

POLICY NUMBER:

BUSINESSOWNERS
BP 05 89 01 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES LIABILITY ENDORSEMENT

**THIS ENDORSEMENT PROVIDES CLAIMS-MADE AND REPORTED COVERAGE
PLEASE READ THE ENTIRE FORM CAREFULLY**

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Employment-related Practices Liability Annual Aggregate Limit Of Insurance:		\$
Supplemental Limit:		\$
Deductible Amount:		\$
Prior Or Pending Litigation Date:		
<input type="checkbox"/>	Employment-related Malicious Prosecution	
Retroactive Date:		
<input type="checkbox"/>	Extended Reporting Period	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

For the purposes of the coverage provided by this endorsement, **Section II – Liability** is amended as follows:

A. The following is added to Paragraph A. Coverages:

1. Insuring Agreement

- a. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a "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 a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "claim" that may result. But:

- (1) The amount we will pay for damages and "defense expenses" is limited as described in Paragraph **D.1.** Employment-related Practices Liability Annual Aggregate Limit Of Insurance and Paragraph **D.2.** Deductible of this endorsement; and
- (2) The coverage and duty to defend provided by this endorsement will end when we have used the applicable Limit of Insurance for "defense expenses" or the payment of judgments or settlements.

No other obligation or liability to pay sums, such as civil or criminal fines, imposed on you or any other insured, or to perform acts or services is covered unless explicitly provided for under Supplementary Payments.

- b. This insurance applies to "wrongful acts" only if:

- (1) The "wrongful act" takes place in the "coverage territory";
- (2) The "wrongful act" did not commence before the Retroactive Date, if any, shown in the Schedule, or after the end of the policy period; and
- (3) A "claim" against any insured for damages because of the "wrongful act" is first made during the policy period, or an Extended Reporting Period provided under Paragraph **F.** of this endorsement, in accordance with Paragraphs **c.** and **d.** below.

- c. A "claim" will be deemed to have been made at the earlier of the following times:

- (1) When notice of such "claim" after being received by any insured is reported to us in writing; or
- (2) When a "claim" against an insured is made directly to us in writing.

A "claim" received by the insured during the policy period and reported to us within 30 days after the end of the policy period will be considered to have been reported within the policy period. However, this 30-day grace period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would have been covered but for exhaustion of the amount of insurance applicable to such "claims".

- d. If during the policy period you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" against any insured, you must provide notice to us in accordance with the provisions of Paragraph **E.2** Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim. If such notice is provided, then any "claim" subsequently made against any insured arising out of that "wrongful act" shall be deemed under this policy to be a "claim" made during the policy period in which the "wrongful act" was first reported to us.
- e. All "claims" for damages because of a "wrongful act" committed against the same person, including damages claimed by any person for care, loss of services or death resulting at any time from the "wrongful act", will be deemed to have been made at the time the first of such "claims" is made, regardless of the number of "claims" subsequently made.

B. For the purposes of the coverage provided by this endorsement, the following is added to Paragraph B. Exclusions, Subparagraph 1. Applicable To Business Liability Coverage:

This insurance does not apply to:

a. Criminal, Fraudulent Or Malicious Acts

An insured's liability arising out of criminal, fraudulent or malicious acts or omissions by that insured.

This exclusion does not affect our duty to defend, in accordance with Paragraph **A.1.** of this endorsement, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal, fraudulent or malicious act or omission.

b. Contractual Liability

Any "wrongful act" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement.

c. Violation Of Laws Applicable To Employers

A violation of your responsibilities or duties required by any other federal, state or local statutes, rules or regulations, and any rules or regulations promulgated therefor or amendments thereto, except for the following, and including amendments thereto: Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform Control Act of 1986, the Family and Medical Leave Act of 1993 and the Genetic Information Nondiscrimination Act of 2008 or any other similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

However, this insurance does not apply to a "wrongful act" arising out of your failure to comply with any of the accommodations for the disabled required of you by, or any expenses incurred as the result of physical modifications made to accommodate any person pursuant to, the Americans With Disabilities Act, or any amendments thereto, or any similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

