



EEOC 2014 Trends: What is the most popular claim?

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Last week, the United States Equal Employment Opportunity Commission (EEOC) released its enforcement litigation data for FY 2014. Continuing a recent trend, the EEOC reported that the percentage of charges that contained retaliation claims, reached an all-time high of 42.8% in 2014. This is significant because the elements that an employee must establish with respect to a retaliation claim are quite different than the elements in a discrimination or harassment claim. Specifically, an employee does not need to establish that its employer discriminated against or harassed him to prevail on a retaliation claim. Rather, the employee only needs to prove that the employer took action against him in response to an internal or external complaint of discrimination or harassment that may deter the employee and/or others from lodging similar complaints in the future. This highlights the fact that preventing retaliation is just as important as promptly addressing workplace complaints of discrimination or harassment.

A breakdown of all charges filed with the EEOC is as follows:

- Retaliation - 42.8% percent of all charges filed
- Race (including racial harassment) - 35%
- Sex (including pregnancy and sexual harassment): 29.3%
- Disability - 28.6%
- Age - 23.2%
- National Origin - 10.8%
- Religion - 4%
- Color - 3.1%
- Equal Pay Act - 1.1% (but note that sex-based wage discrimination can also be charged under Title VII's sex discrimination provision)
- Genetic Information Non-Discrimination Act – 0.4%

In fiscal year 2014, the EEOC obtained \$296.1 million in total monetary relief through its enforcement program for cases that were settled prior to the filing of litigation. Monetary relief from cases litigated, including settlements, totaled \$22.5 million.

TAKEAWAY:

From a risk management perspective, the aggressive investigations and litigation filed by the EEOC only emphasizes the need for employers to faithfully obey what we kindly refer to as Socius' "Three Cardinal Rules of Employment Practices Risk Management": (1) continually update employment practices with a proactive approach (i.e. adapt personnel policies to always be current with the EEOC's strategic initiatives, litigation trends and new statutes). (2) Keep all management and supervisory personnel thoroughly and continually trained (this ensures a smooth implementation of procedures and education of management's pre-agreed strategies to respond to retaliation, harassment and other employment-related allegations), and (3) further mitigate this risk through the purchase of a robust Employment Practices Liability ("EPL") insurance policy.