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A Compliance Check Newsletter

One in Four Private Companies Sued by Employees, Chubb Survey Finds

WARREN, NJ, May 25, 2004 – One in four privately held companies has been sued by an employee or former employee in the past few years, according to a survey sponsored by the Chubb Group of Insurance Companies. Executives at as many as half the firms surveyed say it is likely that an employee may sue them, their board members and their companies and/or lodge a discrimination complaint with federal or state authorities in 2004. And nearly one-third believe that an allegation or actual case of wrongful termination, discrimination or harassment has the potential to inflict financial or other serious damage to their company.

According to *The Chubb 2004 Private Company Risk Survey*, 26% of executives at privately held companies reported that their company had been sued by an employee or former employee, and 22% reported having an employee file a discrimination or harassment complaint with the Equal Employment Opportunity Commission or state agency during the past few years. Furthermore, 44% of executives said it is likely that an employee or former employee will sue their company in 2004, and 50% said it is likely that an employee will file a complaint with the EEOC this year.

"Executives at many private companies realize that they are vulnerable to lawsuits from employees and former employees," said Lisa McGee, a vice president at Chubb & Son and Private Company Customer Group manager. "They are concerned—and rightly so—about the cost to defend against these lawsuits and the potential losses."

More than half the executives surveyed estimated it would cost more than \$100,000 to settle an employment discrimination or harassment lawsuit. Ten percent said it would cost at least \$1 million.

Private company executives say they are also concerned about lawsuits from retired employees, according to the survey. Nearly one-fourth of the executives surveyed report that it is likely a retiree will sue the company, its directors and officers, and/or its benefits plan administrators and fiduciaries in 2004.

Under the Employee Retirement Income Security Act of 1974 (ERISA), fiduciaries are personally liable for losses to benefit plans incurred as a result of their breach of duties. Past or present employees or their families bring the majority of fiduciary claims, but another fiduciary or the U.S. Department of Labor may also bring claims. The most frequent allegations against fiduciaries include denial or change of benefits, administrative error, incorrect benefit calculation, improper advice or counsel, misleading representation, and wrongful termination of plan.

The survey shows that many private companies are taking steps to lower their risks and reduce potential losses. Forty percent of private companies surveyed purchase employment practices liability insurance, and 24% purchase fiduciary liability insurance. Additionally, 72% of the

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companies surveyed have written policies banning employment discrimination and sexual harassment, and 52% offer employment discrimination and/or sexual harassment training.

"Companies that do not prudently manage these risks leave themselves and their directors and officers vulnerable," McGee said. "In particular, smaller firms, which are less likely to be able to withstand the financial shock associated with a lawsuit from an employee or retiree, should consider loss control measures and possibly insurance."

Impulse Research Corp., a market research firm in Los Angeles, conducted the survey. The firm interviewed the CEO, CFO, and other top officers at 300 privately held companies. A summary of major report findings on [employment practices liability](#) and [fiduciary liability](#) can be found on the Chubb web site at www.chubb.com.

The member insurers of the Chubb Group of Insurance Companies form a multi-billion dollar organization providing property and casualty insurance for personal and commercial customers worldwide through 8,000 independent agents and brokers. Chubb's global network includes branches and affiliates in North America, Europe, Latin America, Asia and Australia.

Fiscal Year 2003 Enforcement Data from the Department of Labor

- The number of workplace fatalities and rate of fatal injuries are at the lowest recorded level ever.
- Fatal injuries among Hispanic workers, which had been rising each year since 1995, fell by 6% in 2002
- Mining injuries declined by 25% and fatalities in all mines fell by 31% since FY 2000
- Number of OSHA inspections and citations continued to rise
- \$212.5 million in back wages collected — a 21% increase and 11-year record high
- Number of workers receiving back wages increased by nearly 30% over FY 2002
- Record \$1.4 billion in health and pension assets protected — a 60% increase over FY 2002