

Disturbing Trends Every Employer Should Know

2011 EEOC Statistics Reveal Disturbing Trends Every Employer Should Know By Jack McCalmon, published on RSUIBurger.com, 2/6/12

The Equal Employment Opportunity Commission (EEOC), the government agency responsible for enforcing Title VII, the Age Discrimination in Employment Act (ADEA), the Americans with Disabilities Act (ADA), the Genetic Information Nondiscrimination Act (GINA) and the Equal Pay Act (EPA), has released fiscal year 2011 enforcement statistics.

Total charges were 99,947 for 2011, setting a new record. Despite the record number of charges, the EEOC, for the second year in a row, resolved more charges than it took in. Total resolutions increased seven percent over 2010. The Commission touts a ten percent decrease in inventory for the first time since 2002. Approximately 78,136 charges are still pending.

As far as litigation in 2011, the agency filed 300 lawsuits resulting in \$91 million for claimants. The number of lawsuits filed has increased for the past three years.

Retaliation claims were the most numerous at 37,334. Race discrimination charges followed with 35,395 charges. The other three most frequently cited allegations were sex, disability and age discrimination.

Only 245 claims were filed under GINA in 2011. However, 2011 was the first full fiscal year for enforcement of GINA. GINA prohibits discrimination based on genetic information and family medical history.

The EEOC's enforcement of ADA claims produced the greatest increase in monetary relief last year. Administrative relief for ADA claims increased almost 35.9 percent from \$76.1 million in 2010 to \$103.4 million in 2011. Back impairments, followed by other orthopedic impairments, depression and diabetes, took the lead for the most frequently cited impairments. "Private Sector Bias Charges Hit All-time High," www.eeoc.gov (Jan 24, 2012).

Commentary & Checklist

In 2010, I predicted that EEOC claims would rise in 2011. Although the number of charges missed the 100,000 mark by 53 claims, every category saw increases except race, sex and EPA claims.

GINA claims saw the highest percentage increase over 2010 with a 22 percent increase. Besides GINA, religious discrimination charges saw the highest percentage increase at 9.5 percent. National origin claims followed with a 4.7 percent increase over 2010.

Retaliation claims also saw a modest increase. Retaliation claims are easier to prove than traditional discrimination charges and, should a discrimination charge be dropped or summarily adjudicated, the retaliation claim usually survives for a jury's determination.



Disturbing Trends Every Employer Should Know (continued)

While the increase in the number of ADA claims is no surprise, what is revealing is that complainants with treatable impairments, like back impairments, depression and diabetes, are seeking protection of the law more than complainants with untreatable impairments, for which the law was originally passed. Undoubtedly, the Americans with Disabilities Amendments Act, enacted in 2008, has had the desired effect of treating more workers as “disabled” under the statute, but perhaps not for the impairments contemplated.

Age discrimination charges increased only slightly over 2010, but still hit the second largest number in history, topped only in 2008, a year of numerous corporate layoffs. Age discrimination charges will continue a slight rise as baby boomers stay in the workforce longer.

A disturbing trend for employers is not so much the increase in the number of filed charges, but rather the types of charges being filed; specifically, retaliation and disability claims. Such charges are easier to prove, leaving employers few options other than settlements or jury trials.

All in all, the 2012 charges should follow the pattern of 2011. However, 2013, 2014 and 2015 should bring some form of change, either up or down, depending on the outcome of the 2012 election.

Here is the breakdown comparison of increases and decreases in charge filings since 2010:

- Race – down 1.4 percent
- Retaliation – up 3 percent
- Age – up .9 percent
- Disability – up 2.3 percent
- Sex/Gender – down 1.7 percent (although the source article, cited above, reports that sex discrimination charges increased, the statistics as reported show a decrease)
- National Origin – up 4.7 percent
- Religion – up 9.5 percent
- Equal Pay Act – down 12 percent
- Total Charges – up .02 percent

Our predictions for 2012 are:

- Charges filed with the EEOC will increase slightly in 2012.
- Charges filed with the EEOC should pass the 100,000 mark, setting a new record.
- Retaliation charges will continue as the number one charge and should increase by a minimum of three percent or more beyond 2011 levels.
- Disability discrimination charges will continue to rise as well and should increase by a minimum of two percent or more beyond 2011 levels.
- GINA charges should surpass 2011 charge levels.
- Charges of national origin and religious discrimination should continue to rise in 2011, but may not rise as much as they did in 2011.
- Soft tissue injuries, like back ailments, will continue to be the number one impairment ADA complainants cite.
- Diabetes and other impairments related to obesity will continue to climb.
- Race, age, sex and gender discrimination charges should remain the same or decrease in numbers as more complainants couch their charges as retaliation instead of traditional discrimination.

Should you have any questions or need further assistance, please visit our website, send an email or call us.



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