

Friday, January 15, 2010

Labor and Employment Update: EEOC Discrimination Claims Stay at Record High in 2009

By Lori A. Higuera and Bruna E. Pedrini

In the midst of an economic downturn that has fueled surges of lay-offs and motivated employers to be even more selective in which candidates they hire, the Equal Employment Opportunity Commission (EEOC) has just released its 2009 statistics on workplace discrimination charges. The statistics confirm that employment discrimination claims remain at record high levels. The Commission also reported that it filed over 314 lawsuits in 2009 against employers, in which it collected over 82.1 million dollars in monetary damages. The EEOC collected an additional \$294 million from employers through enforcement and mediation programs.

In total, there were 93,277 charges filed with the EEOC in 2009, down just slightly from 2008. Race and sex discrimination continue to represent a significant percentage of the total charges filed, with 36% of the charges alleging race discrimination and 30% alleging sex discrimination. In reaching a new height, however, the number of retaliation claims (33,613) surpassed the number of race discrimination claims filed (33,579), making retaliation the most frequently cited form of discrimination in EEOC charges.

The Commission also received a record high number of charges alleging national origin discrimination (11,134 or 12%), religious discrimination (3,386 or 3.6%), and disability discrimination (21,451 or 23%). Disability discrimination charges represent the most dramatic increase, showing a rise of 10% over 2008. Presumably this increase in disability discrimination charges is due to the employee-friendly changes brought to life in the Americans with Disabilities Act Amendments Act of 2008 (ADAAA), which took effect January 1, 2009. Indeed, disability enforcement suits brought by the EEOC, which included an ADA claim, more than doubled from 2008 to 2009. The monetary relief obtained in ADA actions is nearly three times higher than it was one year ago.

Record unemployment has changed the demographic composition of those seeking employment and has created a very competitive job market. Tracking this trend, age discrimination claims (22,778 or 24.4%) continue to be very high and are the second highest ever, second only to 2008.

Responding to the 2009 statistics, the Acting Chairman of the EEOC warned that "[e]mployers must step up their efforts to foster discrimination-free and inclusive workplaces, or risk enforcement and litigation by the EEOC." Employers are wise to heed this advice, as the EEOC is expected to receive increased funding and to increase the number of investigators and attorneys on staff in order to strengthen its enforcement goals.

The message here is that employers can expect individuals to continue filing discrimination charges at record levels. In order to protect themselves from such charges, employers are well advised to be proactive. Employers should have in place an effective anti-discrimination policy that is distributed to all employees.

quick links

- [Labor and Employment Practice](#)
- [Unsubscribe](#)
- [Acrobat Reader](#)

Phoenix
3003 N. Central Ave.
Suite 2600
Phoenix, AZ 85012
(602) 916-5000

Tucson
One S. Church Ave.
Suite 1000
Tucson, AZ 85701
(520) 879-6800

Nogales
420 W. Mariposa Rd.
Suite 200
Nogales, AZ 85621
(520) 281-3480

Las Vegas
300 S. Fourth St.
Suite 1400
Las Vegas, NV 89101
(702) 692-8000

Denver
1700 Lincoln
Suite 2900
Denver, CO 80203
(303) 291-3200

In addition, employers should provide effective training to their employees on such policies at least annually. Taking these measures will not only help employers to create and maintain a productive workplace; taking these measures also may save employers significant money in unnecessary defense costs and monetary damages by avoiding EEOC charges in the first place or, if presented, providing a strong defense.

If your company needs assistance reviewing its current employment policies, creating new employment policies, training its employees on the policies, or any other employment-related matter, please call us.

Lori A. Higuera is a director in the Litigation Section and a member of the Labor and Employment, School Law and Commercial Litigation practice groups. She represents employers in arbitration, mediation, internal and external investigations, litigation, and administrative proceedings involving the EEOC, NLRB, DOL and other governmental agencies. She regularly counsels employers on personnel policies, restrictive covenants, employee disability issues, drug/alcohol testing, and wage and hour issues. She has significant experience defending employers against allegations of unfair labor practices, employment discrimination, breach of contract, wrongful discharge and employment-related torts. She regularly drafts and reviews offer letters, employment agreements, independent contractor agreements, confidentiality agreements, non-competition and non-solicitation agreements, as well as separation agreements. Ms. Higuera is a frequent speaker and trainer, regularly giving presentations to lawyers and employers on various issues related to employment law. She earned her B.A. (1992) from the University of Arizona and her J.D. (1996) from the University of Chicago.

Bruna E. Pedrini practices in the areas of employment, fair housing, the Americans with Disabilities Act, public accommodations, accessibility construction, alternative dispute resolution and school law. For more than 15 years, she has represented a wide range of clients in sexual harassment, employment, retaliation, fair housing, disability and accessibility complaints from the Equal Employment Opportunity Commission. Ms. Pedrini served as the chief counsel of the Civil Rights and Conflict Resolution Section for the state Attorney General's Office. Ms. Pedrini also counsels employers on employee discipline, accommodation of disabled individuals, leaves of absence, workplace violence, and other human resource policies and procedures. She has conducted compliance reviews of employee handbooks and human resources and EEO investigations, as well as provided trainings on various topics to managers and employees. She earned her B.A. (1981) from the University of Iowa and her J.D. (1987) from the University of Minnesota.



Lori A. Higuera
Director
602.916.5387
lhiguera@fclaw.com



Bruna E. Pedrini
Of Counsel
602.916.5487
bpedrini@fclaw.com