

In consideration of the premium paid, in reliance upon the statements in the **Application** and subject to the Declarations, limitations, conditions, definitions and other provisions of this Coverage Part, including endorsements hereto, the **Insurer** and the **Insureds** agree as follows:

I. INSURING AGREEMENT

- A. The **Insurer** shall pay, on behalf of an **Insured**, **Loss** on account of a **Claim** first made during the **Policy Period**.
- B. The **Insurer** will pay on behalf of the **Insured**, **Defense Expenses** arising out of any **Wage & Hour Claim** first made against the **Insured** during the **Policy Period**.

II. DEFINITIONS

Benefits means any payments (including insurance premiums), deferred compensation, perquisites or fringe benefits, in connection with an employee benefit plan and any other payment to or for the benefit of an employee arising out of the employment relationship. However, **Benefits** shall not include salary, wages, bonuses, commissions, **Stock Benefits** or non-deferred cash incentive compensation.

Claim means any:

- A. written demand for monetary or non-monetary (including injunctive) relief, including demands for arbitration waiving or tolling of a statute of limitations, reinstatement, reemployment or re-engagement;
- B. civil or criminal proceeding, evidenced by:
 - 1. the service of a complaint or similar pleading in a civil proceeding; or
 - 2. a request to interview or depose an **Insured Individual**; or
 - 3. the filing of an indictment, information or similar document or an arrest in a criminal proceeding; and
- C. arbitration proceeding pursuant to an employment contract or agreement, policy or practice of an **Insured Entity**;
- D. administrative, regulatory or tribunal proceeding, other than a labor, grievance or other proceeding under a collective bargaining agreement, evidenced by the filing of a formal notice of charges or the entry of a formal order of investigation including but not limited to a proceeding before the Equal Employment Opportunity Commission or any similar federal, state or local governmental agency or a proceeding on behalf of the Department of Labor Relations; or
- E. any audit of an **Insured** conducted by the United States of America Office of Federal Contract Compliance Programs ("OFCCP"),

against an **Insured** for a **Wrongful Act**, including any appeal therefrom.

F. Immigration Claim

The time when a **Claim** shall be deemed first made for the purposes of this Coverage Part shall be the date on which the **Claim** is first made against, served upon or received by the **Insured** or the applicable notice or order is filed or entered.

Crisis means the public announcement that an **Incident** occurred on the **Named Insured's** premises or at an event sponsored by the **Named Insured**.

Crisis Management Emergency Response Expenses means expenses for services provided by a Crisis Management Firm. **Crisis Management Emergency Response Expenses** do not include:

- A. Compensation, fees, benefits, overhead, charges or expenses of any Insured; or
- B. Any expenses that are covered or reimbursable to the **Named Insured** under any other valid and collectible insurance.

Crisis Management Firm means any service provider hired by the **Named Insured** and approved in writing by the **Insurer**. The **Insurer's** consent will not be unreasonably withheld.

Defense Costs means that part of **Loss** consisting of:

- A. reasonable costs, charges, fees (including, attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees or benefits of any **Insured**) incurred in investigating, defending, opposing or appealing any **Claim**; or
- B. the premium for appeal, attachment or similar bonds (but the **Insurer** shall be under no obligation to furnish any bond).

Discrimination means any violation of any employment discrimination law.

Employment Practices Wrongful Act means any:

- A. breach of any employment contract or agreement or contractual obligation, including any contract or agreement or contractual obligation arising out of any employee handbook, personnel manual, policy statement or other representation;
- B. **Discrimination**;
- C. **Harassment**;
- D. **Retaliation**;
- E. **Workplace Tort**; or
- F. **Wrongful Employment Decision**,

committed, attempted, or allegedly committed or attempted by an Insured while acting in his or its capacity as such.

Harassment means any:

- A. sexual harassment that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within, an **Insured Entity**; or
- B. workplace harassment, including bullying that interferes with performance or creates an intimidating, hostile or offensive working environment within an **Insured Entity**.

Immigration Claim means a criminal investigation of any of the **Insureds** by any governmental agency but shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

Immigration Wrongful Act means an actual or alleged violation of the responsibilities, obligations or duties imposed by the Immigration Control Act of 1986 or any other similar federal or state laws or regulations in connection with the actual or alleged hiring or harboring of illegal aliens.

