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OFFICE

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Maine Bureau of Insurance
**Report to the Joint Standing Committee on Insurance and
Financial Services**

**LD 840, An Act to Update the Authority of the Maine
Employers' Mutual Insurance Company (MEMIC) to Better
Serve the Needs of Maine Employers
2008**



John Elias Baldacci
Governor

Eric Cioppa
Acting Superintendent



LD 840, An Act to Update the Authority of the Maine Employers' Mutual Insurance Company (MEMIC) to Better Serve the Needs of Maine Employers Report to the Joint Standing Committee on Insurance and Financial Services

On May 15, 2007, Governor Baldacci signed into law LD 840, *An Act to Update the Authority of the Maine Employers' Mutual Insurance Company (MEMIC) to Better Serve the Needs of Maine Employers*. This resulted in MEMIC being able to provide employment practices liability insurance (EPLI) which is incidental to, and written in connection with, its workers' compensation coverage. EPLI coverage may be provided for employers with an average of 100 or fewer employees.

Pursuant to 24-A M.R.S.A. § 3703(1), the Superintendent of Insurance approved the sale of employment practices liability insurance by MEMIC as an endorsement to workers' compensation policies. EPLI covers businesses against claims by workers that their legal rights as employees of the company have been violated. It provides protection against many kinds of employee lawsuits, including claims of harassment, discrimination, wrongful termination, wrongful demotion or discipline, negligent evaluation, demoting or failure to employ or promote, wrongful infliction of emotional distress, and allegations of libel, slander, defamation of character or invasion of privacy made by an employee.

As of February 11, 2008, Maine Employers' Mutual Insurance Company (MEMIC) has issued 46 policies with the Employment Practices Liability Insurance endorsement. The aggregate written premium amounts to \$6,662 and there have been no reports of potential claims. Currently MEMIC is only offering EPLI quotes on new business submissions and is introducing the product slowly to the marketplace to ensure they have a good handle on risk selection and policy issuance procedures before offering the product to all of its policyholders. MEMIC expects to start offering the product to existing policyholders with policies effective on or after April 1, 2008. Initially, MEMIC proposed to attach the EPLI coverage to eligible renewing policies, with the ability of the employer to "opt out". After discussions with the Bureau, MEMIC proposed to issue the coverage to employers that requested the coverage ("opt in"). MEMIC will send out to policyholders, 90 days in advance of their renewal, a questionnaire asking if they are interested in the product. If MEMIC does not get a response, they will contact the agent 60 days in advance to try to determine if the insured is interested in the product. If, after these two attempts, there is no affirmative response to add the coverage, MEMIC will send out a renewal notice 30 days in advance indicating the renewal pricing for workers' compensation only. MEMIC will annually report EPLI premium loss and policy count information to the Bureau, consistent with statistical reporting requirements in 24-A MRSA, § 2323.

MEMIC interviewed several reinsurance carriers with expertise and market penetration in the EPLI marketplace in order to find one that would offer a broad EPLI product at a reasonable price. They selected the Beazley Group, a Lloyds of London Syndicate, because MEMIC felt this company met their criteria and because the Beazley Group helped to train MEMIC's agents, and because the Beazley Group has excellent web-based EPLI services for policyholders and good claim service (including the use of local attorneys). MEMIC entered into a reinsurance

treaty that provides one hundred percent reinsurance protection. MEMIC anticipates a favorable response to this product offering over the next twelve months.

The EPLI endorsement provides coverage on a claims made and reported basis. This means coverage applies to claims first made during the period the endorsement is in effect or an applicable extended reporting period for wrongful acts occurring on or after the retroactive date (date after which losses may occur and be covered under a claims made basis liability coverage) and before the end of the endorsement period and are reported to MEMIC in accordance with the endorsement. The premium for \$100,000 limits and \$5,000 deductible coverage is \$32 per employee, with higher per employee premiums for employers in higher risk businesses.

Some of the key policy terms and conditions are outlined below. Please see Appendix A for a copy of the entire endorsement.

- Each employer has a self-insured retention (deductible), an amount that it is responsible for paying before MEMIC begins making payments for EPLI claims. After the self-insurance retention is met, MEMIC makes payments for claims up to its limit of liability, the most it is responsible for paying for all claims. Any costs of defending claims is included in the limit of liability.
- If MEMIC recommends that a claim be settled and the employer does not consent to the settlement, MEMIC will not pay for judgments that exceed the recommended settlement plus defense costs.
- MEMIC has the right and duty to defend any claim for an insured event. They also have the right to choose counsel to defend a claim they are covering. However, they have no duty to provide other services or take other actions. MEMIC has the right to investigate any claim for an insured event. If the limit of liability is exhausted, MEMIC will notify the policyholder and the employer can take over control of their defense.
- If the endorsement is cancelled or non-renewed, except when cancelled for non-payment of premium, the employer has a 30-day period immediately following such cancellation or non-renewal to report claims. The employer has the right to buy an Extended Reporting Period endorsement which provides an extended reporting period of 12 months or 24 months. The limit of liability for the Extended Reporting Period is part of, and not in addition to, the aggregate Limit of Liability.
- The policyholder has no more than 30 days to report a claim or potential claim.
- The policyholder may cancel the EPLI endorsement by giving MEMIC at least 10 days advance written notice. MEMIC may cancel the endorsement for any reason during the first 60 days the endorsement is in effect. If the endorsement is in effect for more than 60 days or is a renewal, MEMIC may only cancel for one of the following reasons:
 - Non-payment of premium
 - Fraud or material misrepresentation

- Substantial change in the risk which increases the risk of loss after the endorsement has been issued or renewed
 - Failure to comply with reasonable loss control recommendations
 - Substantial breach of contractual duties, conditions or warranties
 - Determination by the Superintendent of Insurance that the continuation of a class or block of business to which the endorsement or policy belongs will jeopardize MEMIC's solvency or will place MEMIC in violation of state laws.
- MEMIC will provide 30 days advance written notice of cancellation.
 - If MEMIC decides to non-renew or if they offer to renew at less favorable terms or higher rates, they will provide 30 days advance written notice.

