

EMPLOYMENT RISK MANAGEMENT AUTHORITY (ERMA)

**MINUTES OF THE COVERAGE COMMITTEE
MEETING JANUARY 14, 2019**

An ERMA Coverage Committee meeting was held on January 14, 2019, via teleconference.

COMMITTEE MEMBERS PRESENT: Scott Ellerbrock, President, PERMA
John Gillison, Vice President, PARSAC
Truc Dever, Treasurer, VCJPA

COMMITTEE MEMBERS ABSENT: None

OTHERS PRESENT: Jennifer Jobe, Executive Director
Kathy Maylin, Litigation Manager
Brittany Claypool, Analyst
Greg O’Dea, Board Counsel
Yahaira Martinez, York

1. CALL TO ORDER/ROLL CALL

The January 14, 2019, ERMA Coverage Committee meeting was called to order at 2:00 p.m. by President Scott Ellerbrock. Roll call was taken and it was determined a quorum was present.

2. APPROVAL OF AGENDA AS POSTED (OR AMENDED)

John Gillison moved to approve the agenda as posted. Seconded by Truc Dever. A roll call vote was taken. The motion passed unanimously.

3. PUBLIC COMMENTS

None.

4. COVERAGE MATTERS

A. Review of Proposed Revisions to the Memorandum of Coverage for the 2018/19 Program Year, Effective January 1, 2019

Ms. Jennifer Jobe, Executive Director, advised in response to the #MeToo movement, a number of bills intended to protect employees from workplace harassment and retaliation under the Fair Employment Housing Act took effect January 1, 2019. At staff’s request, Mr. Greg O’Dea, Board Counsel, reviewed the ERMA Memorandum of Coverage (MOC) for the 2018/19 Program Year and provided recommended changes to the MOC with a retroactive effective date of January 1, 2019.

Mr. O’Dea reviewed his proposed revisions to the MOC as follows:

Revisions to address SB 1300 expansion of liability

SB 1300 expands employer liability to include any form of harassment caused by non-employees. The expansion of liability means that persons providing services pursuant to a contract can also bring claims for any form of harassment caused by nonemployees.

1) Section II, 8. “Employee”

The current language in the MOC limits coverage to only sexual harassment claims brought by persons providing services pursuant to a contract.

To address the gap in ERMA coverage, Mr. O’Dea proposed removing the word “sexual” from the exclusion for independent contractors in this section of the MOC to read, “*The exclusion of independent contractors or subcontractors from the definition of Employee shall not apply to a Claim for harassment...*”

2) Section II, “Harassment”- removing “by a *Covered Party*” from sections 9.A.(3). and 9.B.

The existing definition of *Harassment* in the MOC limits coverage to harassment caused by *Covered Parties* only, and does not address coverage for the liability of the member for harassment caused by nonemployees. Mr. O’Dea proposed modifying 9.A.(3). to read, “create a work environment that interferes with performance...”

Additionally, he recommended modifying section 9.B. to read, “Workplace conduct (i.e. *Harassment* of a non-sexual nature) committed in violation of law...”

In regards to SB 224, Mr. O’Dea recommended against making any revisions to the MOC to address the change to civil code 51.9. He advised the amendment of Civil Code section 51.9 expands the list of professional relationships where liability for sexual harassment can arise to include elected officials. This expansion exposes elected officials to liability for sexual harassment having no relationship to the workplace, that is, section 51.9 provides for liability for claims brought by members of the public who are not employees of the Member.

Under the ERMA MOC, coverage is provided to elected officials for *Claims* brought by *Employees*, provided the official is acting in an official capacity for or on behalf of the Member. Mr. O’Dea advised expanding coverage to encompass non-workplace related sexual harassment claims by citizens is an extension of coverage beyond the parameters of employment practices coverage that ERMA provides.

Truc Dever moved to approve the proposed revisions to the Memorandum of Coverage for the 2018/19 Program Year, effective January 1, 2019. Seconded by John Gillison. A roll call vote was taken. The motion passed unanimously.

5. CLOSING COMMENTS

A. Coverage Committee

None.

B. Staff

None.

6. ADJOURNMENT

The January 14, 2019, ERMA Coverage Committee meeting adjourned at 2:21 p.m. by general consent.



Jennifer Jobe, Executive Director