internal-harassment-investigations>

EPL ASSIST™

- Access to EPL Assist™ website (registration required).
- **No cost, live hotline** and email access to a legal expert at Littler Mendelson, dedicated to Chubb insureds.
- Library of online employment law resources, information and training videos, including COVID-19 related resources.
- Employment law updates, and much more.

EPL Assist™

CHUBB®



Employers today face an array of employment laws and regulations. Whether it involves hiring, evaluating employee benefits or managing a leave of absence or termination, failing to comply with the ever-changing legal requirements can have a devastating impact on both employee morale and the company's bottom line.

Chubb recognizes these unique burdens faced by employers, and has provided our insureds with access to the nation's premier employment and labor law firm, Littler Mendelson (Littler), to create a cutting edge employment practices risk management tool for Chubb insureds, called EPL Assist™. Through EPL Assist™, insureds also have unlimited access to expert advice and counsel through a dedicated hotline.

What is EPL Assist™?

EPL Assist™ is a cutting edge risk management program providing policyholders with access to a wide variety of legal content, forms and analysis, combined with the ability to interact directly with Littler lawyers dedicated to assisting Chubb insureds. Through a secure web portal containing essential employment law resources and tools, as well as the ability to email a question directly to the free assistance hotline, Chubb insureds have access to the content and advice necessary to compete in today's challenging legal environment.

The screenshot shows the Littler EPL ASSIST website. The top navigation bar includes the Littler logo, links for Home, Littler GPS* - 50 State Surveys, ComplianceHR, and Logout, a green bar with 'Free Hotline: 1-888-' and an envelope icon, and the CHUBB logo. Below this is a secondary navigation bar with 'Documents & Templates', 'Forms & Notices', 'Reference', 'Learning', and 'News & Analysis', along with a search bar. The main content area is titled 'Documents & Templates' and features three callout boxes: 'STATE INFO' (pointing to 'Forms & Notices'), 'VIDEOS' (pointing to 'Learning'), and 'HOTLINE' (pointing to 'Free Hotline: 1-888-'). The 'STATE INFO' section includes 'Onboarding' (with sub-items: Pre-Hire Resources, Hiring Resources) and 'Continuing Employment' (with sub-items: Template Policies, Performance Management, Time Off and Leaves of Absence, Wages, Hours and Pay Practices). The 'HOTLINE' section includes 'End of Employment' (with sub-item: Termination Resources) and 'General Guidance'.

Littler Home Littler GPS* - 50 State Surveys ComplianceHR Logout Free Hotline: 1-888- CHUBB

Documents & Templates Forms & Notices Reference Learning News & Analysis Search

Documents & Templates

STATE INFO **VIDEOS** **HOTLINE**

Onboarding
Pre-Hire Resources
Hiring Resources

Continuing Employment
Template Policies
Performance Management
Time Off and Leaves of Absence
Wages, Hours and Pay Practices

End of Employment
Termination Resources

General Guidance

⊕ Onboarding

⊕ Continuing Employment

⊕ End of Employment

⊕ General Guidance

To register for EPL Assist™

1. Visit www.EPLAssist.com/user/register.
2. Enter your contact information and the name of your association or MLS.
3. Enter the policy number MPB G23658240 014.
*If you register in 2022, enter policy number MPB G23658240 015.

It may take up to a week to receive account approval. You will receive an email with information on how to log in and set a password.

QUARTERLY TREND REPORT

Available on
nar.realtor/nar-insurance-program

NAR Insurance Program QUARTERLY TREND REPORT Q3 2021

SUMMARY: Association claims activity increased 66 percent compared to Q3 2020. Member challenges to association governance decisions continue to top the list of claims made, with employment matters a close second. Nationwide, cyber threats remain a significant financial, reputational and logistical risk to all business organizations.

The NAR Insurance Program provides professional liability and limited patent coverage to all eligible associations, affiliates, and MLSs.

