

Managing Employee Lawsuits

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Preventing the Lawsuit

- Education of both employees and supervisors



Employees Must Know Their Rights and Obligations

- The employee handbook is essential
- Acknowledgment may or may not be a contract
- Solving that problem



Educating Supervisors

- Document the investigation and undertake any appropriate remedial action
- If it is not in writing, it did not happen

SHIFTING THE RISK

EPL Policies

D&O Policies

- Limitations and exclusions

EEOC MISSION STATEMENT

- The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

EEOC Statistics

	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Receipts	27,356	27,270	26,777	26,756	26,820	27,893
Resolutions	29,687	31,990	30,501	27,537	25,791	28,642
Resolutions by Type						
Settlements	2,853 9.6%	3,127 9.8%	2,906 9.5%	2,656 9.6%	2,351 9.1%	2,627 9.2%
Withdrawals w/Benefits	1,652 5.6%	1,648 5.2%	1,652 5.4%	1,725 6.3%	1,667 6.5%	1,860 6.5%
Administrative Closures	5,607 18.9%	5,844 18.3%	5,132 16.8%	4,777 17.3%	4,877 18.9%	5,258 18.4%
No Reasonable Cause	17,316 58.3%	19,696 61.6%	19,331 63.4%	17,144 62.3%	15,977 61.9%	17,866 62.4%
Reasonable Cause	2,259 7.6%	1,675 5.2%	1,480 4.9%	1,235 4.5%	919 3.6%	1,031 3.6%
Successful Conciliations	523 1.8%	458 1.4%	482 1.6%	488 1.8%	326 1.3%	398 1.4%
Unsuccessful Conciliations	1,736 5.8%	1,217 3.8%	998 3.3%	747 2.7%	593 2.3%	633 2.2%
Merit Resolutions	6,764 22.8%	6,450 20.2%	6,038 19.8%	5,616 20.4%	4,937 19.1%	5,518 19.3%
Monetary Benefits (Millions)	\$118.7	\$118.5	\$113.0	\$129.1	\$93.9	\$125.5

Where to File

- Federal Court
- State Court
- Arbitration Clauses Under Attack

Preparing for the Litigation

- Conduct your own internal investigation so you know what to expect
- There are no good surprises
- Spoliation leads to the presumption that you have something to hide

Discovery

- Exchange of documents can be voluminous
- Depositions
 - Key management personnel
 - Non-managerial employees
 - Disgruntled former employees



Depositions

- Preparation is critical
- Employees must remember they are on the record
- The other side will likely have already talked to the key employees in the investigation phase

Resolution

- Trial – very public and costly; opportunity cost
- Settlement
 - Confidentiality and Enforcement
 - Public Consent Decree
- Remedial measures beyond money

