

## Trending Claims, EPLI

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Near the end of 2014, insurance industry experts were able to compile a list of the top trending EPLI claims. Illegal background checks, discrimination involving health, wrongful termination and unpaid internships were near the top of the list according to [claimsjournal.com](http://claimsjournal.com). Claim costs are on the rise, thanks in part to length of resolution and without EPLI coverage; your company could find itself in a very serious situation.

New England Motor Freight was hit with a class action lawsuit after allegedly violating the Fair Credit Reporting Act. As a part of employment pre-screening, the company opted to run background checks. The process that they chose was not fair and turned up with inaccurate and negative results. One of the denied applicants took a stand and in the end the company had to pay thousands of dollars to the class members as well as legal fees. Before you decide to run a background check or pre-employment screening, it is suggested to seek legal advice through your EPLI to ensure that you are not straying from the law.

The unpaid internship is another questionable topic. Before you consider recruiting for such a position, you will want to brush up on your knowledge of the Department of Labor requirements for internships. There are six legal requirements under the Fair Labor Standards Act that you should investigate with a fine tooth comb. If after investigating you are still questioning whether to offer an internship, your EPLI covered legal advice will be beneficial with this type of decision making.

FMLA or Family Medical Leave Act is another hot topic for employers. In a claim from 2011, *Johnson vs. Wheeling Machine Products*, the plaintiff, Kendrick Johnson claimed that he was wrongfully terminated because the employer (Wheeling Machine Products) believed that he took leave that was not covered under FMLA. Wheeling needed to prove to the court that they were not provided information from a medical professional that would solidify the reasoning for not being at work for three days. After much back and forth between doctors notes and testimony, the court ruled in favor of Wheeling Machine Products because there was no wrongful termination based on their terms of employment. This business was lucky because they appear to have been informed from the start, but there are so many times when the decisions we make are questionable and the ethical vs. legal line gets blurred.

In the case of many of these medical concerns with employees, there is a lot of ground to cover with regard to what you can request from the employee and how to appropriately acquire medical information necessary to classify leave under FMLA. HIPPA and Privacy Act regulations do apply and can become very tricky if you are uninformed.

Regardless of the situation, if you do not do it the right way, you may not have the insurance to pay. Protect your business and your assets, talk to one of our knowledgeable agents today about Employment Practices Liability Insurance, it is worth the investment.

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