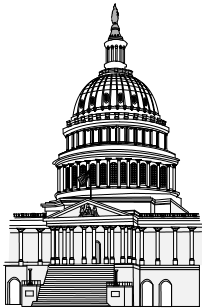


U.S. Equal Employment Opportunity Commission



EEOC HOT TOPICS And Avoiding Title VII Charges

American Association of State Highway and
Transportation Officials
2014 Civil Rights Training Symposium

Phoenix, AZ
April 28, 2014

LAWS ENFORCED

TITLE VII OF THE CIVIL RIGHTS ACT of 1964

Race



National Origin



Color



Sex



Religion



LAWS ENFORCED

The Equal Pay Act

Sex based wage discrimination

Lilly Ledbetter Fair Pay Act of 2009



LAWS ENFORCED

Age Discrimination in Employment Act



Age 40 +

LAWS ENFORCED

The Americans With Disabilities Act

Americans With Disabilities Act Amendments Act (ADAAA)

Genetic Information Nondiscrimination Act (GINA) of 2008



\$ 372 MILLION



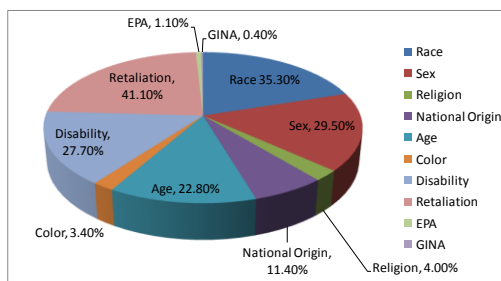
In FY13 EEOC obtained a record **\$372.1 million** in monetary relief for victims of private sector workplace discrimination

 **\$6.7 million more than FY12**

EEOC Received **93,727** charges in FY13

 **5,685 less than FY12**

FY13 Receipts by Basis



A total of **97,252** charges
were resolved



13,887 less than FY12

STRATEGIC ENFORCEMENT PLAN FY 2013 - 2016

Focus & coordinate
EEOC programs

Sustainable
Impact

Reduce &
Deter

Identifies Six National Priorities



Strategic Enforcement Plan

Adopted December 2012

National Enforcement Priorities:

- ① Eliminating Barriers in Recruitment and Hiring
- ② Protecting Immigrant, Migrant and Other Vulnerable Workers
- ③ Addressing Emerging and Developing Issues
- ④ Enforcing Equal Pay Laws
- ⑤ Preserving Access to the Legal System
- ⑥ Preventing Harassment through Systemic Enforcement and Targeted Outreach

Eliminating Barriers in Recruitment and Hiring

- Exclusionary Policies & Practices
- Restrictive Screening Tools
- Steering Particular Groups into Specific Job Types

Hiring: Commission Activities

- Commission Meetings
 - Credit Screens
 - Disparate Treatment
 - Arrest & Conviction Screens
 - Unemployment Screens
- Policy Guidance
 - Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964 (April 25, 2012)
 - EEOC and FTC Offer Joint Tips on Use of Employment Background Checks (March 2014)
 - EEOC Issues New Publications on Religious Garb and Grooming in the Workplace (March 2014)

Protecting Immigrant, Migrant and Other Vulnerable Workers

- Disparate Pay
- Job Segregation
- Harassment
- Trafficking



Maricruz Ladino, featured in PBS 'Rape in the Fields'.
Photo credit: ANDRES CEBEL/FRONTLINE

CASES INVOLVING MIGRANT, IMMIGRANT AND OTHER VULNERABLE WORKERS

- ***EEOC v. Pickle***, 446 F. Supp. 2d 1247 (N.D. Okla. 2006): class race and national origin case alleging oil industry parts manufacturer subjected East Indian workers to discriminatory pay and working conditions. (court awarded \$1,240,000)
- ***EEOC v. Del Monte Fresh Produce*** (D. Haw. filed Apr. 2011): national origin and race harassment case involving Thai farm workers. (settled in Nov. 2013 for \$1,200,000 and innovative, comprehensive equitable relief)
- ***EEOC v. Mesa Systems*** (D. Utah 2013): national origin harassment and terms and conditions case (resolved for \$450,000, largest national origin resolution in Utah)
- ***EEOC v. Signal Int'l*** (S.D. Miss. filed Apr. 2011): 500+ Indian employees subjected to labor trafficking and hostile work environment. (pending)
- ***EEOC v. Koch Foods*** (S.D. Miss. filed June 2011): sexual harassment case involving a class of female and male Hispanic employees in a poultry processing plant. (pending)

