



Insurance Coverage For California Companies For Employee Sexual Misconduct Claims

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You are a California business, and your worst fear has just come true: one of your high ranking executives has been accused of egregious sexual misconduct. Now, both the company and the executive are defendants in a lawsuit, with the claimant alleging that the business failed to properly supervise the errant executive.

Should you give up on the possibility of insurance coverage given the inflammatory allegations against the executive? Not in our view.

Various types of insurance policies could potentially provide coverage to a company in this circumstance. Under commercial general liability policies, for example, the California Supreme Court has determined that insurers have a duty to defend negligence claims against a company for claims asserted by non-employees, notwithstanding the concurrent allegations of intentional, tortious employee conduct. The rationale, of course, is that any claim alleging negligent hiring will be based in part on events predating the employee's tortious conduct, so the sequence of events does not itself preclude liability.

Employment practices liability policies may also provide coverage for claims asserted by both employees and non-employees, since sexual abuse cases often also allege underlying harassing conduct that does not rise to the level of sexual abuse. If the company has a directors and officers policy, that policy may also provide certain potentially applicable coverages.

When faced with egregious allegations of employee sexual misconduct, a

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company's insurance can be a valuable tool in resolving the claims asserted.
Do not assume that the insurer will provide no assistance whatsoever.