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Bias Charges Up Sharply As Settlements on the Rise

According to a recent press release by the United States Equal Employment Opportunity Commission ("EEOC"), discrimination charges are at their highest level in five years. Moreover, in fiscal year 2007, the agency obtained \$345 million in settlements on behalf of purported job bias victims. Employers are concerned about this trend.

According to the EEOC, they received in excess of 82,000 private sector discrimination charges filings last year. EEOC notes that this is the highest volume of incoming charges since 2002, and the largest annual increase (9%) since the early 1990's.

Also notable is that claims of workplace retaliation were now the second highest charge category (behind race). This is a historical first, surpassing sex-based charges in total filings. Historically, race has been the most frequently filed charge since the EEOC became operational in 1965.

Some other notable trends:

- Pregnancy charges surged to a record high level, as did sexual harassment filings;

- A record 16% of sexual harassment charges were filed by men, up from 9% in the early 1990's; and

- EEOC resolved a record number of charges through its internal mediation program. Indeed, according to EEOC's statistics, more than 96% of the participants in an EEOC mediation were satisfied with the outcome (including employers).

EEOC chairperson Naomi Earp was quoted as saying that "corporate America needs to do a better job of proactively preventing discrimination and addressing complaints promptly and effectively". Earp also stated that "to insure that equality of opportunity becomes a reality in the 21st century workplace, employers need to place a premium on fostering inclusive and discrimination free work environments for all individuals".

The California Department of Fair Employment and Housing, which is California's own job bias agency, has seen a dramatic upward trend in job bias filings as well.



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The state's job bias statute applies to any employer with 5 or more employees. And, the anti-harassment provisions of the state law apply where a company has just one employee. When these cases go to court, the employee can collect damages for lost wages in the event of a termination or if the employee claims he or she had to quit due to intolerable working conditions. In addition, the employee can obtain reimbursement for any medical bills and can collect emotional distress damages as well. If the employee wins, the court will award attorneys' fees (meaning the company will pay both its lawyers and the lawyers representing the employee).

With so much at stake, proactive employers will want to insure that their company does not become another agency statistic. Toward that end, this means that you should consider doing the following:

- Review your employee handbook to insure you have an up to date anti-discrimination policy.

- Consider adding a discussion of this important policy in new-hire orientation and have employees acknowledge receipt of this information in writing.

- Be sure you have posted all of the required EEO and other labor law compliance postings.

- Train managers on the importance of EEO compliance and the many ways that seemingly innocent behavior can form the basis of an EEO complaint.

- Implement an internal problem solving procedure which enables employees to effectively address EEO and other employment matters.

- Take immediate action when a complaint is made. Investigate what happened promptly and fix the problem, if at all possible. This might include disciplining the offender(s). In severe cases, termination may be warranted. You may also want to reaffirm your Company's strong stance on the issue to the rest of your staff and retrain managers who are the subject of the complaint.

- Keep good records of what you do because memories fade over time. Also, state law creates an independent duty to investigate and remedy job bias complaints. It's a good idea to document all of the steps you take.

- Don't go it alone. If you don't have expert Human Resources help on staff, get help from an experienced labor law attorney who can guide you through the many nuances of the law.

- Make sure you have records demonstrating that you have put all of your supervisors through the state's mandatory sexual harassment training.

- Talk to your insurance broker about purchasing Employment Practices Liability Insurance. There are many choices and coverages to choose from. Many policies will allow you to use your own labor attorney if you cover this up front during the application process.

There is no doubt that the state's labor laws are getting tougher and tougher to follow. However, there are many steps you can take now to minimize the chances that you will ever be sued for job bias. Also, there is no doubt that compliance is good business. Employers who maintain a professional work environment routinely report that they have a more satisfied and motivated workforce.

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