

# Employment Disputes Policy



# 01

## 1. Insuring clause

## 2. Definitions

- 2.1 'Claim'
- 2.2 'Defence Costs'
- 2.3 'Employee'
- 2.4 'Employer'
- 2.5 'Insured'
- 2.6 'Interrelated Wrongful Acts'
- 2.7 'Limit of Liability'
- 2.8 'Loss'
- 2.9 'Period of Insurance'
- 2.10 'QBE'
- 2.11 'USA or Canada'
- 2.12 'Wrongful Act'

# 02

## 3. Exclusions

## 4. Limit of liability

## 5. Excess

## 6. Claims conditions

- 6.1 Defence and settlement

# 03

- 6.2 Notification of claims
- 7.1 Representations and severability
- 7.2 Other insurance
- 7.3 Construction
- 7.4 Alteration and assignment
- 7.5 Subrogation
- 7.6 Governing law
- 7.7 Deeming clause
- 7.8 Goods and services tax clause

# Welcome to QBE Insurance and thank you for trusting us with your insurance.

QBE has been committed to New Zealand and its commerce since 1888. We are Australasia's largest international insurance and reinsurance group and have specialist staff operating all over the globe, providing insurance to clients in over 140 countries. Our standing in the insurance marketplace has been achieved through consistent delivery of quality service to both our brokers and policyholders.

This is your Employment Disputes Policy document, which should be read in conjunction with your Policy Schedule. Together, they form your contract of insurance and tell you what you are, and are not, insured for.

We want your experience with QBE Insurance to be the best. To allow us to make your claims experience fast and easy, it is important that you provide us with all the information that could influence our decision about your insurance. You need to tell either QBE or your broker about facts known to you as well as those facts you become aware of, which you could have been reasonably expected to know about. If you are in any doubt as to whether or not a fact may be material to your insurance, you can discuss this with QBE or your broker who will guide you.

By not telling us something that it was your duty to tell us it may mean that your claim may not be accepted or an entitlement under the policy could be reduced.

If you need help understanding any aspect of your insurance cover, please contact your insurance broker.



# Employment Disputes Policy

## 1. Insuring clause

- 11 In reliance upon representations made by the Insured and in consideration for the payment of premium, QBE will pay on behalf of the Insured, all Loss arising from any Claim first made against the Insured during the Period of Insurance and notified to QBE during the Period of Insurance by reason of any Wrongful Act provided such Wrongful Act occurred on or after the retroactive date stated in the policy schedule.

## 2. Definitions

### 2.1 'Claim' means:

Any written or verbal communication (including notice of any proceedings, investigations or inquiries) to the Insured which alleges a Wrongful Act.

### 2.2 'Defence Costs' means:

Those costs, charges or expenses incurred in defending or investigating or monitoring Claims or related appeals. Defence Costs does not include: wages or salaries or fees of the Insured.

### 2.3 'Employee' means:

Any person who is or was (or who alleges that but for the Wrongful Act would have been) an employee (as defined in the Employment Relations Act 2000) of the Employer. Employee also means: any person who is or was a director, principal or partner of the Employer. Employee also means: any person providing services for labour only under contract to the Employer provided that the contract is the sole source of income for that person, and, that person carries out functions that would normally be carried out by any employee of the Employer.

### 2.4 'Employer' means:

The organisation or individual(s) named in the Schedule.

### 2.5 'Insured' means:

The Employer and any Employee.

### 2.6 'Interrelated Wrongful Acts' means:

Means: all causally connected Wrongful Acts involving one or more Employees.

### 2.7 'Limit of Liability' means:

The amount specified in the Schedule.

### 2.8 'Loss' means:

Defence Costs and the total amount which the Insured is legally obligated to pay an Employee as a result of a Claim made against the Insured by reason of a Wrongful Act. Loss includes: damages, judgments, settlements and claimant's costs.

### 2.9 'Period of Insurance' means:

The period shown in the schedule, unless terminated earlier.

### 2.10 'QBE' means:

QBE Insurance (Australia) Limited

### 2.11 'USA or Canada' means:

The United States of America or the Dominion of Canada and any dependency, protectorate, colony, state or territory of either country.