A copy of the Employment Practices Liability Insurance endorsements to the Workers' Compensation and Employer's Liability insurance policy is found in Appendix A.

**Appendix A: Employment Practices Liability Insurance
Endorsements to the Workers' Compensation and
Employers Liability Insurance Policy**

**EMPLOYMENT PRACTICES LIABILITY INSURANCE ENDORSEMENT
TO WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY
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In consideration for the premium paid for this Endorsement, it is understood and agreed as follows:

THIS ENDORSEMENT PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. THIS MEANS THAT COVERAGE APPLIES TO CLAIMS FIRST MADE DURING THE ENDORSEMENT PERIOD OR AN APPLICABLE EXTENDED REPORTING PERIOD FOR WRONGFUL ACTS OCCURRING ON OR AFTER THE RETROACTIVE DATE AND BEFORE THE END OF THE ENDORSEMENT PERIOD AND REPORTED TO US IN ACCORDANCE WITH THIS ENDORSEMENT. DEFENSE COSTS REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY FOR THIS ENDORSEMENT AND WILL BE APPLIED AGAINST THE SELF-INSURED RETENTION. THE LIMIT OF LIABILITY FOR THE LIMITED AND EXTENDED REPORTING PERIODS IS PART OF AND NOT IN ADDITION TO THE AGGREGATE LIMIT OF LIABILITY FOR THIS ENDORSEMENT. WE HAVE NO OBLIGATION TO PAY ANY AMOUNTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED.

A. How This Insurance Applies

We will pay **Loss** that an **Insured** is legally obligated to pay on account of a **Claim** because of an **Insured Event** to which this endorsement applies. The amount we will pay is limited as described in Clause H. **Limit of Liability** and Clause I. **Self-Insured Retention** of this endorsement.

If Item 3. of Schedule A to this endorsement indicates that the **Insured** purchased Optional Coverages, then we will pay **Loss** that an **Insured** is legally obligated to pay on account of a **Claim** because of a **Third Party Insured Event** to which this endorsement applies. The amount we will pay is limited as described in Clause H. **Limit of Liability** and Clause I. **Self-Insured Retention** of this endorsement.

Coverage under this endorsement applies only if:

1. a **Claim** is first made against an **Insured** in accordance with Clause E. **When Coverage Is Provided**;
2. the **Claim** is reported in accordance with Clause E. **When Coverage Is Provided** and Clause K. **Reporting a Claim or Potential Claim**;
3. the **Claim** is made and the **Insured Events** or, if purchased, a **Third Party Insured Event** giving rise to the **Claim** occur in the United States or its territories; and
4. a **Claim** is first made against an **Insured** based upon an **Insured Event** or, if purchased, a **Third Party Insured Event** that first occurred after the Retroactive Date or Third Party Retroactive Date set forth in Item 7. of Schedule A. and before the end of the Endorsement Period set forth in Item 2. of Schedule A.

B. We Will Pay

We will pay **Loss** (after you pay the Self-Insured Retention) that results from any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event** made or brought against any **Insured** to which this endorsement applies. Our duty to pay ends when the applicable Limit of Liability has been exhausted. We will not pay more than the applicable Limit of Liability.

We will pay **Defense Costs** incurred (after you pay the applicable Self-Insured Retention) for the defense of any **Claim** that is controlled by us. Any payment of **Defense Costs** is included in the Limit of Liability, it is not in addition to the Limit of Liability.

As respects any **Claim** for which we recommend that a settlement offer be accepted but you do not give your consent to such settlement, and the **Claim** later results in a judgment or settlement in excess of the recommended settlement, our liability for **Loss** on account of such **Claim** shall not exceed the recommended settlement amount plus **Defense Costs** incurred as of the date we recommended the settlement. This provision shall not apply unless the total **Loss**, including the recommended settlement, would exceed the Self-Insured Retention.

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C. We Will Defend

We have the right and duty to defend any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event** made or brought against any **Insured** to which this endorsement applies. We have the right to choose counsel to defend a **Claim** that we are covering. We have no duty to provide other services or take other actions. Our duty to defend any **Claim** ends when the Limit of Liability that applies has been exhausted, and in such event, the **Named Insured** shall, upon notice from us, promptly take over control of the defense.

We have the right to investigate and to settle any **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event** in the manner and to the extent that we believe is proper, contingent upon the consent of the **Named Insured** as defined in this endorsement.

You may take over control of any outstanding **Claim** previously reported to us only if we both agree that you should, if required under law or if a court orders you to do so.

If the Limit of Liability is exhausted, we will notify you of all outstanding **Claims** so that you can take over control of their defense. We will help to transfer control to you. During the transfer of control to you, we will take whatever steps are necessary to continue the defense of any outstanding **Claim** and avoid a default judgment. If we do so, you agree to pay reasonable expenses that we incur for taking such steps after the Limit of Liability is exhausted.

