



EEOC Discrimination Charges and Monetary Relief Obtained Hit Record Highs in 2011

By Tina M. Aiken and Mark R. Busto

The EEOC measures its success by numbers, and according to its annual report, 2011 was a record year. The agency received a record 99,947 charges of discrimination in fiscal year 2011, the highest number of charges in the agency's 46-year history. It also received more than \$364 million in monetary benefits, also the highest level ever obtained. The agency's private sector mediation program also obtained a record level of monetary benefits: more than \$170 million. Overall, the agency obtained both monetary and non-monetary benefits for more than 19,570 people through administrative enforcement activities – mediation, settlements, conciliations and withdrawals with benefits.

Employers should expect more of the same in 2012 – more charges and more pressure from the EEOC to provide monetary benefits to the charging parties.

Statutory Basis of the Claims. In fiscal year 2011, the EEOC filed 261 merits lawsuits, including 177 individual suits, 61 multiple-victim suits (with fewer than 20 victims) and 23 systemic suits. Of these new filings, 162 contained Title VII claims, 80 contained Americans with Disability Act (ADA) claims, 26 contained Age Discrimination in Employment Act (ADEA) claims, and 2 contained Equal Pay Act (EPA) claims. (The total number of merits lawsuits is less than the sum of the suits based on each individual statute as some suits are filed under multiple statutes.) The agency resolved 277 merits lawsuits, for a total monetary recovery of \$90.9 million. In terms of dollars recovered in direct, indirect and intervention lawsuits by statute, the EEOC recovered \$54.3 million in Title VII resolutions, \$8.4 million in ADEA resolutions, \$27.1 million in ADA resolutions, and \$1.1 million in resolutions involving more than one statute. According to the EEOC's 2012 budget justification, the Commission expects to file 270 enforcement suits in fiscal year 2012.

EEOC-Initiated Activity Also Up. In addition to these record-breaking numbers, there has been a steady increase in the number of Commissioner charges (charges initiated by the EEOC rather than by a complainant) to investigate systemic discrimination. This is likely occurring because the agency has made investigating and litigating cases involving systemic discrimination a top priority. Systemic discrimination involves a pattern or practice, policy, or class case where the alleged discrimination has a broad impact on an industry, profession, company or geographic area. At the end of fiscal year 2011, the EEOC was working on 580 systemic investigations, involving more than 2,067 charges. During the year, EEOC field offices completed work on 235 systemic investigations resulting in 35 settlements or conciliation agreements, recovering \$9.6 million. In addition, cause findings were issued in 96 systemic investigations. Those that were not resolved in conciliation were referred to field legal divisions for consideration of litigation. According to the EEOC's 2012 budget justification, based on the large volume of systemic charges currently in investigation, the agency expects the quantity of systemic lawsuits to steadily increase into 2012 and beyond.

What Does This Mean for Employers? As the EEOC's annual report demonstrates, employers need to take EEOC charges of discrimination seriously. Not only does the EEOC intend to expose improper employment practices and discriminatory work environments, the agency also seeks to generate publicity, as can be seen from its website's Newsroom releases, as well as recover significant settlement dollars or a large verdict at trial. Our anecdotal experience suggests that the EEOC's apparent goal of securing ever-increasing monetary settlements and awards for charging parties is sometimes at odds with its responsibility to investigate charges impartially and to dismiss charges outright if they have no reasonable basis. As a result, employers must take EEOC charges very seriously, investigate them carefully and respond to them fully and aggressively.

We fully anticipate that the EEOC will continue to actively investigate and litigate charges of discrimination in 2012. The EEOC will place pressure on employers to timely respond to discrimination charges and, as a result of the agency not meeting its targeted number of resolved charges within 180 days or less, employers may not be granted extensions when responding to charges and may be given less time to respond to requests for information. As a preventive measure, employers should also reexamine their practices used to recruit, hire, promote, train, discipline and retain employees to ensure compliance with all applicable employment laws. Don't hesitate to call if you need help!

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