

**ALERT**

# Eighth Circuit Affirms that Reasonable Person Standard Applies to Prior Knowledge Provision

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The United States Court of Appeals for the Eighth Circuit has affirmed the district court's decision applying a "reasonable person" standard to the prior knowledge provision of a policy covering employment practices. *Division of Employment Security v. St. Paul Mercury Ins. Co.*, 2012 WL 3064298 (8th Cir. July 30, 2012). The district court opinion was discussed in the November 2011 issue of *Executive Summary*. Applying Missouri law, the district court had determined that the reasonable person standard, not the insured's subjective intent, should apply in determining the applicability of provision precluding coverage for any claim arising from any fact, circumstance or situation that was known to any insured prior to the policy's inception and "which could reasonably give rise to a claim against [the Insureds]." The court found that a former employee's unsuccessful application for unemployment benefits alleging retaliation for being a "whistleblower" would have led a reasonable person to anticipate a claim. No coverage was therefore available for the employee's subsequent lawsuit. A copy of the Eighth Circuit's opinion is available [here](#), and the district court's opinion can be found [here](#).

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