

CLIENT ALERT: EEOC Report Reveals Popularity of Retaliation Claims, Noticeable Increase in Religious and National Origin Discrimination Claims

On January 25, 2012, the Equal Employment Opportunity Commission (the "Commission" or "EEOC") released its enforcement and litigation statistics for the fiscal year ending September 30, 2011. According to the report, fiscal year 2011 was a record-breaking year for the Commission in several ways.

First, the EEOC received 99,947 discrimination charges from private sector employees, the most charges the Commission has received in any fiscal year. The report reveals that of all claims of discrimination handled by the EEOC, retaliation claims under various Federal antidiscrimination statutes were the most common, accounting for 37.4% of all private sector charges received in fiscal year 2011. Claims of discrimination based on race (35.4%) were the next most common claim received by the EEOC, followed by claims of discrimination based on sex (28.5%), disability (25.8%), age (23.5%), national origin (11.8%), religion (4.2%), color (2.8%), and genetic information (0.2%). Equal Pay Act claims accounted for only 0.9% of claims filed in fiscal year 2011.

Of all the types of claims handled by the EEOC, the Commission saw the most significant year-to-year increase in religious discrimination claims, which rose 9.2% from fiscal year 2010, and national origin discrimination claims, which increased by 4.6%. Claims under the Genetic Information Nondiscrimination Act ("GINA") also increased by more than 20% from fiscal year 2010 – the first year the EEOC reported statistics for such claims. The EEOC also saw increases in retaliation claims (up 2.9%) and disability discrimination claims (up 2.3%), as well as slight increases in claims alleging discrimination based on color and age. The most significant year-to-year decrease in charges received was in Equal Pay Act claims, which fell by 13.2% from fiscal year 2010. Moreover, despite making up a large portion of charges received, race and sex discrimination claims also dropped slightly from fiscal year 2010.

Second, the new report reveals that fiscal year 2011 was a record-setting year for the EEOC in terms of monetary relief obtained for employees. In fiscal year 2011, the EEOC obtained over \$364 million in monetary relief for discrimination complainants through its enforcement and mediation activities, marking an over \$45 million increase from 2010 and the third consecutive year where the agency saw an increase in monetary relief obtained. The EEOC also separately obtained \$91 million in monetary relief through litigation, an increase of over \$5 million from the year before.

The report also states that litigation by the Commission has increased. In fiscal year 2011, the EEOC filed 300 lawsuits in Federal district courts, including 261 so-called "merit suits" alleging violations of the substantive provisions of the statutes enforced by the EEOC and suits to enforce administrative settlements, as well as 39 actions seeking subpoena enforcement or other preliminary relief.

These new statistics highlight several areas of concern for employers. The record-setting number of discrimination complaints filed with the EEOC indicates that employee complaints of discrimination have not slowed down and, in fact, may continue to rise. Accordingly, employers must be educated about Federal antidiscrimination laws so that they can identify and avoid possible claims of discrimination in the workplace. Furthermore, the prominence of retaliation claims among charges filed in 2011 suggests that employers must be adequately trained on how to handle its interactions with employees who have engaged in activity protected by Federal antidiscrimination laws. Moreover, given the increase in religious and national origin discrimination claims, employers should be prepared to handle issues of religion and national origin in the workplace, including but not limited to complicated issues like providing employees with religious accommodations. Finally, increases in

monetary relief obtained by the EEOC and litigation activity by the agency should caution employers about the costs associated with defending charges of discriminations and the need to properly document the legitimate, nondiscriminatory reasons for their actions so that they can successfully defend charges when they occur and minimize potential exposure.

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