D. Who Is an Insured

If the **Named Insured** shown in Item 1. of the Information Page for this policy is:

1. an individual, you and your spouse are **Insureds** but only for the conduct of a business of which you are the sole owner;
2. a corporation or organization other than a partnership or joint venture, you are an **Insured**. Your stockholders are also **Insureds**, but only with respect to their liability as your stockholders;
3. a partnership or joint venture, you are an **Insured**. Your partners or co-venturers and their spouses are also **Insureds**, but only for the conduct of your business. However, no person or organization is covered for the conduct of any current or past partnership or joint venture not named in a schedule to this endorsement.

The following also are **Insureds**:

1. a Limited Liability Corporation (LLC), or a Limited Liability Partnership (LLP) of the **Named Insured** and its members, partners and shareholders are **Insureds** but only with respect to the conduct of the **Named Insured's** business.
2. the **Named Insured's Employees**, executive officers, directors and trustees are **Insureds** only for the conduct of the **Named Insured's** business within the scope of their employment. The **Named Insured's Employee's** status as an **Insured** will be determined as of the date of the **Discrimination, Harassment or Inappropriate Employment Conduct** which caused an **Insured Event** or, if purchased, a **Third Party Insured Event**.
3. an organization that the **Named Insured** newly acquires, forms or merges with while this endorsement is in effect that has less than 10% of the total number of the **Named Insured's Employees** as of the inception date of this endorsement shall be an **Insured** at the time of such acquisition, merger or formation if the **Named Insured** owns at least fifty one percent (51%) of it. Within thirty (30) days prior to the expiration of this endorsement, the **Named Insured** shall give us written notice as to all such organizations. If the **Named Insured** acquires, forms or merges with any organization that has more than 10% of the total number of its **Employees** as of the inception date of this endorsement, such organization is also an **Insured** if the **Named Insured** owns at least fifty one (51%) of it; provided, however, no such organization is covered for more than forty five (45) days or the remainder of the Endorsement Period shown in Item 2. of Schedule A., whichever is less, from the date acquired, merged or formed unless we agree to cover such acquisition or newly formed organization within such forty five (45) day period in consideration of an additional premium to be determined by us. Notwithstanding the foregoing, any acquired or formed organization is neither covered for **Loss** that results from an **Insured Event** or, if purchased, a **Third Party Insured Event** that happened or first commenced before the **Insured** acquired or formed it; nor for **Loss** covered under any other insurance. This provision does not apply to a partnership or joint venture. Nor does it apply to any organization that is named as an **Insured** on the Information Page for this policy.

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4. an organization more than 50% owned by the **Named Insured** and listed as an **Insured** on the Information Page for this policy.

E. When Coverage Is Provided

1. This endorsement applies only to **Claims** arising out of an **Insured Event** or, if purchased, a **Third Party Insured Event** first made or brought during the Endorsement Period, the Limited Reporting Period or the Extended Reporting Period, if purchased, and which are reported to us in accordance with this endorsement's notice provisions as set forth in Clause **K. Reporting a Claim or Potential Claim**. A **Claim** is considered to be first made when it is first served or received by the **Insured**.
2. All **Claims** because of **One Insured Event** or, if purchased, **One Third Party Insured Event** will be considered to have been made or brought on the date that the first of those **Claims** was first made or brought.

F. Extended Reporting Periods

1. Limited Reporting Period

If this endorsement is cancelled or non-renewed, except cancellation by us for non-payment of Premium, you shall have an automatic Limited Reporting Period for the thirty (30) day period immediately following such cancellation or non-renewal, during which period you can report **Claims** because of **Insured Events** or, if purchased, **Third Party Insured Events** which happen or commence after the Retroactive Date or Third Party Retroactive Date and before the end of the Endorsement Period and are reported in accordance with sections 1. and 2. of Clause **K. Reporting a Claim or Potential Claim**. The limit of liability applicable to the Limited Reporting Period shall be part of and not in addition to the Limit of Liability for the immediately preceding twelve (12) month Endorsement Period.

2. Extended Reporting Period

(a) If this endorsement is cancelled or non-renewed, except cancellation by us for non-payment of Premium, you shall have the right to buy an Extended Reporting Period endorsement providing an extended reporting period of twelve (12) months or twenty-four (24) months from the end of the Endorsement Period, or the effective date of cancellation, whichever is earlier, in exchange for your payment of an additional premium.

(b) The Extended Reporting Period endorsement will not be issued unless we receive a written request for it within thirty (30) days after this endorsement is cancelled or non-renewed, nor will it take effect unless the additional premium is paid within thirty (30) days after this endorsement is cancelled or non-renewed. Once that premium is paid the endorsement may not be cancelled and the additional premium will be fully earned.

(c) The additional premium for a twelve (12) month Extended Reporting Period will be one hundred percent (100%) of the premium charged for the last twelve (12) month Endorsement Period. The additional premium for a twenty-four (24) month Extended Reporting Period will be one hundred fifty percent (150%) of the premium charged for the last twelve (12) month Endorsement Period. If other insurance you buy covers a **Claim** covered by the Extended Reporting Period then the coverage afforded by the Extended Reporting Period shall be excess over such other coverage.