This exclusion does not apply to any "claim" for retaliatory treatment by an insured against any person making a "claim" pursuant to such person's rights under any statutes, rules or regulations.

d. Strikes And Lockouts

Any "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.

e. Prior Or Pending Litigation

Any "claim" or "suit" against any insured which was pending on, or existed prior to, the applicable Pending Or Prior Litigation Date shown in the Schedule, or any "claim" or "suit" arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or "suit".

f. Prior Notice

Any "wrongful act" alleged or contained in any "claim" which has been reported, or for which, in any circumstance, notice has been given, under any other prior insurance policy providing essentially the same type of coverage.

C. For the purposes of the coverage provided by this endorsement, **Section II – Who Is An Insured is amended to include as an insured:**

- 1.** Your "employees", unless otherwise excluded in this endorsement.
- 2.** Your former "employees", unless otherwise excluded in this endorsement, but only with respect to "wrongful acts" committed while in your employ.

D. For the purposes of the coverage provided by this endorsement, Paragraph **D. Liability And Medical Expenses Limits Of Insurance is replaced by the following:**

1. Employment-related Practices Liability Annual Aggregate Limit Of Insurance

- a.** The Employment-related Practices Liability Annual Aggregate Limit Of Insurance shown in the Schedule of this endorsement is the most we will pay, regardless of the number of:

- (1)** Insureds;
- (2)** "Claims" made or "suits" brought; or
- (3)** Persons, organizations or government agencies making "claims" or bringing "suits".

- b.** The Employment-related Practices Liability Annual Aggregate Limit Of Insurance shown in the Schedule of this endorsement is the most we will pay for the sum of:

- (1)** All damages; and
- (2)** All "defense expenses"

because of all "wrongful acts" to which this insurance applies.

The Employment-related Practices Liability Annual Aggregate Limit Of Insurance applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Employment-related Practices Liability Annual Aggregate Limit Of Insurance.

2. Deductible

- a. We will not pay for our share of damages and "defense expenses" until the amount of damages and "defense expenses" exceeds the Deductible shown in the Schedule of this endorsement. We will then pay the amount of damages and "defense expenses" in excess of the Deductible, up to the Employment-related Practices Liability Annual Aggregate Limit Of Insurance.

Example No. 1

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$75,000

The Deductible will be subtracted from the amount of damages and "defense expenses" in calculating the amount payable:

$\$75,000 - \$5,000 = \$70,000$ Amount Payable

Example No. 2

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$120,000

The Deductible will be subtracted from the amount of damages and "defense expenses" ($\$120,000 - \$5,000 = \$115,000$). Since the amount of the damages and "defense expenses" minus the Deductible exceeds the Limit of Insurance, the policy will pay the full Limit of Insurance (\$100,000).

- b. The Deductible amount shown in the Schedule applies to all "claims" arising out of:
 - (1) The same "wrongful act"; or

- (2) A series of "wrongful acts", circumstances or behaviors which arise from a common cause

regardless of the number of persons, organizations or government agencies making such "claims".

- c. We may pay any part or all of the Deductible amount to effect settlement of any "claim" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible amount as has been paid by us.

- E. For the purposes of the coverage provided by this endorsement, the following are added to Paragraph E. **Liability And Medical Expenses General Conditions:**

1. Consent To Settle

If we recommend a settlement to you which is acceptable to the claimant, but to which you do not consent, the most we will pay as damages in the event of any later settlement or judgment is the amount for which the "claim" could have been settled, to which you did not give consent, less any deductible.

2. Duties In The Event Of A Claim Or 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;
 - (3) Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
 - (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 a "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 become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" and for which a "claim" has not yet been received, you must notify us, in writing, as soon as practicable. Such notice must provide:

- (1) A description of the "wrongful act", including all relevant dates;
- (2) The names of the persons involved in the "wrongful act", including names of the potential claimants;
- (3) Particulars as to the reasons why you became aware of and reasonably expect a "claim" which may result from such "wrongful act";
- (4) The nature of the alleged or potential damages arising from such "wrongful act"; and
- (5) The circumstances by which the insured first became aware of the "wrongful act".

