



Protecting your Practice

Intelligent and innovative risk transfer solutions for Management Liability and Employment Practices Liability Insurance



MANAGEMENT LIABILITY:

The highly publicised demise of Dewey Leboeuf highlights an extreme example of the severe personal financial impact claims can have on the partners involved in the management of a law firm. Although the legal structure of a law firm remains distinctly different from that of a public or private company, similarities have emerged in the way both are governed. As a result, D&O risks traditionally typical among corporations, have become more commonplace in the legal industry. Potential claims' scenarios can include:

- Wrongful expulsion of a partner/partners leading to a claim for breach of fiduciary duty when a firm makes a decision to close branch offices or areas of practice.
- Firm expansion which ends up being detrimental from both financial performance and conflicts points of view. The firm's management could be sued for mismanagement with claims that it failed to do the necessary due diligence in evaluating the potential impact of the expansion.
- Mergers and Acquisitions. Claims can arise if a merger leads to a reduction in an individual partner's income or overall revenue of the firm.
- Changes to compensation provisions in a partnership agreement can lead to claims against management, particularly if employment, termination, and retirement protocols have not been correctly addressed.
- Hiring practices, particularly involving recruiting lawyers from rival firms may lead to claims of "predatory hiring." Firms losing attorneys could sue management of the hiring firms alleging wrongful acts in hiring practices or tortious interference with business relations.
- Pension Benefit Issues. Firm management's failure to restructure over-generous defined benefit pension plans that continue to create a drag on the firm's financial performance could lead to claims of breach of fiduciary duty.

EMPLOYMENT PRACTICES LIABILITY:

Closely linked to the exposures relating to the management activities of a law firm are the liabilities which arise from employment practices. Ranging from failure to adhere to equal opportunity regulations to workplace harassment, employment-related claims can also cause a law firm significant financial harm. Potential scenarios could include allegations of:

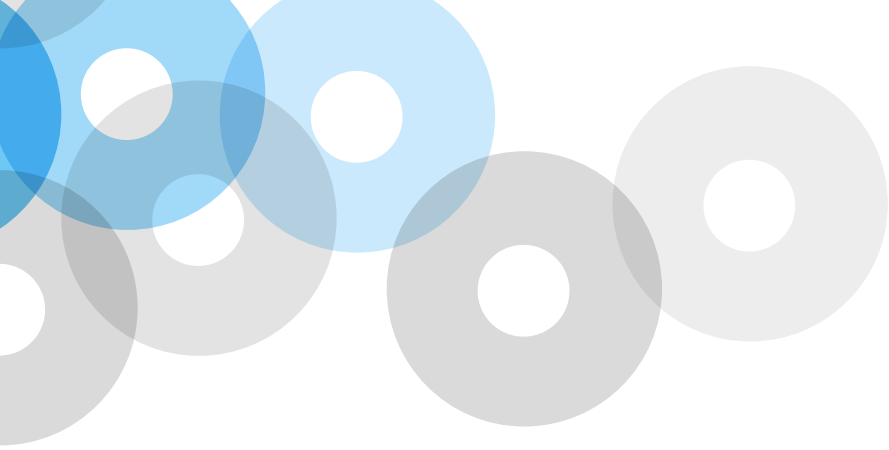
- Infliction of emotional distress
- Violations of legal protections for family and medical leave
- An abusive or hostile work environment
- Negligent hiring or supervision
- Constructive termination
- Wrongful failure to grant partnership (or other tenure or seniority positions)

Law firms are currently under the spotlight concerning two significant employment practice issues.

The first has been highlighted most recently with significant gender bias claims being brought against prominent law firms. With a recent study showing that male partners at sizeable US law firms make an average of \$949,000 a year compared with \$659,000 a year for female partners, a 44% pay gap appears to be generating interest among plaintiff attorneys, which present potential financial implications for law firms.

It has been widely reported that Chadbourne & Parke is in the process of defending a \$100m class-action suit alleging discrimination and pay inequity. While the large headline figure alone is eye-catching enough, what is more alarming for law firms is that this is not an isolated occurrence and may, in fact, be part of a developing trend. Indeed, in the past month it has been reported that another firm is attempting to dismiss a \$50m action, a \$200m case was recently settled confidentially at arbitration, and, in 2013, another \$200m gender bias class action was settled confidentially.

Although the outcomes of these actions are usually confidential, we have seen several seven-figure settlements where firms are apprehensive of the risks of going to trial. And, defending such litigation is costly and, in itself, could have significant financial implications for a law firm.



Secondly, there have been numerous articles in both the legal and mainstream press concerning the work environments at law firms and how they can contribute to substance abuse and mental health issues. In one article, it was claimed that it is twice as difficult to become an equity partner today as it was in 1985. Another study analysing the responses of 12,825 practicing attorneys across 19 states showed that around 21% of lawyers qualified as problem drinkers, while 28% struggled with mild or more serious depression and 19% struggled with anxiety.

These issues are arguably sowing the seeds for a new wave of allegations and potential litigation.

COVERAGE AVAILABILITY:

Even if the allegations arising out of the scenarios described above are groundless, it seems they are on the rise and the cost to defend such claims is also rising. Our benchmarking data highlights that law firms of varying sizes are taking these exposures and the potential financial implications associated with them very seriously. The average limits purchased are as follows:

Firm Size (number of attorneys)	Average Per Claim Limit Purchased
Up to 200	\$5,650,000
201-500	\$10,500,000
501-1,000	\$25,800,000
Over 1,000	\$26,500,000

In response to the exposures faced by the management of law firms, there have been significant developments in the ML/EPL coverage available in the commercial market, selections of which are summarized below:

- Additional excess limit for non-partner executives for non-indemnifiable liability claims.
- Wage & Hour defense coverage (sub-limit).

- Employment event coverage (sub-limit) for a PR advisor in the event of a significant event, e.g. layoff/termination of 20% or greater of the workforce or a workplace disaster resulting in loss or life or imminent threat of or actual use of a lethal weapon.
- Costs of retraining coverage (sub-limit).
- Privacy notification costs coverage (sub-limit) covering claims arising from the theft of personally identifiable employee information, e.g. Social Security Numbers.
- Voluntary compliance notice coverage (sub-limit).

Beazley and Markel have traditionally led this class as, unlike other more general D&O markets, they have specifically targeted law firms and have worked hard to understand the industry and tailor their products accordingly. In addition, there are a number of new and existing markets that have expanded their reach into this space and this has created an increase in available capacity, see below:

Insurer	Maximum Line Size
Beazley	\$20,000,000
Markel	\$25,000,000
Ironshore Europe Limited	\$25,000,000
Startpoint	\$25,000,000
W.R. Berkley*	\$10,000,000

*only where W.R. Berkley participate on the E&O Program

We are a market-leader in this category, representing some of the largest and most distinguished law firms in the world. Our unique Management Liability and Employment Practices Liability insurance product is supported by key leading law firm liability insurers.

If you would like further information on this topic, please contact your local US Broker.

Paragon is authorised and regulated by the Financial Conduct Authority. Accredited Lloyd's Broker.