(d) Coverage under the Extended Reporting Period is with respect to **Claims** first made against an **Insured** during the Extended Reporting Period and reported by an **Insured** during the Extended Reporting Period, provided always that **Claims** reported during the Extended Reporting Period are limited to **Insured Events** or, if purchased, **Third Party Insured Events** which happen or commence after the Retroactive Date or Third Party Retroactive Date and before the end of the Endorsement Period and which are otherwise covered by this endorsement.

3. Limit of Liability for the Limited and Extended Reporting Periods

The limit of liability for the Extended Reporting Period shall be part of and not in addition to the aggregate Limit of Liability for the immediately preceding 12 month Endorsement Period. The aggregate Limit of Liability for the Endorsement Period set forth in Item 4. (c) of Schedule A. shall not be increased in any way by the Limited Reporting Period or the addition of the Extended Reporting Period.

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G. Change In Control

If, during the Endorsement Period, any of the following changes occur:

1. the acquisition of an **Insured**, or of all or substantially all of its assets, by another entity, or the merger or consolidation of an **Insured** into or with another entity such that the **Insured** is not the surviving entity; or
2. the obtaining by any person, entity or affiliated group of persons or entities of the right to elect, appoint or designate over fifty percent (50%) of the directors of an **Insured**,

coverage under this endorsement with respect to such **Insured** will continue in full force and effect with respect to **Claims for Insured Events** or, if purchased, **Third Party Insured Events** committed before such change, but coverage with respect to such **Insured** will cease with respect to **Claims for Insured Events** or, if purchased, **Third Party Insured Events** committed after such change. After any such change, this endorsement may not be cancelled, regardless of Clause **O. Cancellation; When We Do Not Renew** of this endorsement, and the entire Premium for this endorsement will be deemed fully earned.

H. Limit of Liability

1. The amount shown at Item 4. (a) of Schedule A. as the "Each **Insured Event Limit**" is the most we will pay for **Claims** first made or brought during the Endorsement Period for **Loss** that results from any **One Insured Event** regardless of the number of **Claims**.
2. The amount shown at Item 4. (b) of Schedule A. as the "Each **Third Party Insured Event Limit**" is the most we will pay for **Claims** first made or brought during the Endorsement Period for **Loss** that results from any **One Third Party Insured Event** regardless of the number of **Claims**.
3. The amount shown in Item 4. (c) of Schedule A. as the "Aggregate Limit of Liability" is the most we will pay for the combined total of all **Claims** first made or brought during the Endorsement Period for **Loss** that results from all **Insured Events** and, if purchased, all **Third Party Insured Events**.
4. In the event that a **Claim** triggers coverage under this endorsement and any other section of this policy, our liability under this endorsement and any other section of this policy combined shall not exceed the amount of the largest of the applicable Limits of Liability.
5. If the Endorsement Period is extended, the Limit of Liability shall not in any way increase and the Limit of Liability for any such extension shall be part of and not in addition to the Limit of Liability set forth in Schedule A. for the Endorsement Period.

I. Self-Insured Retention

Our obligation to pay under this endorsement applies only to covered amounts in excess of any Self-Insured Retention that the **Insured** must pay, as shown in Item 5. of Schedule A. and the Limit of Liability will not be reduced by the amount of such Self-Insured Retention.

The Self-Insured Retention amount will apply separately to each **Claim** made, however, it will only apply once to all **Claims** arising out of any **One Insured Event** or, if purchased, any **One Third Party Insured Event** regardless of the number of claimants who allege damages.

If, prior to terminating or demoting an **Employee** the **Insured** consults with and follows the advice of a labor law attorney approved by our Authorized Representatives set forth in Item 10. of Schedule A., then the **Insured's** Self-Insured Retention is reduced by 50% in the event the **Insured** faces a **Claim** involving such termination or demotion.

K. Reporting a Claim or Potential Claim

1. You must see to it that we or our Authorized Representatives set forth in Item 10. of Schedule A. are notified as soon as practicable but in no event more than thirty days (30) after any **Insured** who is a principal, partner, officer, director, trustee, in house counsel, **Employee(s)** within the HR Risk Management department or **Employee(s)** with personnel and risk management responsibilities, becomes aware that a **Claim** has been made. Your notification should include:
 - (a) the identity of the person(s) alleging **Discrimination, Harassment, Inappropriate Employment Conduct** or, if **Third Party Insured Event** coverage is purchased, **Inappropriate Third Party Conduct**;

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- (b) the identity of any **Insured(s)** who allegedly committed the **Discrimination, Harassment, Inappropriate Employment Conduct** or, if **Third Party Insured Event** coverage is purchased, **Inappropriate Third Party Conduct**;
 - (c) the identity of any witnesses to the alleged **Discrimination, Harassment, Inappropriate Employment Conduct** or, if **Third Party Insured Event** coverage is purchased, **Inappropriate Third Party Conduct**; and
 - (d) the date(s) an **Insured Event** or, if purchased, **Third Party Insured Event** took place.
2. You and any other **Insured** must:
- (a) immediately send us or our Authorized Representatives set forth in Item 10. of Schedule A. copies of any demands, notices, summonses or legal papers received in connection with the **Claim**;
 - (b) authorize us or our authorized representatives to obtain statements, records and other information;
 - (c) co-operate with us or our authorized representatives in the investigation or defense of the **Claim**; and
 - (d) assist us or our authorized representatives in the enforcement of any right against any person or organization which may be liable to an **Insured** because of **Loss** to which this endorsement may also apply.
3. No **Insured** will, except at their own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent. Subsequent payments that are deemed by us as having been prejudiced by any such voluntary payment will also be the sole responsibility of the **Insured**.
4. Solely at an **Insured's** option, an **Insured** may within the Endorsement Period report an oral complaint by an **Employee**, former **Employee** or applicant for employment alleging **Discrimination, Harassment** and/or **Inappropriate Employment Conduct**. If such report is received by us or our Authorized Representatives set forth in Item 10. of Schedule A. within the Endorsement Period then any **Claim** subsequently arising from such oral complaint will be deemed to be made on the date such report was received. Such report must include the identity of the person(s) making the oral complaint. In no event, however, is an **Insured** entitled to coverage under this endorsement based on a **Laundry List Notification**.