Incident means:

- A. An accident or other event resulting in the death or Serious Bodily Injury to three (3) or more individuals; or

B. The accidental discharge of pollutants.

Independent Contractor means any natural person working for an **Insured Entity** pursuant to a written contract or agreement between such natural person and the **Insured Entity** which specifies the terms of the **Insured Entity's** engagement of such natural person.

Insured means any **Insured Entity** or **Insured Individual**.

Insured Individual means any:

A. **Executive** or **Employee**; or

B. **Independent Contractor**, but only if the **Insured Entity** agrees to indemnify the **Independent Contractor** in the same manner as **Employees** for liability arising out of a **Claim**.

Loss means the amount that an Insured becomes legally obligated to pay on account of any **Claim** including:

A. compensatory damages (including back pay and front pay);

B. judgments and settlements, including a judgment or settlement awarding plaintiffs' attorneys fees, provided that with respect to any settlement including plaintiffs' attorney fees, that portion of the settlement can be demonstrated to be reasonable, taking into consideration the nature of legal action, time and expense involved in prosecuting such action, and the likelihood of a court awarding a similar amount as part of a judgment;

C. pre and post-judgment interest;

D. liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Family Medical Leave Act or Equal Pay Act;

E. **Defense Costs**; and

F. punitive, exemplary or multiplied portion of multiplied damages, if and to the extent that any such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages.

In determining the most favorable jurisdiction as set forth in item F. above, due consideration shall be given to the jurisdiction with a substantial relationship to the relevant Insureds, to the **Insured Entity**, or to the **Claim** giving rise to such damages, and the **Insurer** shall not challenge any opinion of independent legal counsel (mutually agreed to by the **Insurer** and the **Insured**) that such damages are insurable under applicable law.

Loss does not include any portion of such amount that constitutes any:

1. amount not insurable under the law pursuant to which this Coverage Part is construed;

2. cost incurred to comply with any order for injunctive or other non-monetary relief, or to comply with an agreement to provide such relief;

3. future salary, wages, commissions, or **Benefits** or other monetary payments of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution of any **Claim**;

4. salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;

5. Benefits due or to become due or the equivalent value of such **Benefits**;

6. cost associated with providing any accommodation for persons with disabilities or any other status which is protected under any law, including the Americans with Disabilities Act and the Civil Rights Act of 1964;

7. tax, fine or penalty imposed by law;

8. cost incurred to clean up, remove, contain, treat, detoxify or neutralize **Pollutants**; or
9. amounts incurred in connection with an **Immigration Investigation** except **Defense Costs**
10. amount allocated to non-covered loss pursuant to Section IV.E. Allocation of the Common Policy Terms and Conditions.

Premises means the buildings, facilities or properties occupied by an **Insured Entity** in conducting its business.

Retaliation means retaliatory treatment against an **Insured Individual** on account of such **Insured Individual**:

- A. exercising his or her rights under law, refusing to violate any law or opposing any unlawful practice;
- B. having assisted or testified in or cooperated with a proceeding or investigation (including any internal investigation conducted by an **Insured Entity's** human resources or legal department) regarding alleged violations of law by the **Insured**;
- C. disclosing or threatening to disclose to a superior or any governmental agency any alleged violations of law; or
- D. filing any claim against an **Insured Entity** under the Federal False Claims Act, Section 806 of the Sarbanes Oxley Act or any other whistleblower law.

Serious Bodily Injury means any injury to a person that creates a substantial risk of death, serious permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

Social Media means any internet or mobile-based platform for the creation and exchange of user generated content including, but not limited to, Facebook, LinkedIn, MySpace, Twitter and any other similar media applications.

Social Media Wrongful Act means any actual or alleged defamation, libel, or invasion of privacy of any natural person, other than an **Employee** or applicant for employment, arising out of an **Insured Individual's** use of **Social Media** while acting solely within the course and scope of their employment with an **Insured Entity**.

Stock Benefits means any:

- A. offering, plan or agreement between an **Insured Entity** and any **Employee** which grants stock, warrants, shares or stock options of the **Insured Entity** to such **Employee**, including grants of restricted stock, performance stock shares, membership shares or any other compensation or incentive granted in the form of securities of the **Insured Entity**; or
- B. payment or instrument, the amount or value of which is derived from the value of securities of an **Insured Entity**, including stock appreciation rights or phantom stock plans or arrangements,

provided that **Stock Benefits** shall not include amounts claimed under any employee stock ownership plans or employee stock purchase plans.

