

2009: Year of the EEOC?

Discrimination Charges Reach Record Highs and Payouts Total Over \$376 Million

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At the end of 2009, while most government agencies looked back at a year of decreased resources, stretched budgets and limited success, the U.S. Equal Employment Opportunity Commission ("the EEOC") celebrated one of its best years ever. Of course, "best" is in the eye of the beholder. 2009 was not a great year at the EEOC for employers.

93,277 workplace discrimination charges were filed with the EEOC during 2009, the second highest level ever, and monetary relief for victims totaled more than \$376 million. The 2009 data shows that discrimination charges based on disability, religion, national origin and age hit record highs. Continuing a decade-long trend, the most frequently filed charges alleged discrimination based on race (36%), retaliation (36%), and sex-based discrimination (30%).

Though it is unclear whether this data reflects an increasingly successful federal agency or an increasingly hostile employment environment, the numbers come alive in a number of recent discrimination suit settlements.

For example, in December of 2009, Outback Steakhouse, Ralph Schomp Automotive and Riverstone Residential all experienced the sting of major discrimination claim settlements.

"Cute girls should work in the front." "Women managers let down and lose focus when they have children." These statements, among others, resulted in Outback Steakhouse paying a \$19 million settlement to victims of sex discrimination. In addition to the monetary damages, Outback agreed to a multi-faceted compliance program, including establishment of an online application system, creation of a new human resources position, employment of an outside consultant, and systematic reporting to the EEOC.

Facing charges of sex and age discrimination, the Colorado car dealership of Ralph Schomp Automotive settled with the EEOC for \$1.5 million and a similar compliance program, agreeing to post its anti-discrimination policy, provide anti-discrimination training, and systematically report to the EEOC. According to the lawsuit, five female employees were victims of offensive verbal comments and physical touching, demotion, refusal to transfer, salary reduction and failure to promote. In addition, the EEOC alleged that five older male employees were subjected to age-related comments prior to being terminated and replaced with younger, less experienced workers.

Finally, without even bothering to hire an attorney or to answer the complaint, Riverstone Residential, SW, LLC, an Arizona property management firm, settled a disability discrimination suit with the EEOC for

\$30,000. The firm had been charged with unlawfully denying an employee disability accommodation, when the employee requested time off for treatment of his bipolar disorder, and unlawfully terminating the employee, when the employee informed the firm that he had been involuntarily hospitalized.

Again, it is unclear why discrimination charges are at a near-historic level. It could be due to multiple factors, including greater accessibility of the EEOC to the public, economic conditions, increased diversity and demographic shifts in the labor force, employees' greater awareness of the legal rights, and changes made to simplify the agency's intake process. Whatever it is, employers need to be aware that we are facing another year of increasing discrimination claims. With that knowledge comes the ability to prepare an ongoing defense through successful training of managers, implementation of effective policies, and conscious awareness of the workplace environment.