FrankCrum

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THE RISING COSTS OF BEING AN EMPLOYER

TODAY'S BIGGEST WORKPLACE RISKS & HOW SMART BUSINESSES PROTECT THEMSELVES

You Didn’t Sign Up for This

You started your business to build something, not to become an expert in employment law. But the moment you hired your first employee, you took on a second job you never applied for: managing employer risk.

And that job is getting harder. Workplace claims are climbing, jury awards are ballooning, and the rules keep shifting, whether it’s from how you handle accommodation requests to whether the AI tool screening your resumes could land you in court. For a small or mid-sized business without a legal department or a full HR team, one claim from a current, former, or even prospective employee can mean months of distraction and a six-figure bill.

Here's the good news: employer risk is manageable.
The businesses that come out fine aren't lucky, they're prepared. They understand where today's risks are coming from, they put smart practices in place to prevent claims, and they carry the right financial protection for the claims that happen anyway.

That's what this guide is for. In the pages ahead, we'll walk through what the data says about employer risk right now, the six trends every employer should have on their radar, the practical steps that reduce your exposure, and how Employment Practices Liability Insurance (EPLI) works as your safety net when prevention isn't enough.

Let's start with the big picture.

The State of Employer Risk: What the Numbers Say

If it feels like employees are more willing to file claims than they used to be, you're not imagining it.
Consider what's happening across the country:

- **Discrimination charges remain elevated.** 88,201 new workplace discrimination charges were filed with the Equal Employment Opportunity Commission (EEOC) in fiscal year 2025, holding steady with fiscal year 2024 and up 9.2% from fiscal year 2023.
- **Small businesses are a prime target.** Businesses with fewer than 100 employees account for over 40% of all EPLI claims. Smaller companies often lack the formal HR processes and documentation that help larger companies defend themselves, and plaintiffs' attorneys know it.
- **The price tag is steep.** According to Jury Verdict Research, the average jury award for employment practices claims is $217,000, and even lawsuits settled outside of court average $75,000 in total costs.
- **Verdicts are going nuclear.** There's been a recent increase in "nuclear verdicts" exceeding $10 million. Settlement costs are rising too, as businesses pay more to avoid the roll of the dice that a jury trial has become.

Put those numbers together, and the takeaway is simple: it's not just the biggest companies getting sued, and the cost of a claim—win or lose—is more than most small businesses can comfortably absorb.

What's a "Nuclear Verdict"?

A nuclear verdict is when a jury awards an amount that far exceeds what an objective observer would consider rational or expected, often $10 million or more. Even if your business never faces one, its ripple effect matters. They drive up settlement demands and defense costs for everyone.

Six Trends Driving Employer Risk Right Now

Employment claims aren't random. They cluster around areas where the law is changing, expectations are shifting, or employers are most likely to make an inconsistent call. Here are the six areas we're watching most closely, and where your business is most likely to be tested.

1

Disability Accommodation

Disability discrimination allegations have accounted for over one-third of claims filed with the EEOC for four years running. This isn't a spike, it's the new normal. Employers have an ongoing obligation to provide reasonable accommodations for disabilities when needed, and claims often stem not from outright refusal but from mishandling the conversation. Slow responses, informal denials, or skipping the interactive process altogether can all turn a routine request into a charge.

2

AI Bias in HR Decisions

AI tools used in recruiting, performance reviews, and other HR processes are under increasing scrutiny, and regulators have made it clear that "the software did it" is not a defense. In 2023, the EEOC settled its first AI-related discrimination lawsuit for $365,000 after alleging that hiring software had rejected older applicants in violation of the Age Discrimination in Employment Act (ADEA). If you're using AI anywhere in your hiring or people decisions (and increasingly, everyone is), you're accountable for its outcomes.

3

Remote and Hybrid Work

Remote work surged during the COVID-19 pandemic, and even with restrictions long gone, many employers still offer remote or hybrid arrangements. The flexibility is great, but the risk shows up when policies are applied inconsistently across employees or work locations. Who gets to work from home, who doesn't, and why? If the answers vary from manager to manager, you can create risk when policies are applied inconsistently.

4

Return-to-Office Mandates

On the flip side, employers calling their workforce back to the office face their own exposure. Return-to-office requirements can create disputes when operational needs collide with employee expectations or accommodation needs. An employee who worked remotely for two years due to a health condition may have a legitimate accommodation claim if a blanket mandate ignores their situation.

