

**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**



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Governor

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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 M.R.S.A. § 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**