### 2.12 'Wrongful Act' means:

Actual or alleged conduct of the following kind against an Employee by the Insured, or by another Employee in the course of that other Employee's employment with the Insured:

- (a) unlawful discrimination, wrongful demotion, or failure or refusal to promote;
- (b) actual or constructive termination of the contract of service in breach of the law;
- (c) misrepresentation or defamation;
- (d) the infliction of emotional distress;

- (e) harassment (sexual or otherwise);
- (f) failure or refusal to hire a potential employee;
- (g) invasion or breach of the right of privacy;
- (h) victimisation

### 3. Exclusions

- 31 This policy does not cover Loss arising out of any Claim:
- (a) brought about by a Wrongful Act committed wholly outside New Zealand or Australia;
  - (b) for the payment of fines or penalties (whether criminal, civil or pecuniary) imposed by law;
  - (c) for punitive or aggravated or exemplary or multiple damages or matters uninsurable under the law pursuant to which this policy is construed;
  - (d) for payment to any Employee of any amount which the Insured was obligated (whether under any award or statute or contract of employment or otherwise) to pay prior to the Wrongful Act being committed;
  - (e) arising from the publication of material known by the Insured to be false. This exclusion will not apply to any Insured who did not know (or could not reasonably be expected to have known) that the material was false;
  - (f) arising from death or physical injury to the body, or any illness attributable to direct physical injury to the body;
  - (g) arising from or in consequence of loss of or damage to property;
  - (h) for the cost of physical modifications to the Insured's workplace, or the cost of changes to workplace procedures;
  - (i) arising from Wrongful Acts committed during any lockout, strike, picket, standdown or suspension, or other industrial dispute;
  - (j) arising under any statute relating to workers compensation, accident compensation or occupational health and safety;
  - (k)
    - (i) brought in a court in USA or Canada;
    - (ii) brought in a court elsewhere exercising jurisdiction under any law of USA or Canada;
    - (iii) brought in a court elsewhere to enforce a judgment or order of court referred to in (i) or (ii); or
  - (l)
    - (i) first made against the Insured prior to the Period of Insurance; or
    - (ii) arising from any matter disclosed to QBE prior to the Period of Insurance as being either a claim, or circumstances which may give rise to a claim, against the Insured; or
    - (iii) arising from any matter notified to any insurer (including QBE) prior to the Period of Insurance as being either a claim, or circumstances which may give rise to a claim, against the Insured; or
    - (iv) arising from any litigation or inquiry that was either in progress or pending prior to the Period of Insurance; or
    - (v) arising from circumstances of which any Insured had become aware prior to the Period of Insurance AND which that Insured know (or ought reasonably to have known) to be circumstances which may give rise to a Claim.
  - (m) resulting from a failure by the Insured to pay adequate redundancy compensation to any Employee dismissed by reason of redundancy.

### 4. Limit of liability

- 41 For the purposes of determining the Limit of Liability, all Claims arising out of Interrelated Wrongful Acts, shall be deemed to be one Claim.
- 42 QBE's liability under this policy for Loss (including Defence Costs) in respect of any one Claim shall not exceed the Limit of Liability.
- 43 QBE's liability under this policy for Loss (including Defence Costs) in respect of all Claims shall not exceed the Limit of Liability.
- 44 If in respect of the same Claim, the Insured is entitled to indemnity under this policy, but is also entitled to indemnity under any Directors & Officers Liability/Company Reimbursement Liability policy issued by QBE, then the Insured must elect under which policy it will seek indemnity, it being agreed that claims for indemnity cannot be made under more than one policy issued by QBE in respect of the same claim.

### 5. Excess

- 51 The Insured (other than an Employee) shall bear the amount of the Excess shown in the Schedule in respect of each Claim, and QBE shall only be liable to pay in excess of that amount.

### 6. Claims conditions

#### 6.1 Defence and settlement

- 6.1.1 The Insured shall not admit liability for or settle any Claim, or incur any Defence Costs, without prior written consent from QBE (such consent not to be unreasonably withheld). QBE shall not be liable for any admission or settlement or Defence Costs to which it has not so consented.
- 6.1.2 QBE shall not require the Insured to contest any Claim unless a Senior Counsel (mutually agreeable to QBE and the Insured) advises that the Claim should be contested.

