

Employment Law Litigation Goes Through the Roof

By Larry Bodine, Esq. of Glen Ellyn, IL. He is a business developer with 18 years experience who helps exclusively law firm attract and keep more clients. He can be reached at 630.942.0977 and www.ApolloBusinessDevelopment.com.



Larry Bodine

Discrimination claims filed with the [U.S. Equal Employment Opportunity Commission](#) last year rose to the highest in the agency's 44-year history, after a Supreme Court ruling that changed the way complaints may be filed. This area of practice has been building all year. See [Law Firm Marketing Should Focus on Employment Law](#)

A record 95,402 claims were filed during the year ended Sept. 30, the EEOC said. That was 15% more than in 2007. According to the [a press release](#):

- 25.8% of claims filed contained an allegation of age discrimination.
- 34.3% of the filings included complaints of retaliation.
- 35.6% included claims of race discrimination.

“The EEOC has not seen an increase of this magnitude in charges filed for many years,” acting agency Chairman Stuart Ishimaru said in a statement today. “While we do not know if it signifies a trend, it is clear that employment discrimination remains a persistent problem.”



Jacqueline A. Berrien

Lawyers and clients can count on more assertive enforcement actions by the EEOC now that President Obama picked Jacqueline A. Berrien, a lawyer with the NAACP Legal Defense and Educational Fund, to head the Equal Employment Opportunity Commission. The President praised Berrien's “passion and leadership” and expressed confidence in her ability to eradicate discrimination in the workplace. Berrien, a Harvard Law School graduate, previously worked at the American Civil Liberties Union, the Ford Foundation's Peace and Social Justice Program and the Lawyers' Committee for Civil Rights

According to the FY 2008 data, all major categories of charge filings in the private sector (which includes charges filed against state and local governments) increased. Charges based on age and retaliation saw the largest annual increases, while allegations based on race, sex and retaliation continued as the most frequently filed charges. The surge in charge filings may be due to multiple factors, including:

- Economic conditions
- Increased diversity and demographic shifts in the labor force
- Employees' greater awareness of the law
- The EEOC's focus on systemic litigation
- Changes to EEOC's intake practices.

The FY 2008 data also show that the EEOC filed 290 lawsuits, resolved 339 lawsuits, and resolved 81,081 private sector charges. Through its combined enforcement, mediation and litigation programs, the EEOC recovered approximately \$376 million in monetary relief for thousands of discrimination victims and obtained significant remedial relief from employers to promote inclusive and discrimination-free workplaces. The increase may be attributable to economic conditions, demographic changes in workplaces and changes to the way claims are filed, Ishimaru said.

Big fees and verdicts

The surge in age-related claims signifies that layoffs caused by the U.S. recession have started to affect workers with seniority. Several recent EEOC claims have settled for between \$350,000-\$800,000 and an additional \$130,000 - \$150,000 in attorney fees, according to [Michelle Binks](#), a Chicago human resources examiner.

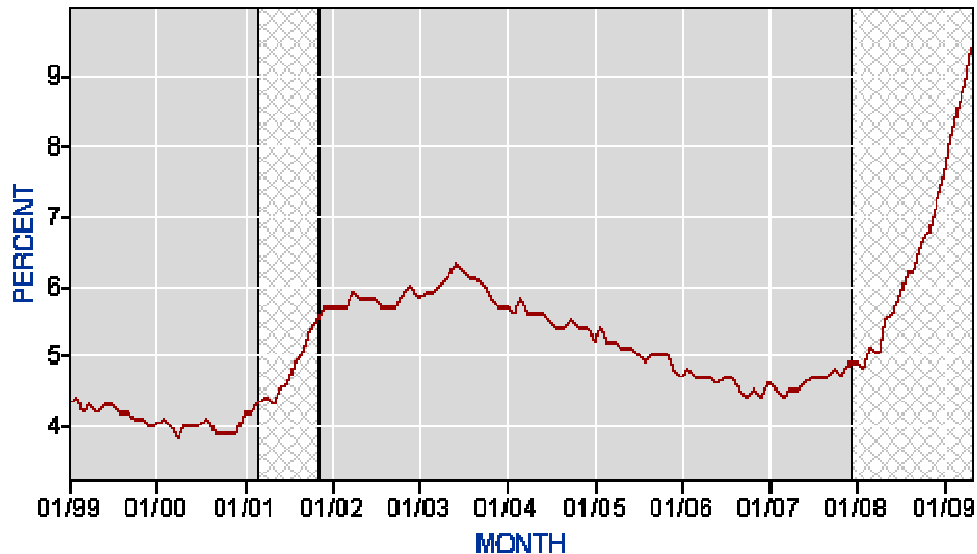
"Due to the economic times, many employers are laying off senior staff. Why? Because they tend to be the highest paid individuals. Replacing someone with a junior staff member is not a defensible reason for laying someone off, that's looked upon as termination (and in many cases age discrimination)," Binks said.

Employment lawsuits in general are producing monster verdicts. Paul Thomas Chester was fired by iFreedom Communications, a provider of VoIP and WiFi technology, as its Chief Marketing officer. A Los Angeles County Superior Court issued [a \\$4.1 billion judgment](#) confirming a JAMS arbitration award on June 2 because he was entitled to unpaid salary, commissions, travel expenses, compensation for unissued company stock and unreturned intellectual property. The defendants were liable for statutory penalties, interest, attorney's fees, and punitive damages equal to three times the compensatory award.

"The company was earning tons of money, much of it due to Chester -- and it refused to pay him what he was clearly entitled to receive. They also lied to him and stole from him. It's pretty simple stuff with very large numbers," said employee rights lawyer [Ellen Simon](#).

Claim	FY 2008	%
Race	33,937	35.6%
Sex	28,372	29.7%
National Origin	10,601	11.1%
Religion	3,273	3.4%
Retaliation - All Statutes	32,690	34.3%
Retaliation - Title VII only	28,698	30.1%
Age	24,582	25.8%
Disability	19,453	20.4%
Equal Pay Act	954	1.0%
Total Charges	95,402	100%

Unemployment rate (seasonally adjusted)



Note: Cross-hatched area represents recession.

100,000 claims

“It’s possible we have yet to see the full impact of the recession on discrimination charge filings as the economy continues to spiral downward since fiscal year 2008.” In short, it looks like we may be headed toward another record-breaking year in which more than 100,000 workers file discrimination charges,” said EEOC spokesperson David Grinberg.

Employees who in the past might not have filed employment claims are less reluctant in the current recession. Consider that:

- The unemployment rate, calculated using a survey of households as opposed to companies, has increased to **9.5%**, the highest level since August 1983. Nonfarm payrolls fell by 467,000 in June 2009, according to the U.S. Labor Department. The unexpectedly large drop came amid widespread declines across manufacturing, construction and professional services.
- **14.5** million people were unemployed as of May 2009.
- In May, employers took 2,933 [mass layoff actions involving 312,880 workers](#). Mass layoff events and initial claims rose to their highest levels on record.
- Over the year, manufacturing layoff events and initial unemployment claims more than doubled. Thirty states reached program highs for May average weekly initial claims.

“What has to be driving it is the economy with the loss of jobs and the unemployment statistics we’ve been seeing,” said Michael Hannafan, a Chicago plaintiffs’ attorney.
“People are desperate, more desperate, to keep their jobs.”