

EEOC INVESTIGATIONS



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The EEOC

- The Equal Employment Opportunity Commission (“EEOC”) is an independent federal agency created by Congress in 1964 to eradicate discrimination in employment.
- The EEOC wields great power and broad discretion in achieving the goal of eradicating discrimination in employment.

Purpose of the EEOC

- ❑ The development of regulations and policy guidance to promote equal employment opportunity in the workplace, training and technical assistance, outreach, and educational programs.
- ❑ To investigate claims of discrimination to determine whether discrimination has occurred.

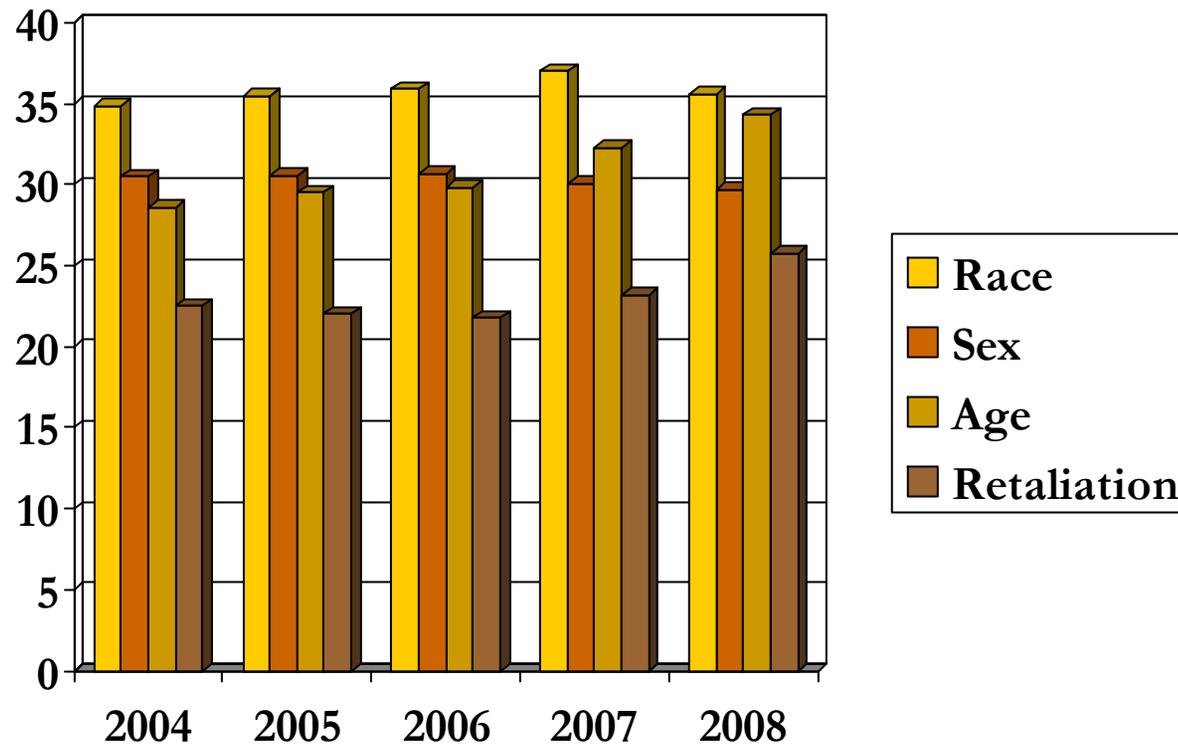
EEOC Enforcement

- The EEOC enforces and investigates claims in the following areas:
 - Title VII of the Civil Rights Act
 - Equal Pay Act of 1963
 - Age Discrimination in Employment Act of 1967 (ADEA)
 - Rehabilitation Act of 1973, Sections 501 and 505
 - Titles I and V of the Americans with Disabilities Act of 1990 (ADA)
 - Civil Rights Act of 1991

2008 EEOC Charge Statistics

- Total Charges in 2008
 - 95,402. This represents an increase of 15.2% over 2007; and
 - A 26.5% increase in 4 years!

