



# 2017 EEOC Statistics

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The Equal Employment Opportunity Commission (the “EEOC”) has released certain statistics relating to the types and number of Charges of Discrimination (“Charges”) filed with the Commission during Fiscal Year 2017. The statistics reveal several interesting trends while reinforcing patterns that remain remarkably consistent.

## Retaliation Claims Continue to Rise; Harassment Claims Do Not

To begin, in a continuing trend, statistics show that retaliation claims are increasingly prevalent in Charges handled by the EEOC. For the ninth time in the last eleven years, the EEOC reported resolving more retaliation claims than it had in the preceding year.

For example, in Fiscal Year 2017, 48.8% of all new Charges filed with the EEOC contained a retaliation allegation. This represents only a modest increase from the 2016 number of 45.9%. The long-term trend in retaliation claims, however, is more significant. Two decades ago, in 1997, retaliation allegations appeared in only 22.6% of new Charges.

While the total number of new Charges filed with the EEOC fluctuates from year to year—often mirroring the general state of the economy—the percentage of allegations under different theories of discrimination has, for the most part, remained remarkably consistent. Only disability discrimination and retaliation allegations appear on a significantly larger share of new EEOC Charges in 2017 than they did in 1997. Further, the growth in retaliation Charges over that timeframe dwarfs the growth in disability Charges.

While prominent in the news, the number of new Charges alleging sexual harassment has recently remained steady. There were approximately 1,000 fewer sexual harassment Charges filed with the EEOC in 2017 than in 2010, when the EEOC started releasing harassment-specific data. The number of sex-harassment based Charges has remained between 6,750 and 7,000 in each of the last four years. Generally, sex-based discrimination has appeared on roughly one-third of all newly filed EEOC Charges each year since 1997.

## The #MeToo Effect?

These statistics beg an interesting question: why has increased public attention on issues of sexual harassment, through movements such as #MeToo, not translated into an increase in EEOC filings? The most straightforward possibility is that it takes time for new allegations of harassment to reach the stage of an EEOC Charge. If so, we may see an uptick in these types of claims in the coming years. Further, the EEOC accepted public comment on new harassment guidelines in 2017. If and when new guidance is published, that also may lead to more Charges being filed with the EEOC.

It is also possible that, even as increased public discussion of the prevalence of sexual harassment reduces the social stigma attached to reporting harassment, many of the pressures of not reporting harassment to an employer—including the possible fear of professional retaliation—may remain. Companies seeking to combat workplace harassment should strive to make clear that professional retaliation will not occur. This will lead to more people coming forward, which, while perhaps painful to deal with in the short term, will help a company rid itself of unseen harassment. Companies that encourage this dialogue and handle complaints properly can also avoid the pitfalls that lead to harassment and retaliation Charges being filed.

## Should Companies Change What They Are Doing?

In recent months, many companies have been coming to the realization that their corporate culture needs revamping when it comes to workplace harassment. Even where well intentioned, the practices and policies in place for dealing with workplace harassment are often inadequate. Of course, the first goal should be to eliminate sexual harassment from the workplace. But, both the public attention on the issue and the EEOC statistics provide an important additional lesson that the Company’s response to complaints of harassment is also critical.

One way to both combat harassment and fear of retaliation is for the Company to actively encourage employees to come forward. Corporate America in general, and each company within its own walls, must strongly communicate to employees that they should tell the appropriate company representative if they are the victim of, or witness to, workplace harassment. Once a complaint is made, companies must conduct a thorough and well-documented investigation, communicating with those involved throughout the process. The company should also tell employees who report harassment to tell human resources if they feel a co-worker or supervisor is retaliating. In taking these steps, the Company will: (1) communicate to its employees that it takes harassment and retaliation seriously; (2) make clear that employees should feel comfortable reporting harassment by coworkers and supervisors; and (3) in the event of a Charge or lawsuit being filed, help the company demonstrate that it takes complaints seriously and did not engage in retaliation.

## Other Noteworthy EEOC Statistics

The 2017 EEOC statistics also contain several other noteworthy pieces of information:

- Fiscal Year 2017 marked a noticeable uptick in the amount of EEOC-filed merit-based lawsuits. The EEOC's 184 merit-based suits in 2017 was more than double the 86 that it filed in 2016. The EEOC is still far short of the more than 250 merit-based lawsuits that it filed each year between 1997 and 2011. The 86 suits in 2016 also represented a significant decrease from the 142 suits filed in fiscal year 2015. Time will tell whether this year's uptick is the beginning of an upward trend in new suits brought by the EEOC, or part of the overall downward trend that began a decade ago.
- The EEOC also appears to have made significant steps in cutting down on its growing backlog of Charges. As of the end of Fiscal Year 2017, the inventory of pending Charges is the lowest it has been in more than a decade. The decrease appears to be a combination of the EEOC having resolved slightly more cases during Fiscal Year 2017 than it did in Fiscal Year 2016 while, at the same time, taking in fewer new Charges.
- The EEOC is increasing its efforts to focus on instances of "systemic discrimination." The EEOC made the highest number of probable cause findings (167) in cases of systemic discrimination and brought the highest number of new lawsuits (30) alleging systemic discrimination in the past six years. Both of those 2017 figures are significantly higher than they have been in any of the past six years. Systemic discrimination now makes up almost a quarter of the EEOC's active litigation docket.

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### Conclusion and Takeaways

The EEOC's statistics do not provide a crystal ball into how employment litigation will progress in the coming years. The continuing trends contained in the statistics, however, are useful in reinforcing some important principles. Whether harassment claims increase or remain at their current pace, they still are present in close to one-third of all EEOC Charges. Further, retaliation claims continue to appear on an increasing number of Charges filed. Those numbers should serve as a reminder of the potential consequences of having a corporate culture that permits workplace harassment. Even with an optimal culture, harassment and resulting lawsuits may be inevitable. Applying best practices will serve the company two-fold, both reducing if not eliminating harassment and retaliation and protecting the company in the event EEOC Charges or lawsuits are filed.

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