See also "Rape in the Fields" presented by Frontline/Univision at <http://www.pbs.org/wgbh/pages/frontline/rape-in-the-fields>



EEOC v. Hill Country Farms (d/b/a Henry's Service Corp.) (S.D. Iowa 2013)

PBS POV Documentary - **The Men of Atalissa**

Addressing Emerging and Developing Issues

These can change over time as EEOC responds to:

- demographic changes (e.g., an aging workforce),
- recently enacted legislation,
- developing judicial and administrative interpretations and theories, and

Currently prioritized:

1. ADA Issues: Coverage, reasonable accommodation, qualification standards, undue hardship, direct threat
2. Accommodating pregnancy-related limitations; the intersection of the ADAAA and the PDA
3. Coverage of LGBT individuals under Title VII

Enforcing Equal Pay Laws



Enforcing Equal Pay Laws

- EEOC will target compensation systems and practices that discriminate based on gender
- Directed investigations and Commissioner Charges will be encouraged to facilitate enforcement
- As with all priorities, EEOC will emphasize this priority because it is in the best position to address the issue

Preserving Access to Legal System

- Retaliation
- Overly broad waivers
- Restrictions on ability to file charges
- Recordkeeping violations

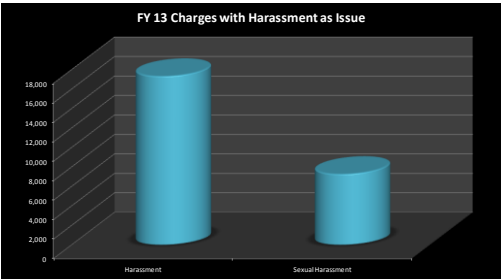
Preventing Harassment: Systemic Enforcement and Targeted Outreach

- Systemic Task Force
 - Litigation with emphasis on “pattern or practice,” policy and/or class cases
- Education and Technical Assistance
 - Technical Assistance Program Seminars
 - Customized, fee-based training
 - General Outreach

District Complement Plan

- Strategic Enforcement Plan addresses priorities for EEOC, as a whole
- District Complement Plan addresses local challenges
 - Local enforcement priorities
 - Areas for systemic investigation/litigation
 - Strategies for legal/enforcement efforts

Harassment



Harassment Affects the Workplace

- High legal costs and fines (litigation)
- Damaged organizational image
- Reduced productivity and lower morale
- Higher employee turnover
- Higher costs for hiring and training new employees

Survey Question

Over the past 12 months,
has your organization
focused more effort on
retaliation prevention?

- A. Yes
- B. No
- C. I'm not sure



Top EEO Risk Area - Retaliation

- **EEOC Charge Stats:** 38,539 (41%) retaliation charges in FY13. *For third year running, the #1 most common basis for an EEO charge!*
- The underlying claim of harassment or discrimination doesn't need to be proved.



Do your managers and supervisors understand retaliation risks?

Retaliation is Your Greatest Vulnerability:



WHAT IT FEELS LIKE TO COMPLAIN OF EMPLOYMENT DISCRIMINATION



Costs in the Workplace



The 3 Rs of Retaliation

- Recognize
- Remedy
- Resist

Best Practices

- Train managers and supervisors to be aware of their anti-retaliation obligations under EEO Laws, including specific actions that may constitute retaliation.

Best Practices

- Create an environment where employees are not afraid to complain.
- Provide clear and credible assurances that, if employees make complaints or provide information related to complaints, the employer will protect employees from retaliation, and consistently follow through on this guarantee.

Best Practices

- Reduce the risk of retaliation claims by carefully and timely recording the accurate business reasons for disciplinary or performance-related actions, and sharing these reasons with the employee in the same manner you would with an employee who has not complained of discrimination

Best Practices

Scrutinize employee handbooks and policies:

- Eliminate restrictive "chain of command" language.
- Eliminate language indicating an employee can be disciplined if it is believed the complaint was "false" or unsubstantiated.