EEOC Charge Statistics



Cost associated with Discrimination claims & lawsuits

- Cumulative cost for a company to defend a single lawsuit:
 - \$10,000, when settled at filing of suit;
 - \$100,000 when case is resolved by summary judgment or other pretrial ruling;
 - \$175,000 at the start of trial;
 - \$250,000 if trial won by Plaintiff; and
 - THIS DOESN'T INCLUDE PLAINTIFF'S ATTORNEY FEES!

EEOC Process

- The EEOC investigation is commenced by the filing of a charge of discrimination.
 - No Presumed guilt
 - The charge will provide information explaining the allegations, the unlawful employment practice, who is involved, and what law(s) are involved.
 - Executed by the charging party.

EEOC Process

- Following the charge, the EEOC will notify the Employer of the charge.
 - Generally a copy of the charge
 - Title VII and the ADA require notification within ten (10) days; however, this is often difficult given the voluminous number of charges.
 - Delayed notice is not a defense in most cases

EEOC Process

- Employer is usually “invited” to participate in mediation at the outset of the investigation process.
- EEOC will also issue a “Request for Information” to “facilitate the prompt resolution of this charge”.
 - Correct name and address
 - Number of employees
 - Organizational chart or statement
 - Written Position Statement on EACH allegation, supported by documentation or written statements if available
 - Copy of each written rule, policy or procedure relevant to the allegations.
 - Personnel file of charging party and those identified in the charge

EEOC Process

- ❑ EEOC may ask for an on-site visit
- ❑ EEOC may issue subpoena for certain documents if the EEOC believes the employer has not been forthcoming
- ❑ Witness interviews
 - Phone or in person
 - An attorney or Employer representative can be present for management interviews.
 - **HOWEVER**, the EEOC may interview non-management employees without your permission, knowledge, and outside of your presence!!!

EEOC Process – Employer Response

- Position Statement – Take this SERIOUSLY - this is the employer's first opportunity to tell your side of the story. First impressions are critical.
 - Describe who the employer is and what the employer does.
 - Provide background information
 - description of the employee's job duties, the department in which the employee works and other pertinent information relating to the employee's position.
 - Provide copies of relevant portions of handbook, an explanation of the company's policies and procedures, and a signed copy of the acknowledgement by the employee.
 - Respond to each allegation by providing the factual circumstances and give the complete story
 - Who investigated, who involved, what learned.
 - Specifically identify what supports the employer's position that the conduct was not unlawful.
 - Provide any other relevant supporting documentation.

Employer Practices before Response

- Review the charge
- Notify legal counsel and HR
- Review the law(s) involved and your handbook
- Set plan of action
- Review the charging employee's personnel file
- Investigate
 - if this is first knowledge - IMMEDIATELY
 - Advise those who participated in investigation and witnesses not to discuss
 - Discuss anti-retaliation
- Roundtable with HR, Legal and determine position statement

Preparing for the EEOC Investigation

- Know what your employees are going to say!
 - Discuss with each employee in private. Explain/Review anti-retaliation policy. Consider attorney-client privilege by having attorney present.
 - Signed statement? Affidavit?
- Prepare each employee for the interview.

Preparing for the EEOC On-site Investigation

- ❑ Generally considered to indicate greater interest on the part of the EEOC.
- ❑ May ask questions about things not being charged, but seen.
- ❑ Examination of the workplace
- ❑ Cooperate with the investigator, but attempt to limit the scope to the allegations contained in the charge.
- ❑ Prepare a comfortable interview environment for the investigator and the witnesses.

EEOC Conferences

- Fact Finding Conference
- Mediation Conference
 - Evaluate findings of fact, if any, and the exposure

EEOC Decision

□ Conciliation

- The EEOC is required to attempt to resolve findings of discrimination through "informal methods of conference, conciliation, and persuasion."
- After the parties have been informed by letter that the evidence gathered during the investigation establishes "reasonable cause" to believe that discrimination occurred, the parties will be invited to participate in conciliation discussions.
- During conciliation, your investigator will work with the employer and the Charging Party to develop an appropriate remedy for the discrimination.

EEOC Decision

- EEOC can file suit
- Dismissal and Notice of Right to Sue
 - Fail to state a claim
 - Not timely filed
 - Unable to conclude information established violation of the statute
 - Other....
 - Must file suit within NINETY (90) days, unless under the Equal Pay Act (2 or 3 years)