

EEOC Announces FY 2015 Performance Results, Touts Increase in Litigation and Systemic Successes

By Paul Patten

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The Equal Employment Opportunity Commission's recently released Performance and Accountability Report ("PAR") for Fiscal Year 2015 shows the EEOC recovered more than a half billion dollars through litigation and other enforcement activities this past fiscal year, a significant increase over FY 2014.

For the FY period from October 1, 2014, through September 30, 2015, the agency recovered \$356.6 million in pre-litigation relief for those who work in the private sector and an additional \$65.3 million through its litigation efforts. The EEOC secured an additional \$105.7 million for federal employees and applicants through its federal sector process. The EEOC's total claimed monetary achievements were \$527.6 million.

Litigation Pay Dirt and More to Come

The EEOC's FY 2015 efforts in court were rewarded with significantly greater recoveries compared to FY 2014. With more filings in 2015, expectations will be high for 2016. Disability issues continue to contribute significantly to the EEOC's litigation playbook.

According to the PAR, the EEOC resolved 155 merits lawsuits in FY 2015. The monetary recovery amounting to \$65.3 million was almost triple the \$22 million recovered in FY 2014. These resolutions included 87 Title VII claims, 61 Americans with Disabilities Act claims, 12 Age Discrimination in Employment Act claims, one Equal Pay Act claim, and one Genetic Information Non-Discrimination Act claim (some lawsuits sought relief under more than one statute). The EEOC claims it obtained a favorable result in almost 90% of these resolutions.

The agency filed 142 merit lawsuits in FY 2015, also an increase from FY 2014. These included 16 systemic lawsuits and 26 lawsuits with multiple victims. Claims broke down as follows: 83 under Title VII, 53 under ADA, 14 under ADEA, seven under EPA, and one under GINA.

Pre-Litigation Enforcement: 250% Increase in Systemic Recoveries

Monetary benefits obtained for private sector workers resulted mainly from the EEOC's pre-litigation mediation program, settlement, or conciliation. The PAR emphasized the high priority the EEOC has put on redressing alleged systemic discrimination, where the agency sees itself as having a broad impact on an industry, company, or geographic area.

In FY 2015, the EEOC employed additional systemic investigators for which it claimed a significant pay off. The EEOC resolved 268 systemic investigations and obtained more than \$33.5 million through those resolutions, a hefty increase from the \$13 million obtained in FY 2014. According to the EEOC, its ability to conciliate successfully was even greater for systemic cause findings (64%) than for cause findings overall (44%).

The EEOC highlighted several million-dollar pre-litigation settlements that provide further insight into its targeted issues:

- A \$2.8 million conciliation involving the use of hiring assessments that allegedly violated the ADA and Title VII;
- A \$1.2 million ADA settlement where applicants allegedly were subjected to prohibited medical examinations and inquiries;
- A \$3.8 million sexual harassment/discrimination settlement involving 300 women; and
- A \$2.5 race hiring and recruitment settlement.

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Along with these substantial monetary settlements, the PAR devoted several paragraphs to describing pre-litigation criminal background achievements.

The tenor of the PAR is that the EEOC will expand on these FY 2015 systemic achievements in FY 2016 through the developing expertise of its investigators, more training, and the implementation of tools and systems focused on systemic issues.

Jackson Lewis attorneys are available to assist employers faced with an EEOC investigation or lawsuit.

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