Best Practices

Scrutinize employment agreements and releases for facially retaliatory language.

An employer cannot interfere with an individual's statutory right to file a charge with the EEOC or FEPA or to participate in any manner with a proceeding under EEO Laws.

Benefits of a Respectful Workplace

- Higher morale and positive attitudes
- Reduced stress, absenteeism and turnover
- Fewer legal entanglements



Benefits of a Respectful Workplace

- Greater teamwork
- Higher productivity
- More creativity and initiative
- Creates reputation as “employer of choice”



HOW TO AVOID A CHARGE OF DISCRIMINATION



**BUT, BEFORE WE ANSWER THE
"HOW" QUESTION, WHAT ABOUT
THE "WHY" QUESTION?**

***"Why should I care if a
charge is filed against my
organization?"***

**AND HOW ABOUT ONE MORE
"WHY" QUESTION BEFORE WE
GET GOING?**



***"WHY DO PEOPLE FILE CHARGES
ANYWAY?"***

MY PERSPECTIVE

- **First, the BAD News**
 - PEOPLE ARE *VERY* SENSITIVE TO **UNFAIRNESS**
 - They have little antennas which detect it – invisible to the naked eye.
- **AND UNFAIRNESS** ALWAYS PROCEEDS THE FILING OF A CHARGE



WORKERS
EXPECT
FAIR
TREATMENT

Repeat to yourself daily

Agree or disagree?

- REALITY IS IRRELEVANT
- WHAT MATTERS IS PERCEPTION

What Makes Employees Unhappy?

- Pay
- Internal Pay Equity
- Benefits programs
- Over-management
- Pay increase guidance for merit
- HR response to employees
- Favoritism
- Communication and Availability
- Workloads are too heavy
- Facility cleanliness

Source: HR Solutions, Inc.

First Key To Avoid a Charge



Develop and Implement Strict Policy
Against Discrimination,
Harassment and Retaliation
In Your Workplace

Second Key To Avoid a Charge



Train Managers and Supervisors
on Policy with Expectation that
Prevention is Their Responsibility

Third Key To Avoid a Charge



Train all Employees

Fourth Key To Avoid a Charge



View Complaints as Opportunities

Fifth Key To Avoid a Charge



Be a Better Receiver of Complaints

Sixth Key To Avoid a Charge



Conduct Investigations Promptly,
Thoroughly and Take Action, if
Needed.

Spare Keys



GOT INTERNAL ADR?

- ADR - ALTERNATIVE DISPUTE RESOLUTION
 - aka - **MEDIATION**
- What is it?...
 - *"...an informal process in which a neutral third party helps opposing parties reach a voluntary, negotiated resolution."*
- Why is it good to have?...
 - One last chance to keep the problem "in house."

"INFORMATION VACUUMS"



■ GET FILLED WITH THE WORST ASSUMPTIONS

- *"I'm not going to give you all of the reasons why we sent Frank for this training instead of you. We just thought he was the better person to send, that's all."*
- *"Look Margaret, you just worry about you, I'll worry about Carol."*

SAYING "SORRY" AIN'T EASY (BUT YOU MIGHT BE SORRY IF YOU DON'T)

■ BUT WHY APOLOGIZE?

- WOULD YOU BELIEVE THAT AN APOLOGY IS *CONSISTENTLY* REQUESTED AS PART OF A SETTLEMENT?

■ BUT HOW DO I DO IT?

- Have the alleged offender do it personally.
- Remember that saying, *"I'm sorry."* packs more punch than, *"I apologize."*
- If nothing else, say: *"I'm sorry that you were offended (or upset) by what happened."*

BREAKING UP IS HARD TO DO (DON'T MAKE IT ANY HARDER)

■ LAYOFF

- LET 'EM KNOW IT'S COMING
- LET 'EM KNOW YOUR CRITERIA

■ TERMINATION

- DO YOU REALLY NEED SECURITY TO WALK HIM OUT THE DOOR?
- CAN'T SHE SAY GOODBYE TO HER CO-WORKERS?



So, why so much concern over
all of this "SOFT STUFF?"

"Those who underestimate the power
of human emotion – will soon feel
its wrath."

■ An anonymous EEOC Investigator

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