5

Religious Accommodation

The bar for denying religious accommodations got higher. After Groff v. DeJoy (2023), employers must show that a requested religious accommodation would cause "substantial increased costs" before denying it under Title VII. Previously, employers operated under the understanding that anything more than a "de minimis", or trivial increase in costs justified a denial. If your policies or manager instincts still reflect the old standard, they're out of date.

6

Broader Title VII Enforcement

On June 5, 2025, the Supreme Court held that Title VII does not impose a higher burden on majority-group plaintiffs in employment claims, meaning discrimination claims can come from any employee, in any direction. At the same time, guidance from the DOJ and EEOC has brought increased scrutiny to employee resource groups, hiring practices, and internal programs that may appear to favor certain groups over others. Programs built with good intentions still need a compliance check.

What Is Title VII?

Title VII is a federal law under the Civil Rights Act of 1964 that makes it illegal for employers to discriminate against employees or job applicants. It protects individuals on the basis of race, color, religion, sex (including pregnancy, sexual orientation, and gender identity), and national origin

The #1 Claim You Haven't Thought About: Retaliation

Retaliation is consistently the most frequent allegation filed with the EEOC, accounting for about half of all discrimination charges. Here's how it usually happens: an employee raises a concern, and something adverse follows, such as a termination, a demotion, or a schedule change. Employees frequently allege both the underlying discrimination and the subsequent retaliation (often called "dual-filing") in their claims.

Wrongful termination is consistently the most common retaliation allegation, making up the majority of administrative charges. The lesson: how you respond after a complaint matters just as much as the complaint itself.

THE BEST CLAIM
Is The One That Never Happens

Here's the part that should make you feel better: many employment claims are preventable. They tend to grow out of the same handful of gaps, such as outdated policies, untrained managers, thin documentation, and inconsistent decisions. Close those gaps, and you eliminate most of the fuel.

Seven habits separate low-risk employers from the rest:

- ✔ Keep policies current and compliant. Especially those covering EEO, non-harassment, accommodation requests, corrective action, federal and state-protected leaves of absence, and AI use.
- ✔ Train your managers. Your front-line managers are where most claims start or get stopped. Train them on harassment (including digital harassment), discrimination, protected concerted activities, and the employment laws that apply to your business.
- ✔ Audit your internal practices. Regular check-ups help you catch compliance gaps before an attorney or agency does.
- ✔ Document everything. Thoroughly document employee complaints, investigations, and corrective action. In a dispute, the employer with the paper trail usually wins.
- ✔ Get ahead of AI. Evaluate how technology and AI are used in your employment decisions, and create an AI use policy before a problem forces the issue.
- ✔ Stay current on the rules. Federal, state, and local regulations shift constantly, and "we didn't know" isn't a defense.
- ✔ Be consistent everywhere. Apply policies the same way for remote and on-site employees. Inconsistency is the raw material of discrimination claims.

You Don't Have to Do This Alone: How FrankAdvice Helps

If that list feels like a second full-time job, that's because for most small businesses, it is. This is exactly the gap FrankAdvice, FrankCrum's award-winning HR consulting team, was built to fill.

FrankAdvice clients are assigned a dedicated, SHRM-certified HR consultant with experience across a range of industries. That's a real person who knows your business, not a call center, and who helps you get ahead of risk instead of reacting to it:

Guidance on the tough calls
Performance issues, terminations, accommodation requests, compensation questions—the exact situations where a misstep turns into a claim.

Policies and documentation done right
Employee handbooks, job descriptions, and corrective action processes are built to keep your practices aligned with the law.

Manager training
Programs that strengthen the judgment of the people making your day-to-day employment decisions.

Proactive education
Legal update alerts, newsletters, and webinars so regulatory changes never catch you flat-footed.

Remember: insurance is a financial protection tool, but proactive policies, training, documentation, and consistent practices remain the best defense.

When Prevention isn't Enough: EPLI Is Your Safety Net

You can do everything right and still get sued. Claims don't have to be valid to be expensive. You'll pay to defend even a meritless one. That's why smart risk management pairs prevention with protection.

