

January 31, 2013

EEOC Releases Detailed Enforcement Statistics – Claims Remain at Historic Levels

By David Goldman

The U.S. Equal Employment Opportunity Commission (EEOC) announced that it received 99,412 private sector workplace discrimination charges during fiscal year (FY) 2012 – October 1, 2011 to September 30, 2012. While the number of charges is down slightly from the record number filed in previous fiscal year, FY 2012 marked the fifth consecutive year that neared the 100,000-charge level.

The EEOC also released details regarding the types of charges filed. For the second consecutive year retaliation is the most frequently filed charge (37,836), followed by race (33,512) and sex discrimination (30,356).¹ Of particular interest to employers, the Commission released a new table analyzing the type of discriminatory actions alleged. Under Title VII, the top six most frequently challenged practices were discharge/constructive discharge, harassment/intimidation, terms and condition of employment, discipline, promotion, and wages. Even though the number of charges dipped, the EEOC obtained a historic amount of money from private employers through its administrative process – \$365.4 million.

On the litigation/investigation side of the EEOC's efforts, the story is more mixed. In FY 2012, the EEOC filed 155 lawsuits, collecting \$44.2 million. Both numbers were down significantly from FY 2011 (300 lawsuits, collecting \$91 million). The EEOC may have made up for the low number of lawsuits with a continued emphasis on systemic pattern investigations. In FY 2012, the EEOC completed 240 systemic investigations, which in part resulted in 46 settlements or conciliation agreements. These settlements, achieved without litigation, secured \$36.2 million.

What to Do with These Numbers

No employer has unlimited resources to devote to anti-discrimination compliance (and even California only requires "reasonable" efforts to prevent!). The EEOC's statistics are an excellent roadmap for employers that want to focus their efforts on the most significant risks.

For example, many employers provide sexual harassment training for managers. This practice is prudent given that harassment charges represent 20% of the total charges, the affirmative defenses available to those who conduct such training, and how explosive the issue can become.

¹ Sex discrimination includes allegations of sexual harassment and pregnancy.

However, the number charges involving retaliation, race discrimination, and termination each outpaced the number of sexual harassment charges (indeed all harassment charge) in FY 2012. Employers would be well advised to ensure that their training and other compliance efforts pay as much attention to the issues causing the greatest number claims of harassment.

[David Goldman](#), Managing Shareholder of the Littler Learning Group, is in the San Francisco office. If you would like further information, please contact your Littler attorney at 1.888.Littler, info@littler.com, or Mr. Goldman at dgoldman@littler.com.