

## EEOC Receives Record Number of Charges of Discrimination for the Second Year in a Row

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According to a U.S. Equal Employment Opportunity Commission (EEOC) press release, the EEOC received a record number of private sector charges of employment discrimination in fiscal year 2011. This marks the second year in a row that charges of discrimination filed with the EEOC hit an all-time high.

The EEOC received a total of 99,947 charges of discrimination in fiscal year 2011, a slight increase from the year before. Like in fiscal year 2010, charges alleging retaliation were the most numerous, representing 37.4 percent of all charges filed. Charges of race discrimination followed, with 35,395 charges representing 35.4 percent of the total charges filed.

In fiscal year 2011, the EEOC filed 300 lawsuits and 261 “merits” lawsuits, which include direct suits and interventions alleging violations of the substantive provisions of the statutes enforced by the EEOC and suits to enforce administrative settlements.

As these statistics demonstrate, adverse actions taken by employers, such as terminations, demotions, pay decreases, and certain transfers, are increasingly likely to result in a charge of discrimination or litigation. More and more often, those charges and lawsuits are based on claims of retaliation. Under the laws enforced by the EEOC, including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Age Discrimination in Employment Act, an employer may not retaliate against an employee because he or she engaged in protected activity under these statutes. Protected activity could include filing a charge of discrimination with the EEOC, making a good faith complaint to an employer about discrimination on the job, or participating in an employment discrimination proceeding (such as an investigation or lawsuit). Employers should therefore be aware that they are exposed to a heightened

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risk of litigation if adverse action is taken against an employee who has previously complained about alleged discrimination or other alleged unlawful employment practices.

To help defend against the increasing claims of discrimination and retaliation, employers are encouraged to review their anti-discrimination policies with managers and staff, ensure that there is an appropriate reporting procedure for complaints, and train managers to properly respond to complaints of discrimination. Just as important, an employer should carefully analyze the reasons and facts surrounding any adverse action it plans to take against an employee to ensure that it can articulate and prove the legitimate lawful business reasons for the action.

The fiscal year 2011 enforcement and litigation statistics are available on the EEOC's website at <http://www.eeoc.gov/eeoc/statistics/enforcement/index.cfm>.

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