3. Representations

By accepting this policy, you agree that:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

4. If You Are Permitted To Select Defense Counsel

If, by mutual agreement or court order, 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 Paragraph E.2. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim Condition of this endorsement as well as the other provisions of this policy; and
 - (2) Direct defense counsel of the insured to:
 - (a) Furnish us with the information we request to evaluate those "suits" for coverage under this policy; and

- (b) 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.

5. Transfer Of Duties When Limit Of Insurance Is Used Up

- a. If we conclude that, based on "claims" which have been reported to us and to which this insurance may apply, the Employment-related Practices Liability Annual Aggregate Limit Of Insurance is likely to be used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will notify the first Named Insured, in writing, to that effect.
- b. When the Employment-related Practices Liability Annual Aggregate Limit Of Insurance has actually been used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will:
 - (1) Notify the first Named Insured in writing, as soon as practicable, that such a limit has actually been used up, and that our duty to defend the insured against "suits" seeking damages subject to that limit has also ended;
 - (2) Initiate, and cooperate in, the transfer of control, to any appropriate insured, of all "suits" for which the duty to defend has ended for the reason described in preceding Paragraph 5.b.(1) and which are reported to us before that duty to defend ended; and
 - (3) Take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.
- c. If the circumstances described in Paragraph 5.b.(1) have occurred, the first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must:
 - (1) Cooperate in the transfer of control of "suits"; and

- (2) Arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
- d. We will take no action with respect to defense for any "claim" if such "claim" is reported to us after the Employment-related Practices Liability Annual Aggregate Limit Of Insurance has been used up. It becomes the responsibility of the first Named Insured, and any other insured involved in such a "claim", to arrange defense for such "claim".
- e. The first Named Insured will reimburse us as soon as practicable for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 5.b.
- f. The exhaustion of the Employment-related Practices Liability Annual Aggregate Limit Of Insurance and the resulting end of our duty to defend will not be affected by our failure to comply with any of the provisions of this Condition.

F. Extended Reporting Period

- 1. For the purposes of the coverage provided by this endorsement, the following Extended Reporting Period provisions are added:
 - a. You will have the right to purchase an Extended Reporting Period from us if:
 - (1) This endorsement is cancelled or not renewed for any reason; or
 - (2) We renew or replace this endorsement with insurance that:
 - (a) Has a Retroactive Date later than the date shown in the Schedule of this endorsement; or
 - (b) Does not apply to "wrongful acts" on a claims-made basis.
 - b. An Extended Reporting Period, as specified in Paragraph F.1.a. above, lasts three years and is available only for an additional premium.
 - c. The Extended Reporting Period starts with the end of the policy period. It does not extend the policy period or change the scope of the coverage provided. It applies only to "claims" to which the following applies:
 - (1) The "claim" is first made during the Extended Reporting Period;
 - (2) The "wrongful act" occurs before the end of the policy period; and

- (3) The "wrongful act" did not commence before the Retroactive Date.

- d. You must give us a written request for the Extended Reporting Period within 30 days after the end of the policy period or the effective date of cancellation, whichever comes first.
- e. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due and any premium or deductible you owe us for coverage provided under this endorsement. Once in effect, the Extended Reporting Period may not be cancelled.
- f. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:
 - (1) The exposures insured;
 - (2) Previous types and amounts of insurance;
 - (3) Limit of Insurance available under this endorsement for future payment of damages; and
 - (4) Other related factors.

The additional premium will not exceed 200% of the annual premium for this endorsement.

- g. When the Extended Reporting Period is in effect, we will provide a Supplemental Limit of Insurance for any "claim" first made during the Extended Reporting Period.

The Supplemental Limit of Insurance will be equal to the dollar amount shown in the Schedule of this endorsement under the Employment-related Practices Liability Annual Aggregate Limit Of Insurance.

Paragraph D.1.b. of this endorsement will be amended accordingly.