L. Action Against Us

No person or organization has the right under this endorsement to join us as a party or otherwise bring us into a suit asking for damages from an **Insured**, or to sue us on this endorsement unless all of its terms have been fully complied with.

M. Other Insurance

This endorsement shall be deemed primary insurance in connection with covered **Claims** by **Employees** against an **Insured** because of an **Insured Event** or, if purchased, a **Third Party Insured Event**. In connection with any other covered **Claim**, this endorsement shall apply in excess of all indemnity rights of an **Insured** and in excess of any other valid or collectible insurance available to any **Insured**.

N. Premium

The Premium shown in Item 8. of Schedule A. to this endorsement is for the Endorsement Period shown in such Schedule A.

O. Cancellation; When We Do Not Renew

- 1. The **Named Insured** may cancel this endorsement by giving us advance written notice of cancellation. The notice shall include the effective date of cancellation, which shall be at least ten (10) days after the date we receive the notice.
- 2. We may cancel this endorsement for any reason during the first sixty (60) days this endorsement is in effect. If this endorsement is in effect for at least sixty (60) days or is a renewal, we may cancel this endorsement only for one of the following reasons:
 - (a) non-payment of Premium;

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- (b) fraud or material misrepresentation made by or with the knowledge of the **Named Insured** in obtaining this endorsement, continuing this endorsement or in presenting a **Claim** under this endorsement;
 - (c) substantial change in the risk which increases the risk of **Loss** after this endorsement has been issued or renewed, including, but not limited to, an increase in exposure due to rules, legislation or court decision;
 - (d) failure to comply with reasonable loss control recommendations;
 - (e) substantial breach of contractual duties, conditions or warranties; or
 - (f) determination by the superintendent of insurance that the continuation of a class or block of business to which this endorsement or policy belongs will jeopardize our solvency or will place us in violation of the insurance laws of the State of Maine or any other state.
3. If we cancel this endorsement we will provide the **Named Insured** with thirty (30) days advance written notice of the cancelation. Our notice will include the reason(s) for cancelation and the effective date of cancelation.
4. If we decide not to renew this endorsement, we will mail or deliver to the **Named Insured** written notice of the non-renewal or renewal with changed terms or rates not less than thirty (30) days before the expiration date of this endorsement.
5. If we offer renewal at less favorable terms, higher rates or a higher rating plan, we will mail or deliver to the **Named Insured** written notice of the changed terms or rates not less than thirty (30) days before the expiration date of this endorsement. If we fail to provide this notice at least thirty (30) days before the expiration date of this endorsement, you may cancel the renewal endorsement within the thirty (30) day period after receipt of the notice or delivery.

P. Transfer Of Rights Of Recovery Against Others to Us

If any **Insured** has rights to recover all or part of any payments we have made under this endorsement, those rights are transferred to us, and the **Insured** must do nothing after a **Loss** to impair them. At our request, any **Insured** will bring suit or transfer those rights to us and help us to enforce them.

Q. Bankruptcy

Bankruptcy or insolvency of any **Insured** or of an **Insured's** estate will not relieve us of our obligations under this endorsement, except as excluded in Clause S. **Exclusions: What Is Not Covered.**

R. False Or Fraudulent Claims

If any **Insured** shall proffer any **Claim** knowing the same to be false or fraudulent as regards amount or otherwise, we have the right to bring legal action to prevent recovery under this endorsement. This section R. does not limit or change in any way the exclusion set forth in Item 6. of Clause S. **Exclusions: What Is Not Covered.**

S. Exclusions: What Is Not Covered

1. **Worker's Compensation/ERISA/FLSA/NRLA/WARN/COBRA/OSHA.** This endorsement does not cover any **Loss** arising out of any **Claim** alleging violation of any: i) worker's compensation, disability benefits or unemployment compensation law, social security and other employment benefits law; ii) the Employee Retirement Income Security Act of 1974 Public Law 93-406; iii) the Fair Labor Standards Act (except the Equal Pay Act); (iv) the National Labor Relations Act; (v) the Worker Adjustment and Retraining Notification Act; (vi) the Consolidated Omnibus Budget Reconciliation Act of 1985; (vii) the Occupational Safety and Health Act; (viii) any other federal, state or local statute or law similar to any statute or law described in (i) through (vii) of this exclusion; provided, however, this exclusion shall not apply to any **Claim** for any actual or alleged retaliatory treatment of the claimant on account of the claimant's exercise of rights pursuant to such statute, law, rule or regulation including, without limitation, a **Claim** of discrimination by an employee under paragraph 3 of section 39A – 218 or under section 39A – 353 of the Maine Workers' Compensation laws.

