

## A Closer Look At The EEOC's 2013 Enforcement and Litigation Statistics

During the 2013 fiscal year (ended September 30, 2013), the U.S. Equal Employment Opportunity Commission (EEOC or Agency) obtained the highest monetary recovery (\$372.1 million) in Agency history through its administrative process. EEOC Chair Jacqueline A. Berrien stated "this work is particularly noteworthy given the extraordinary fiscal constraints and operational challenges in fiscal 2013." According to the Agency's 2013 report, the sequestration caused the agency to furlough its entire workforce for 40 hours, freeze hiring and reduce its budget for litigation, information technology, travel and contracts for services, among other things. By Washington standards, the EEOC budget of just under \$400 million is considered relatively small.

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### *The Number of Charges and Level of Recoveries*

The total of 93,727 charges filed during FY 2013 decreased modestly from the 99,412 charges filed during FY 2012, but is nearly ten percent above the 1997-2012 annual average of 85,373. The 2013 filing total was the fifth highest total number of annual filings since 1997. The number of filings did not exceed 90,000 during any one fiscal year prior to FY 2008, but the annual filing levels have stayed well above 90,000 since that point. The elevated filing levels since FY 2008 suggest that the recent levels are related to the economic downturn. By the same token, it might be assumed that the decline in the number of charges filed during 2013 may reflect the nascent economic recovery.

For the fifth year in a row, allegations of retaliation were the most frequently cited basis for charges of discrimination, both as a matter of number of charges (38,539) and as a percentage of all charges (41.1%). Both the number of charges and percentages represent an increase of retaliation charges in comparison to the previous year.

The second most frequently cited basis for charges of discrimination was race discrimination, which was cited in 33,068 charges, representing 35.3 percent of all charges. The next most frequently cited basis was sex discrimination, including sexual harassment and pregnancy discrimination, which was cited in 27,687 charges (29.5 percent of all charges), followed

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by discrimination based on disability, which was cited in 25,957 charges (27.7 percent). Compared to the 2012 fiscal year, both race and disability discrimination charge filings decreased in absolute numbers, but increased as percentages of all charges.

The states with the highest number of EEOC charges were Texas with 9,068 charges, representing 9.7 percent of all charges filed; Florida with 7,597 charges; California with 6,892 charges; Georgia with 5,162 charges; Illinois with 4,781 charges and North Carolina and Pennsylvania with about 4,400 charges each.

### *Merits Litigation*

During fiscal year 2013, the EEOC filed 131 merits lawsuits alleging discrimination, which represents an increase of about 7% compared to fiscal year 2012. The term “merits suits” includes direct suits and interventions alleging violations of the substantive provisions of the statutes enforced by the Commission and suits to enforce administrative settlements. But while the number of merits suits increased in FY 2013 compared to the prior fiscal year, the number of merits suits is well below historical levels. During the period of 1997 through 2012, the EEOC averaged 323 merits suits per fiscal year, so the number of 2013 merits lawsuit filings is nearly 60% below the historical annual average. The reduced number of merits lawsuit filings seems to be the result of a deliberate strategic shift to reduce the number of individual lawsuits and to increase the number of systemic discrimination cases – that is, to concentrate litigation resources on lawsuits that are likelier to have the most impact on fighting discrimination.

During 2013, the highest number of lawsuits were filed under Title VII of the Civil Rights Act of 1964 (78). The EEOC also filed its first three suits asserting Genetic Information Nondiscrimination Act (GINA) claims in FY 2013.

During fiscal year 2013, the Agency resolved 209 merits lawsuits producing monetary benefits of \$38.6 million. Both figures are down from the 2012 fiscal year, when there were 283 merits suits resolutions producing \$44.2 million in monetary recoveries. The monetary recoveries in fiscal 2013 through merits lawsuits was well below the 1997-2013 annual average of \$86.4 million of monetary recoveries in merits lawsuits.

### ***Substantive statutes that the EEOC enforces:***

- *Title VII of the Civil Rights Act of 1964 (Title VII)*
- *The Americans with Disabilities Act of 1990 (ADA)*
- *The Age Discrimination in Employment Act of 1967 (ADEA)*
- *The Equal Pay Act of 1963 (EPA)*

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*Discussion*

For employers, there are some important time line takeaways from these figures. That is, even though the overall numbers of charges filed decreased, the number of retaliation charges increased. And the overall consequences for employers hit with charges increased to record levels. As a matter of fact, according to findings from the Chubb 2013 Private Company Risk Survey, 25% of those surveyed had an employment practices liability (EPL) related event in the past three (3) years and 45% are concerned about a lawsuit for wrongful termination, sexual harassment, discrimination or retaliation. According to the Chubb survey, the average total cost associated with an EPL event is \$70,267.

The above mentioned trends underscore the importance for employers of developing and maintaining employment programs to keep their operations in compliance with statutory requirements and to take steps to avoid conduct that could trigger allegations of retaliation. In addition to an effective compliance program, well-advised employers will be sure to maintain a well-designed employment practices liability insurance policy procured from a knowledgeable and experienced insurance broker.

### About the Author

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