Third Party means any natural person who is not an **Insured Individual**.

Third Party Wrongful Act means any harassment, or discrimination based upon status protected under any anti-discrimination law, against a **Third Party** committed, attempted, or allegedly committed or attempted by any **Insured** while acting in their or its capacity as such.

Wage & Hour Claim means:

- A. Any:
 1. Written demand first received by an Insured for monetary or non-monetary relief including a written demand for reinstatement, re-employment, re-engagement or injunctive relief;
 2. Civil proceeding commenced by the service of a complaint or similar pleading;

3. Formal administrative or regulatory proceeding commenced by the filing of charges, formal investigative order or similar document, including a proceeding before the Equal Employment Opportunity Commission or any similar governmental agency;
4. Arbitration or mediation proceeding commenced by the receipt of a demand for arbitration or mediation or similar document;

which is brought and maintained by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Insured Entity** against an Insured for a **Wage & Hour Violation**, including any appeal therefrom; or

- B. A written request first received by an Insured to toll or waive a statute of limitations relating to a potential **Wage & Hour Claim** described in A.1. through A.4. above.

However, **Wage & Hour Claim** shall not include any arbitration or grievance proceeding pursuant to a collective bargaining agreement.

Wage & Hour Violation means an alleged or actual violation of the responsibilities, obligations and duties imposed by any federal, state or local statutory or common law anywhere in the world including regulations promulgated under any such law that governs wage, hour and payroll policies and practices, including but not limited to the Fair Labor Standards Act, as amended.

Workplace Tort means any employment-related:

- A. misrepresentation, defamation (including libel and slander), invasion of privacy, wrongful infliction of emotional distress, mental anguish or humiliation; or
- B. negligent retention, supervision, hiring or training, failure to provide or enforce consistent employment-related corporate policies and procedures, false imprisonment, negligent evaluation, wrongful discipline or wrongful deprivation of career opportunity,

but only when alleged as part of a **Claim** for any **Wrongful Employment Decision**, breach of employment contract, **Discrimination**, **Harassment** or **Retaliation**.

Workplace Violence means any intentional use of or threat to use deadly force by any individual with the intent to cause harm and which did or could result in the injury or death of an individual while on the **Insured Entity's Premises**.

Workplace Violence Expenses means any reasonable fees, expenses or cost of:

- A. An independent security consultant for up to ninety (90) days following the date that the **Workplace Violence** occurs;
- B. An independent public relations consultant for up to ninety (90) days following the date that the **Workplace Violence** occurs;
- C. A counseling seminar for all **Employees** conducted by an independent consultant following the **Workplace Violence**;
- D. Independent security guard services for up to fifteen (15) days; and
- E. An independent forensic analyst.

Wrongful Act means an **Employment Practices Wrongful Act**, **Social Media Wrongful Act**, or **Third Party Wrongful Act**.

Wrongful Employment Decision means any wrongful termination, discharge of employment, demotion, denial of tenure, failure or refusal to employ or promote, or wrongful or negligent employee reference.

III. EXCLUSIONS

This Insurance does not apply to Loss on account of that portion of a Claim:

A. Breach of Written Employment Contract

For any breach of any written employment contract or agreement, provided that this exclusion shall not apply to:

1. **Loss** to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract or agreement; or
2. **Defense Costs**;

B. OSHA, Workforce Notification and Labor Relations

Based upon, arising out of or resulting from any violation of the responsibilities, obligations or duties imposed by the Occupational Safety and Health Act, the Worker Adjustment and Retraining Notification Act, the National Labor Relations Act or any similar law; and

C. Workers Compensation, Disability Benefits, Social Security, Unemployment

Based upon, arising out of or resulting from any failure to comply with any obligation under any workers compensation, disability benefits, social security or unemployment insurance law;

However, these exclusions shall not apply to any **Claim** for **Retaliation**.