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2. **Contractual Liability.** This endorsement does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** any **Insured** is obligated to pay by reason of the assumption of another's liability for an **Insured Event** or, if purchased, a **Third Party Insured Event** in a contract or agreement. This exclusion will not apply to liability for damages because of an **Insured Event** or, if purchased, a **Third Party Insured Event** that any **Insured** would have without the contract or agreement.
3. **Consequential Loss.** This endorsement does not cover any **Loss** resulting from or attributable to any allegations made by or solely for the benefit of a claimant's domestic partner, spouse, child, parent, brother or sister.
4. **Wage and Hour Law.** This endorsement does not cover any **Loss** arising out of a claim based upon, arising out of, directly or indirectly in connection with, related to or in any way alleging violation of any state or local wage and hour law, however, in the event such **Claim** also alleges an **Insured Event** or, if purchased, a **Third Party Insured Event** otherwise covered by this endorsement, notwithstanding the provisions of Clause **C. We Will Defend**, and subject to all other terms, conditions and exclusion contained in this endorsement, we agree to pay **Loss** solely for that portion of the **Claim** involving such **Insured Event** or, if purchased, such **Third Party Insured Event**.
5. **Stock Options.** This endorsement does not cover any **Loss** resulting from or attributable to stock options, including, without limitation, 1) the failure to grant stock options and/or 2) amounts attributable to unvested stock options which options did not vest because of the actual or alleged wrongful termination of an **Employee**.
6. **Fraud and Collusion.** This endorsement does not cover any **Loss** based upon, arising out of, directly or indirectly in connection with, related to, or in any way involving any **Claim** alleging fraud, collusion, dishonest, criminal or malicious acts by or at the direction of an **Insured**. Without limiting the foregoing, we will pay **Defense Costs** incurred relating to allegations of fraud, collusion, dishonest, criminal or malicious acts to defend an innocent **Insured** named in such **Claim** so long as such **Claim** also contains allegations against that innocent **Insured** involving an **Insured Event** or, if purchased, a **Third Party Insured Event** otherwise covered by this endorsement.
7. **Prior Knowledge.** This endorsement does not cover any **Loss** arising out of **Insured Events** or, if purchased, **Third Party Insured Events** of which any **Insured** who is a principal, partner, officer, director, trustee, in-house counsel, **Employee(s)** within the HR or Risk Management department or **Employee(s)** with personnel and risk management responsibilities was aware by actual knowledge of the facts or circumstances of such **Insured Event** or, if purchased, such **Third Party Insured Event** prior to the Prior Knowledge Date set forth in Item 6. of Schedule A.
8. **Prior Notice.** This endorsement does not cover any **Loss** arising out of **Insured Events** or, if purchased, **Third Party Insured Events** that have been the subject of any notice given under any other policy or endorsement prior to the inception date of this endorsement.
9. **Property Damage/Bodily Injury.** This endorsement does not cover any **Loss** for damage to, or destruction of, loss of, or loss of use of any tangible property; or for or arising out of bodily injury, sickness, disease or death of any person; provided, however, that this exclusion shall not apply to that portion of a **Claim** for an **Insured Event** or, if purchased, a **Third Party Insured Event**, seeking **Loss** for emotional distress, loss of reputation, mental anguish, or humiliation otherwise covered by this endorsement.
10. **Penalties.** This endorsement does not cover any **Loss** arising out of any fines, penalties, taxes, punitive damages, exemplary damages or any additional damages resulting from the multiplication of compensatory damages (referred to herein collectively as "Penalties"), except that if a suit is brought against the **Named Insured** on a **Claim** falling within the coverage hereof, seeking both compensatory damages and Penalties, then we will afford a defense to such action, without liability, however, for such Penalties; provided further, that our obligation to provide such defense for Penalties shall terminate when the **Claim** for compensatory damages in such action is terminated or paid through judgment or settlement and, in no event, shall we afford a defense for Penalties after the Limit of Liability for compensatory damages has been paid. Provided, however, that this exclusion does not apply solely to that portion of Penalties

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that constitutes punitive or exemplary damages or any additional damages resulting from the multiplication of compensatory damages (such punitive, exemplary and additional damages resulting from the multiplication of compensatory damages referred to herein collectively as "Punitive Damages") if Item 3. of Schedule A. states that Optional Coverages have been purchased under this endorsement.

11. **Retroactive Date.** This endorsement does not cover any **Loss** arising out of any **Insured Events** or, if purchased, **Third Party Insured Events** that first occurred on or before the Retroactive Date or Third Party Retroactive Date set forth in Item 7. of Schedule A. For the purposes of this exclusion, related **Insured Events** or, if purchased, related **Third Party Insured Events** are excluded if the first related **Insured Event** or **Third Party Insured Event** took place or is alleged to have taken place prior to the later of the Retroactive Date or the Third Party Retroactive Date.

T. Definitions

1. **Claim(s)** means a written complaint or written charge made against an **Insured** or a written demand made against an **Insured** in which damages are alleged or where specific charges of **Discrimination, Harassment, Inappropriate Employment Conduct** or, if **Third Party Insured Event** coverage is purchased, **Inappropriate Third Party Conduct** are brought.

Claim includes a civil action, suit or administrative proceeding to which any **Insured** must submit or to which any **Insured** submits with our consent.

Claim shall not mean any labor or grievance arbitration subject to a collective bargaining agreement; or any complaint, writ or other proceeding in which an **Insured** is alleged to have committed or engaged in a criminal offense or violation of a federal, state or local penal law.

