

## Top 10 EEOC Employment Discrimination Claims in 2018

In April, the EEOC published its statistics for FY 2018. The EEOC has disclosed the resolution of 90,558 charges of employment discrimination, securing \$505 million for victims of discrimination in private, federal and state and local government workplaces through voluntary resolution and litigation, and \$56.6 million for victims of sexual harassment. In addition:

- The EEOC filed 217 lawsuits, 111 that included allegations under Title VII.
- The EEOC resolved 156 lawsuits across the country.
- Charges filed with the EEOC alleging sexual harassment increased by 13.6 percent from FY 2017.
- Courts continue to wrestle with the scope of sex discrimination (i.e., is it solely gender-based?) under Title VII. (See, *Zarda v. Altitude Express*, 883 F.3d 100 (2d Cir. 2018), in which the court, en banc, considered whether Title VII prohibits discrimination on the basis of sexual orientation such that court precedents to the contrary should be overruled. The court held that sexual orientation discrimination constitutes a form of discrimination "because of ... sex," in violation of Title VII, and overturned *Simonton v. Runyon*, 232 F.3d 33, 35 (2d Cir. 2000), and *Dawson v. Bumble & Bumble*, 398 F.3d 211, 217-23 (2d Cir. 2005), to the extent they held otherwise. *Zarda v. Altitude Express, Inc.*, 883 F.3d at 107, 2018 U.S. App. LEXIS 4608, \*1-2, 130 Fair Empl. Prac. Cas. (BNA) 1245, 102 Empl. Prac. Dec. (CCH) P45,990, 2018 WL 1040820). See also, *Hively v. Ivy Tech Community College of Indiana*, 853 F.3d 339 (7th Cir. 2017), recognizing sexual orientation discrimination as a form of sex discrimination prohibited by Title VII; and *Evans v. Georgia Regional Hospital*, 650 F.3d 1248 (11th Cir. 2017), holding that sexual orientation discrimination is not protected by Title VII.) Significantly, in April 2019, the U.S. Supreme Court granted certiorari to several sexual orientation and transgender cases, including *Zarda v. Altitude Express, Inc.*, so additional guidance regarding these issues and Title VII should be forthcoming in the next year or so. In the meantime, despite the decrease in EEOC discrimination charges overall, the EEOC resolved 2,101 charges and recovered \$6.1 million for lesbian, gay, bisexual, and transgender (LGBT) individuals who filed sex discrimination charges with EEOC in FY 2018. Data reflects a steady increase during the six years the Commission has collected LGBT charge data, with an increase in monetary benefits received by about \$1 million every year. From FY 2013 through FY 2018, 8,661 charges were filed with EEOC by LGBT individuals alleging sex discrimination. EEOC recovered \$22.2 million for victims of such alleged discrimination.
- The top 10 types of employment charges handled by EEOC in 2018 were:
  - o Retaliation: 39,469 (51.6%)
  - o Sex: 24,655 (32.3%)
  - o Disability: 24,605 (32.2%)
  - o Race: 24,600 (32.2%)
  - o Age: 16,911 (22.1%)
  - o National Origin: 7,106 (9.3%)
  - o Color: 3,166 (4.1%) (overlaps with race)
  - o Religion: 2,859 (3.7%)
  - o Equal Pay Act: 1,066 (1.4%)
  - o Genetic Information Non-Discrimination Act: 220 (0.3%)