MARKET INSIGHTS + TAKEAWAYS

RESILIENT WORKFORCES:

With 81 percent of companies updating their remote work policies, insurers are focusing on how employers are managing the return to office and remote work arrangements, as well as diversity, equity and inclusion (DEI) efforts.

TAKEAWAY: Work with employment counsel to review and update your association's employment handbook to ensure it sufficiently addresses COVID-19 related issues, such as vaccination or testing requirements, enhanced safety measures and remote work, as well as processes to address inter-employee conflict resolution. Check out the Resources list for additional guidance.

FUTURE PLANNING:

The pandemic was not previously considered a top-10 risk by the majority of organizations, and exposed weaknesses in risk management planning. Organizations across all industries are strongly urged to make risk management a critical business priority.

TAKEAWAY: Make risk assessment and disaster planning part of your association's annual planning. Start by creating a [disaster preparedness plan](#) that addresses natural disasters, cyber attacks, and other events that could disrupt business operations and the provision of member services.

INTELLECTUAL PROPERTY:

For the first time in five years, patent litigation in the US increased year over year. This was largely driven by software-related claims and non-practicing entities (aka patent trolls), along with companies' efforts to develop new software and information technology.

TAKEAWAY: Be sure agreements with technology vendors such as those for MLS services, mobile apps and websites include indemnification for patent infringement claims, and consider budgeting for excess patent infringement insurance for the 2022 policy year.

Source: Aon, NAR's broker for the NAR Insurance Program, professional liability trends across market sectors.

RESOURCES

[Employment Practices Legal Hotline](#)

[Diversity, Equity and Inclusion Resources](#)

[Employer/Employee Guidelines](#)

[Code of Conduct and Anti-Harassment Policy](#)

[Best Practices for Conducting Internal Harassment Investigations](#)

[Human Resources Toolkit](#)

[Strategic Association Management Services](#)

RISK MANAGEMENT WEBINAR

Employment Practices to
Avoid Liability

December 9 // 2:00 pm CDT

[REGISTER NOW!](#)

CLAIMS REPORTED: 15

(10 active demands/lawsuits
and 5 potential claims)

- 5 Association Governance
- 3 Employment
- 2 Antitrust
- 2 Professional Standards
- 2 Other
- 1 Copyright

INSURANCE TIP

2022 insurance program renewal information is coming in early January to your physical mailbox and your email inbox. Start planning now for any excess insurance needs you may have in the new policy year.

ANNUAL MAILING

COMING EARLY JANUARY 2022

Mail
Email
nar.realtor

*Excess purchase period is
January 1 – April 1, 2022*

HELP! WE'VE BEEN SUED OR SOMEONE HAS
THREATENED TO SUE. WHAT SHOULD I DO?



EXCESS COVERAGE APPLICATION INSTRUCTIONS

ASSOCIATION PROFESSIONAL LIABILITY INSURANCE POLICY

(Association Directors' and Officers' and Errors and Omissions Coverage)

NATIONAL ASSOCIATION OF REALTORS®

(A National Professional Trade Association herein called "Named Insured")



NATIONAL
ASSOCIATION *of*
REALTORS®

CHUBB®

THIS IS A CLAIMS MADE POLICY. PLEASE REVIEW THE POLICY CAREFULLY. THE POLICY IS LIMITED FOR ONLY THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY PERIOD UNLESS, AND TO THE EXTENT, THE EXTENDED REPORTING PERIOD OPTION APPLIES.

Master APLI Policy

Duplicate copy of Master APLI Policy MPB G23658240 014 issued to the National Association of REALTORS® in Illinois, the original of which is on file and available for inspection at the headquarters office of the National Association of REALTORS®, 430 N. Michigan Avenue, Chicago, Illinois

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MORE INFORMATION

NAR INSURANCE PROGRAM

nar.realtor/nar-insurance-program

AON ACCOUNT EXECUTIVES

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Laura Sereika

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THANK YOU.



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