Employment Practices Liability Insurance (EPLI) provides coverage for lawsuits brought by current, former, or prospective employees who allege their legal rights were violated. It typically covers claims involving discrimination, harassment, wrongful termination, retaliation, and other wrongful employment practices.

For a small business, EPLI turns an unpredictable, potentially devastating expense into a manageable one. Given that the average settled claim runs $75,000 and jury awards average $217,000, coverage isn't a luxury; it's a seatbelt.

What Counts as a Claim?

"Claim" means more than a lawsuit. **Under an EPLI policy, a claim can include:**

1. A written request from an employee, former employee, applicant, attorney, or other party asking for money, another type of remedy, mediation, arbitration, or an agreement to pause or extend a legal deadline.
2. A charge, complaint, or notice filed with a federal, state, or local agency about the employer's employment practices.
3. A civil lawsuit or arbitration case being filed.
4. A criminal lawsuit or criminal proceeding, if the PEO decides and specifically requests that it be treated as a claim under the policy.
5. A labor or union grievance once it moves to arbitration.

Notice how early in the process some of these fall. A demand letter counts. An agency charge counts. Involving your HR Consultant early is key.

What To Do When You Get a Claim

The first days after receiving a claim matter enormously. **Three rules to follow:**

1. **Notify your EPLI carrier immediately.** If your EPLI policy is through FrankCrum, ask your HR Consultant to assist with filing your claim. Claims should be submitted as soon as possible and no later than 30 days after receiving notice. Acting fast helps you avoid missing important deadlines and reduces the risk of a coverage denial.

2. **Don't discuss the claim with the opposing party.** Contacting the employee directly can come across as hostile and make matters worse, while talking to the employee's attorney can lead to your words being taken out of context. Let your attorney handle these conversations.

3. **Preserve every document associated with the employee.** You'll want all relevant records available to present your case and preservation is required by law. Willfully destroying evidence can result in penalties that dwarf the original claim.

What EPLI May Not Cover

Like any insurance, EPLI has boundaries. **It generally does not cover:**

- ✕ **Wage and hour, workers' compensation, unemployment, and OSHA claims**
- ✕ **Claims initiated by the employer to enforce contracts, such as noncompete agreements**
- ✕ **Claims involving workers not leased through FrankCrum**
- ✕ **Claims that occurred outside of the EPLI policy period**
- ✕ **Claims not reported in a timely manner**

The Bottom Line: Prevention + Protection

Employer risk isn't going away. Claims are up, verdicts are up, and the rules keep evolving. But none of it has to keep you up at night, if you approach it the way well-protected businesses do:

- ✓ **Reduce the risk with current policies, trained managers, consistent practices, and solid documentation with FrankAdvice as your guide.**
- ✓ **Transfer the risk that remains with EPLI coverage, so a single claim can't derail everything you've built.**

With FrankCrum, both halves live under one roof: a dedicated HR consultant who helps you prevent claims, and an EPLI safety net with claims support when you need it. That's how you get back to the job you actually signed up for: running your business.

When in doubt, reach out!

Whether you receive a vague attorney letter or a verbal threat from an employee to sue, you can always contact your HR Consultant to discuss next steps.

Why FrankCrum

Although FrankCrum clients appreciate our long and successful track record, financial stability, technology capabilities, and the wide range of services we offer, what we hear most often is that they appreciate being able to speak with a live person who gives them straight answers to what may sometimes be difficult questions.

That's the way we do business - one person at a time, one client at a time. It's literally part of our DNA as the FrankCrum family of businesses: what we call "A Family of Employer Solutions."

Our company history began in 1981, when Frank W. Crum, Jr. and his father started offering temporary staffing services, with a deep commitment to the success of business owners. Because of that commitment, we have expanded our professional offerings over time as clients partnered with us to help them grow.

Today, that family of businesses - still owned and operated by Frank Crum, Jr. and now his son, Matt and daughter, Haley - offer HR services through FrankCrum PEO, workers' compensation and general liability insurance through Frank Winston Crum Insurance and staffing services through FrankCrum Staffing. You'll find the same operational philosophy in all three companies; Frank refers to it as "doing the right things for the right reasons."

It boils down to this: Running a business can be hard. Managing your human resources program shouldn't be. Let us know how we can help.

To learn how FrankCrum can help your business, call 800-277-1620 to schedule a consultation.

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