- 2. If the Extended Reporting Period is chosen by checking the appropriate box in the Schedule of this endorsement, the provisions of this Paragraph 2. supersede any other provisions of this endorsement to the contrary.
 - a. An Extended Reporting Period is provided, as described in Paragraph F. Extended Reporting Period.
 - b. A Supplemental Limit of Insurance applies, as set forth in Paragraph F.2.c. below, to "claims" first made during the Extended Reporting Period. The limit is equal to the Employment-related Practices Liability Annual Aggregate Limit Of Insurance entered in the Schedule.

- c. Paragraph **D.1.b.** of this endorsement is replaced by the following:
 - b. The Employment-related Practices Liability Annual Aggregate Limit Of Insurance shown in the Schedule of this endorsement is the most we will pay for the sum of:
 - (1) All damages; and
 - (2) All "defense expenses" because of all "wrongful acts" to which this insurance applies.

However, the Employment-related Practices Liability Annual Aggregate Limit Of Insurance does not apply to "claims" to which the Supplemental Limit Of Insurance applies.
 - d. The following is added to Paragraph **D.1.** of this endorsement:
 - c. The Supplemental Limit Of Insurance is the most we will pay for the sum of:
 - (1) All damages; and
 - (2) All "defense expenses" because of all "wrongful acts" for "claims" first made during the Extended Reporting Period.
 - e. Paragraph **D.1. Employment-related Practices Liability Annual Aggregate Limit Of Insurance**, as amended by Paragraphs **F.2.c.** and **F.2.d.**, is otherwise unchanged and applies in its entirety.
 - f. The Extended Reporting Period will not take effect unless the additional premium for it, as set forth in Paragraph **F.** Extended Reporting Period, is paid when due. If that premium is paid when due, the Extended Reporting Period may not be cancelled.
- G. For the purposes of the coverage provided by this endorsement, the following is added to Paragraph **F. Liability And Medical Expenses Definitions** of the policy:
 - 1. "Claim" means a "suit" or demand made by or for a current, former or prospective "employee" for damages because of an alleged "wrongful act".
 - 2. "Defense expenses" means payments allocated to a specific "claim" we investigate, settle or defend, for its investigation, settlement or defense, including:
 - a. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
 - b. Fees of attorneys the insured retains when, by our mutual agreement or court order (or when required by administrative hearing or proceeding), the insured is given the right to retain defense counsel to defend against a "claim".
 - c. All other litigation or administrative hearing expenses, including fees or expenses of expert witnesses hired either by us or by the defense attorney retained by an insured.
 - d. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$250 a day because of time off from work.
 - e. Costs taxed against the insured in a "suit".

"Defense expenses" does not include salaries and expenses of our "employees" or the insured's "employees" (other than those described in Paragraphs **a.** and **d.** of this definition).
 - 3. "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.
 - 4. "Wrongful act" means one or more of the following offenses, but only when they are employment-related:
 - 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 an 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, wrongful deprivation of career opportunity, or breach of employment contract;
 - d. Negligent hiring or supervision which results in any of the other offenses listed in this definition;

- e. Retaliatory action against an "employee" because the "employee" has:
 - (1) Declined to perform an illegal or unethical act;
 - (2) Filed a complaint with a governmental authority or a "suit" against you or any other insured in which damages are claimed;
 - (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;
- f. Coercing an "employee" to commit an unlawful act or omission within the scope of that person's employment;
- g. Harassment;
- h. Libel, slander, invasion of privacy, defamation or humiliation; or
- i. Verbal, physical, mental or emotional abuse arising from "discrimination".

H. If Employment-related Malicious Prosecution is chosen by checking the appropriate box in the Schedule of this endorsement, then the following provisions apply:

- 1. Paragraph **B.a.** of this endorsement is replaced by the following:

This insurance does not apply to:

a. Criminal, Fraudulent Or Malicious Acts

An insured's liability arising out of criminal, fraudulent or malicious acts or omissions by that insured.

However, this exclusion does not apply to malicious prosecution of "employees" by that insured. This exclusion does not affect our duty to defend, in accordance with Paragraph **A.1.** of this endorsement, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal, fraudulent or malicious act or omission.

- 2. The following is added to Paragraph **G.4.** of this endorsement:

j. Malicious prosecution.