

Out of the Frying Pan, into the Fire: Let the Litigation Commence

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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 Litigation Statistics, FY 1997 through 2014

| | FY 1997 | FY 1998 | FY 1999 | FY 2000 | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|-----------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| All Suits Filed | 332 | 414 | 465 | 329 | 428 | 370 | 400 | 421 | 416 | 403 | 362 | 325 | 314 | 271 | 300 | 155 | 148 | 167 |

| | FY 1997 | FY 1998 | FY 1999 | FY 2000 | FY 2001 | FY 2002 | FY 2003 | FY 2004 | FY 2005 | FY 2006 | FY 2007 | FY 2008 | FY 2009 | FY 2010 | FY 2011 | FY 2012 | FY 2013 | FY 2014 |
|------------------------------------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|---------|
| Monetary Benefits (\$ in millions) | 114.7 | 95.6 | 98.7 | 52.2 | 49.8 | 56.2 | 146.6 | 168.6 | 104.8 | 44.3 | 54.8 | 102.2 | 82.1 | 85.1 | 91.0 | 44.2 | 38.6 | 22.5 |

The Laws

- Americans with Disabilities Act
- Title VII – Civil Rights Act of 1964
- Age Discrimination Employment Act
- Pregnancy Discrimination Act
- Equal Pay Act of 1963
- Genetic Information Nondiscrimination Act of 2008

Factors in Determining to Bring Suit

- Severity of Offense
- Frequency of Offense
- Systemic Discrimination
- Broader Impact of Discrimination

Before Litigation Even Starts

- Preserve all documents and data
- Save/Isolate Emails and Hard Drives
- Spoliation – 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
- EEOC will likely have already talked to the key employees in the investigation phase

Resolution

- Trial – very public
- Settlement
 - Confidentiality
 - Public Consent Decree
- Remedial measures beyond money