D. Accommodation

For costs and expenses incurred, or to be incurred, to comply with an order, judgment or award of injunctive or other equitable relief of any kind, including but not limited to, costs and expenses associated with or arising from an **Insured's** obligations under the Americans With Disabilities Act or the Rehabilitation Act of 1973, as amended or any similar federal, state or local law anywhere in the world. However, this exclusion shall not apply to **Defense Expenses**.

With respect to the Employment Practices Liability Coverage Part, the following exceptions shall apply to Section III. **EXCLUSIONS** of the Common Policy Terms and Conditions:

1. A. Bodily Injury/Property Damage shall not apply to **Loss** for any mental anguish, emotional distress or humiliation when alleged as part of a **Claim** otherwise covered under this Coverage Part; and
2. B. Conduct shall not apply with respect to any **Claim** under this Coverage Part.
3. C. **ERISA**, G. Wage & Hour and E. Pollution shall not apply to any **Claim** for **Retaliation**.
4. G. Wage & Hour shall not apply to **Defense Expenses**.
5. H. Biometric Information shall not apply to any **Claim** for **Discrimination, Retaliation, Harassment**, or Wrongful Termination

IV. CONDITIONS

A. Other Insurance

1. With respect to any **Claim** for an **Employment Practices Wrongful Act**, other than that portion of a **Claim** made against a leased or temporary employee or **Independent Contractor**, this Coverage Part shall be primary insurance.
2. With respect to:
 - a. that portion of any **Claim** made against any leased or temporary employee or **Independent Contractor**; or

- b. any Claim for a **Third Party Wrongful Act**, where Loss is covered under this Coverage Part and other valid and collective insurance,

this Coverage Part shall be specifically excess of and shall not contribute with any other valid and collectible insurance policy (other than a policy that is issued specifically as excess of the insurance afforded by the Coverage Part), regardless of whether such other insurance is stated to be primary, contributory, excess, contingent or otherwise.

B. Coordination of Coverage

Any Loss covered under this Coverage Part and one or more other **Liability Coverage Parts** shall first be covered under this Coverage Part, subject to its terms, conditions and limitations. Any remaining portion of such **Loss** shall be covered under such other **Liability Coverage Part(s)**, subject to its terms, conditions and limitations.

C. Limit of Liability

1. The Immigration Investigation Defense Expense Limit stated in Item 3. of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for all **Defense Expenses** resulting from any **Immigration Claim** first made during the **Policy Period**, for any **Immigration Wrongful Act** committed or allegedly committed prior to the end of the **Policy Period**.
2. The Crisis Expense Limit stated in Item 3. of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for all **Crisis Management Emergency Response Expenses** resulting from an **Incident** that causes a **Crisis** that occurs during the **Policy Period**.

The **Crisis Management Emergency Response Expenses** must occur during the **Policy Period** and be reported to the **Insurer** no later than six (6) months after the date the **Crisis** began.

3. The **Social Media Wrongful Acts** Expense Limit stated in Item 3. of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for **Loss** arising from any Claim alleging **Social Media Wrongful Acts**.
4. The **Workplace Violence Expense** Sublimit stated in Item 3. Of the Declarations of this Coverage Part represent the **Insurer's** maximum liability for all **Workplace Violence Expenses** incurred by an **Insured Entity** which results from a **Workplace Violence** that occurs during the **Policy Period**.

All amounts set forth above shall be part of, and not in addition to, the Maximum Aggregate Limit of Liability set forth in Item 3 of the Declarations of the Employment Practices Liability Coverage Part.

1. The Wage & Hour Defense Expense Limit stated in Item 3 of the Declarations of this Coverage Part represents the **Insurer's** maximum liability for all **Defense Expenses** resulting from any **Wage & Hour Claim**.

If a matter includes allegations constituting a covered **Claim** and a **Wage & Hour Claim** then the Wage & Hour Defense Expense Limit shall not apply and the Maximum Aggregate Limit of Liability shown in Item 3. of the Declarations of this coverage part will apply so long as such **Claim** remains part of such matter. If at the time such **Claim** is no longer part of such matter, then the Wage & Hour Defense Expense Limit shall apply unless the amount of **Defense Expenses** incurred at such time exceeds the Wage & Hour Defense Expense Limit. In this event, the **Insurer** will have no further obligation to pay **Defense Expenses** arising out of such **Wage & Hour Claim**.