In formulating such advice, Senior Counsel shall take into consideration the economics of the matter, the damages and costs which are likely to be recovered by or from the plaintiff, the likely Defence Costs, and the prospects of the Insured successfully defending the Claim.

The cost of such advice will be borne by QBE and shall be regarded as part of the Defence Costs.

- 6.1.3 QBE may make any investigations it deems expedient and may, with the consent of the Insured, make any settlement of a Claim it deems expedient within the Limit of Liability. If the Insured refuses to consent to any such settlement recommended by QBE and elects to contest or continue any actions or proceedings in connection with such Claim, then (subject to the Limit of Liability) QBE's liability for that Claim shall not exceed such recommended settlement amount, plus Defence Costs incurred with QBE's consent up to the date of such refusal.
- 6.1.4 The Insured will use all reasonable endeavours to defend any Claim, and, to provide such information and assistance to QBE as it reasonably requires to investigate or to defend any Claim or to enable it to determine its liability under this policy. Such information includes such data or documentation necessary to establish and/or assert any right of contribution or indemnification against any third party.
- 6.1.5 Notwithstanding condition 6.1.4, QBE shall be entitled to take over and conduct any proceedings in connection with any Claim but will do so in full consultation with the Insured. Legal advisers retained by QBE to act on behalf of the Insured shall at all times be at liberty to disclose to QBE any information obtained (whether from the Insured or otherwise) in the course of so acting, and the Insured agrees to waive any claim for legal professional privilege to which it might otherwise have been entitled.

## 6.2 Notification of claims

The Insured shall, within the Period of Insurance, provide written notice of any Claim as soon as practicable and provide such information and assistance to QBE as it reasonably requires.

## 7.1 Representations and severability

- 7.1.1 In agreeing to issue this policy, QBE has relied upon the declarations and statements that are contained in or constitute the written application for this policy. All such declarations and statements formed the basis of QBE's decision to issue this policy and shall be considered as incorporated in and constituting part of this policy.
- 7.1.2 If there is more than one organisation or individual named in the Schedule as the Insured, the written application referred to in condition 7.1.1 shall be construed as a separate application by each Insured. With respect to the declarations and statements contained in the application, no statement or knowledge possessed by any Insured shall be imputed to any other Insured for the purposes of determining if indemnity is available under this policy in respect of such other Insured.

## 7.2 Other insurance

If any Loss arising from any Claim can be indemnified under any other insurance policy, then this policy shall only cover such part of the Loss which exceeds the amount of the indemnity available from such other policy (whether such policy is stated to be excess, primary, contributory, contingent or otherwise), unless such other policy is an excess policy over the Limit of Liability of this policy.

## 7.3 Construction

The titles of paragraphs in this policy are included for descriptive purposes only and do not form part of this policy for the purposes of its construction or interpretation.

## 7.4 Alteration and assignment

No change in, or modification of, or assignment of interest under this policy shall be effective unless agreed to in writing by QBE.

## 7.5 Subrogation

If liability is admitted under this policy, QBE shall be subrogated to the extent of such liability to the Insured's rights of recovery. In such circumstances, the Insured shall do everything reasonably necessary to secure and preserve such rights, and to assist QBE (including execution of documents necessary to bring an action in the name of the Insured) to effectively pursue such rights.

## 7.6 Governing law

This policy shall be construed in accordance with the laws of New Zealand, and any disputes relating to interpretation shall be submitted to the exclusive jurisdiction of the courts of New Zealand, unless otherwise agreed to by QBE.

## 7.7 Deeming clause

The cover provided by this policy ceases absolutely at the end of the Period of Insurance, however, if during the Period of Insurance, the Insured shall become aware of any Wrongful Act which may give rise to a Claim under this policy, and gives written notice during the Period of Insurance to QBE of such Wrongful Act, then any Claim which may be subsequently made shall be deemed to be a Claim within the Period of Insurance.

## 7.8 Goods and services tax clause

If the Insured is assessed as liable to pay tax under Section 5(13) of the Goods and Services Tax Act 1985 (or any amendment or re-enactment thereof) on receiving any benefit under this policy, QBE will indemnify the Insured for the cost of that tax.

The indemnity provided under this clause shall be in addition to the Limit of Liability.