2. **Defense Costs** means those reasonable and necessary expenses that result from the investigation, settlement or defense of a specific **Claim**, including attorney fees and expenses, the cost of legal proceedings, the cost of appeal bonds, the cost of bonds to release property being used to secure a legal obligation (but only for bond amounts within the Limit of Liability that applies). We have no obligation to furnish any bonds.

The following are not **Defense Costs**: costs incurred by any **Insured** before notice is provided to us; salaries and expenses of your employees, including in-house and/or coverage attorneys, salaries and expenses of our employees, or our in-house or coverage attorneys or the fees and expenses of independent adjusters we hire.

3. **Discrimination** means termination of the employment relationship, a demotion, a failure or refusal to hire or promote, denial of an employment benefit or the taking of any adverse or differential employment action because of race, color, religion, age, sex, disability, pregnancy, sexual orientation, national origin, or any other basis prohibited by federal, state or local law occurring on or after the Retroactive Date or the Third Party Retroactive Date, if applicable, set forth in Item 7. of Schedule A.

This endorsement covers retaliation **Claims** based on unlawful **Discrimination** occurring on or after the Retroactive Date or the Third Party Retroactive Date, if applicable, set forth in Item 7. of Schedule A., except as excluded in Clause **S. Exclusions: What Is Not Covered**.

4. **Employee** means an individual whose labor or service is engaged by and directed by the **Named Insured**, or any covered entity. This includes volunteers, part time, seasonal and temporary **Employees** as well as any individual employed in a supervisory, managerial or confidential position. Independent contractors and sub contractors are not **Employees** unless they are dedicated agents or representatives of an **Insured**. Employees who are leased to another employer are not **Employees**.
5. **Harassment** means unwelcome sexual or non-sexual advances, requests for sexual or non-sexual favors or other verbal, visual or physical conduct of a sexual or non-sexual nature, where such harassment occurs on or after the Retroactive Date or the Third Party Retroactive Date, if applicable, as shown in Item 7. of Schedule A. and is based on a factor or category prohibited by law (including sex, race, age, national origin, disability, etc.), that (1) explicitly or implicitly are made a condition of employment, (2) are used as a basis for employment decisions, or (3) create a work environment that interferes with performance.

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6. **Inappropriate Employment Conduct** means any of the following occurring on or after the Retroactive Date set forth in Item 7. of Schedule A.:
- (a) actual or constructive termination of an employment relationship in a manner which is alleged to have been against the law or wrongful or in breach of an implied employment contract or breach of the covenant of good faith and fair dealing in the employment contract;
 - (b) allegations of wrongful demotion, or wrongful discipline;
 - (c) allegations of misrepresentation made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote;
 - (d) allegations of infliction of emotional distress, mental injury, mental anguish, shock, sickness, disease or disability made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote;
 - (e) allegations of false imprisonment, detention or malicious prosecution made by an **Employee**, a former **Employee** or an applicant for employment which arise from the **Insured's** an employment decision to hire, fire, promote or demote;
 - (f) allegations of libel, slander, defamation of character or any invasion of right of privacy made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote; or
 - (g) other personal injury allegations made by an **Employee**, a former **Employee** or an applicant for employment which arise from an **Insured's** employment decision to hire, fire, promote or demote.

Inappropriate Employment Conduct shall not include any allegations other than those set forth above.

7. **Inappropriate Third Party Conduct** means actual or alleged acts of discrimination or harassment by an **Insured** against any natural person who is not an **Employee**. **Inappropriate Third Party Conduct** shall not include actual or alleged acts of assault or battery.
8. **Insured Event** means actual or alleged acts of **Discrimination, Harassment, and/or Inappropriate Employment Conduct**, by an **Insured** against an **Employee** or former **Employee** or applicant for employment with an **Insured** entity occurring on or after the Retroactive Date as shown in Item 7. of Schedule A. and before the end of the Endorsement Period set forth in Item 2. of Schedule A. **Insured Event** shall not include **Claims** for actual or alleged violation of any federal, state or local wage and hour laws or regulations.
9. **Laundry List Notification** means any attempt by an **Insured** to report multiple matters under this endorsement in a summary fashion that does not comply with Clause **K. Reporting a Claim or Potential Claim**. By way of example, a **Laundry List Notification** may consist of a report by an **Insured** that lists purported potential claimants, either in the absence of a **Claim**, or in the absence of an oral complaint.
10. **Loss** means damages, judgments (including prejudgment and post judgment interest awarded against an **Insured** on that part of any judgment paid by us), settlements we authorize or agree to, statutory attorney fees and **Defense Costs**. Post judgment interest shall be paid as a supplemental payment that does not erode the Limit of Liability.

