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Corporate Counsel magazine named Allen Matkins a "Go-To" law firm for labor and employment.

#### About Allen Matkins

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## Empirical Employment Discrimination Trends

The [UCLA-RAND Center for Law and Public Policy](#) recently completed a study of employment discrimination claims filed under the [California Fair Employment and Housing Act](#). Coupled with statistics independently available from the [U.S. Equal Employment Opportunity Commission](#) and the [California Department of Fair Employment and Housing](#), the study provides hard data on emerging employment discrimination trends, including the following:

- Not surprisingly, California remains one of the highest-filing states in the country. On a national basis, about one out of every five employment discrimination complaints is filed in California.
- California has experienced a significantly higher percentage of disability discrimination claims than in the rest of the country (36.4% of total complaints filed vs. the 23% national average).
- Age discrimination complaints, which are up nationally by about 28% in just the last five years, currently represent 19.5% of all employment discrimination complaints filed in California.
- The EEOC reports that retaliation complaints have increased dramatically. They now account for over 30% of the total in California.

Moving from numbers to dollars, the study concluded that although plaintiff and defense jury verdicts were split evenly, "[m]edian jury verdicts varied substantially by the alleged basis of discrimination." Race (\$105,000), Sex (\$177,000), Age (\$180,597), and Disability (\$233,288).

Finally, the study concluded that the estimated median cost of defending an employment discrimination case by private counsel through trial is \$150,000. Even winning at the summary judgment stage is expensive for employers, estimated at \$75,000. Of course, these are estimates based on limited surveys, and employment litigation cases vary significantly in complexity.

### How is this study useful to employers?

Statistical data such as this can be useful to employers in several respects. First, in order to not become a statistic, employers must continuously update their personnel policies to ensure that their human resources personnel are trained and engage in best practices. For example, the disability claims being filed suggest that California employers are often accused of (i) blurring

the critical distinctions between the family/medical leave laws and the disability laws, (ii) not engaging in the legally-required "interactive process" when evaluating a request for an accommodation, and (iii) targeting employees who take a protected leave of absence.

Second, the costs of defending an employment discrimination claim (even successfully) suggest that early economic evaluation is critical in every case. Otherwise, even settlement becomes a lose-lose proposition. While the study points out that some employers have purchased EPLI (employment practices liability insurance) with the goal of offsetting some of these costs, many employers have concluded that EPLI is not a panacea. Oftentimes such policies cover only a limited portion of the claims asserted and at heavily discounted attorneys' fees rates. In addition, depending upon the policy, the EPLI carrier can direct both litigation strategy and settlement, taking important decisions away from those who will be most impacted -- employers. In many cases, a high self-insured retention, coupled with a choice-of-counsel endorsement, may provide the best protection for the employer.

Finally, employers should consider implementing binding arbitration as a means to reduce both defense costs and litigation exposure. There are both pros and cons to arbitration (one of the negatives is that the employer must pay for the arbitrator's services, which can run several thousand dollars a day), and an alternative dispute resolution policy must be evaluated on an employer-by-employer basis.

Studies such as this one by the UCLA-RAND Center provide valuable, empirical data that smart employers will evaluate to limit their exposure to employment discrimination claims.

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