Loss does not include anything specifically excluded in Clause **R. Exclusions: What Is Not Covered**, or any of the following:

- (a) salary or wages of the **Insured**;
- (b) non-monetary relief (this provision does not apply to **Defense Costs** where non-monetary relief is sought for alleged **Harassment, Discrimination, Inappropriate Employment Conduct**);
- (c) payment of insurance plan benefits by or on behalf of retired **Employees**, or that to which a claimant would have been entitled as an **Employee** had any **Insured** provided the claimant with a continuation of insurance;
- (d) liquidated damages where there is a finding of wilfulness;

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- (e) costs incurred by an **Insured** to modify or adapt any building or property in order to make such building or property more accessible or accommodating to any disabled person; costs associated with eliminating non-essential duties from the job description of a disabled person; costs associated with providing a disabled person with reasonable workplace accommodations; and costs associated with lost productivity by an employer as the result of making a reasonable workplace accommodation for a disabled person;
 - (f) matters which may be deemed uninsurable according to the law under which this endorsement is construed;
 - (g) amounts owed under federal, state or local wage and hour laws;
 - (h) amounts owed under a contract of employment;
 - (i) commissions, bonuses, profit sharing or benefits pursuant to a contract of employment, including but not limited to vacation, holiday, and/or sick pay;
 - (j) severance payments or obligations to make payments;
 - (k) amounts that are sought or deemed to be owed under partnership, stock or other ownership agreements;
 - (l) fines, penalties and taxes; or
 - (m) "Punitive Damages" (meaning punitive or exemplary damages or any additional damages resulting from the multiplication of compensatory damages), unless Item 3. of Schedule A states that Optional Coverages have been purchased under this endorsement.
11. **One Insured Event** means (1) one or more covered allegations of **Discrimination, Harassment and/or Inappropriate Employment Conduct** which are related by an unbroken chain of events, or (2) class action or multiple claimant or multiple plaintiff suits arising out of related **Insured Events**.
12. **One Third Party Insured Event** means one or more covered allegations of **Inappropriate Third Party Conduct** which are related by an unbroken chain of events.
13. **Subsidiary** means any organization more than 50% owned by the **Named Insured** and named as an **Insured** on the Information Page to this policy.
14. **Third Party Insured Event** means actual or alleged acts of **Inappropriate Third Party Conduct** by an **Insured** against any natural person who is not an **Employee** of any **Insured**.

U. Applicability of Policy Provisions to this Endorsement

The employment practices liability insurance provided by this policy is governed exclusively by this endorsement, Schedule A. and any other applicable schedule to this endorsement. No other section of this policy is applicable to such employment practices liability insurance except for the following:

- 1. Item 1. of the Information Page of this policy;
- 2. **GENERAL SECTION**, Clauses A., C. and D.;
- 3. **PART FIVE—PREMIUM**, Clauses A., D., E., F. and G.;
- 4. **PART SIX—CONDITIONS**, Clauses A., B., C. and E.

All other terms and conditions of this policy remain unchanged.

Authorized Representative

THE EMPLOYMENT PRACTICES LIABILITY INSURANCE ENDORSEMENT PROVIDES COVERAGE ON A CLAIMS MADE AND REPORTED BASIS. THIS MEANS THAT COVERAGE APPLIES TO CLAIMS FIRST MADE DURING THE ENDORSEMENT PERIOD OR AN APPLICABLE EXTENDED REPORTING PERIOD FOR WRONGFUL ACTS OCCURRING ON OR AFTER THE RETROACTIVE DATE AND BEFORE THE END OF THE ENDORSEMENT PERIOD AND REPORTED TO US IN ACCORDANCE WITH THIS ENDORSEMENT. DEFENSE COSTS REDUCE AND MAY EXHAUST THE LIMIT OF LIABILITY FOR THIS ENDORSEMENT AND WILL BE APPLIED AGAINST THE SELF-INSURED RETENTION. THE LIMIT OF LIABILITY FOR THE LIMITED AND EXTENDED REPORTING PERIODS IS PART OF AND NOT IN ADDITION TO THE AGGREGATE LIMIT OF LIABILITY FOR THIS ENDORSEMENT. WE HAVE NO OBLIGATION TO PAY ANY AMOUNTS ONCE THE APPLICABLE LIMIT OF LIABILITY IS EXHAUSTED.

Schedule A: Employment Practices Liability Insurance Endorsement to Workers Compensation and Employers Liability Insurance Policy

Insurer: <INSURER'S NAME>
Policy Number: <POLICY NUMBER>

1. **Named Insured:** <FILL IN SAME AS ITEM 1 OF INFORMATION PAGE>
2. Endorsement Period:

From <MONTH, DAY, YEAR>
To < MONTH, DAY, YEAR> at 12:01 a.m. at your address set forth in the Information Page.
3. Optional Coverages (**Third Party Insured Event** Coverage & "Punitive Damages" Coverage)
____ Yes ____ No
4. Limit of Liability, including **Defense Costs**:

(a) Each **Insured Event** Limit \$<PER CLAIM LIMIT>
(b) Each **Third Party Insured Event** Limit \$<PER CLAIM LIMIT>
(c) Aggregate Limit of Liability \$<AGGREGATE LIMIT>
5. Self-Insured Retention, including **Defense Costs**:

(a) Any **One Insured Event** \$<PER INSURED EVENT>
(b) Any **One Third Party Insured Event** \$<PER THIRD PARTY INSURED EVENT>
6. Prior Knowledge Date: <MONTH, DAY, YEAR>
7. Retroactive Date:

(a) **Insured Event** Retroactive Date <MONTH, DAY, YEAR>
(b) **Third Party Insured Event** Retroactive Date <MONTH, DAY, YEAR>
8. Premium: \$<DOLLAR AMOUNT>

(Based on <NUMBER> Full Time and <NUMBER> Part Time/Seasonal Employees)
9. Terrorism Coverage: Included at no additional premium.
10. Authorized Representatives for purposes of Clause I. and Clause K. 2. (a):

Authorized Representative