

## LEGAL INSIGHTS

### EEOC Claims Reach Record High

A record high of 95,402 private-sector discrimination charges were filed with the Equal Employment Opportunity Commission in fiscal 2008. Increases occurred in every major category of discrimination charges, the EEOC said as it released its final enforcement and litigation statistics for the year that ended Sept. 30, 2008.

The EEOC confirmed its earlier preliminary results that indicated charge activity soared to record levels in fiscal 2008. In fact, the charges filed in fiscal 2008 represent a 15 percent increase over the number filed in fiscal 2007, the commission said.

The EEOC said the surge in charges may be due to multiple factors, including economic conditions, increased diversity and demographic changes in the U.S. labor force, employees' greater awareness of federal anti-discrimination laws, the commission's focus on systemic litigation, and changes in the EEOC's charge intake procedures.

"The EEOC has not seen an increase of this magnitude in charges filed for many years," said Stuart Ishimaru, the agency's acting

chairman. "While we do not know if it signifies a trend, it is clear that employment discrimination remains a persistent problem."

According to the commission's final data for fiscal 2008, age-bias charges and retaliation charges accounted for the largest annual increases while discrimination charges based on race, sex, and retaliation remain the most frequently alleged violations. A total of 24,582 age-bias charges were filed in fiscal 2008, an increase of about 5,400 from the fiscal 2007 level, according to the EEOC. The commission received 32,960 retaliation claims in fiscal 2008, up about 6,000 from the prior year.

The data also indicate that during fiscal 2008, the EEOC filed 290 lawsuits, resolved 339 lawsuits, and resolved 81,081 private-sector charges. Through its combined enforcement, mediation, and litigation programs, the EEOC obtained approximately \$376 million in monetary relief for thousands of discrimination victims as well as significant nonmonetary remedies from employers.

More information on EEOC fiscal 2008 enforcement and litigation statistics, including trend data, is available at [www.eeoc.gov/stats/enforcement.html](http://www.eeoc.gov/stats/enforcement.html).

While the law involved a case about pay discrimination, its reach can go far beyond pay issues since the law applies the paycheck accrual rule of Title VII of the 1964 Civil Rights Act, the Age Discrimination in Employment Act, the Americans with Disabilities Act, and the Rehabilitation Act, pointed out management attorney Camille Olson of Seyfarth Shaw (Chicago). Because of this, race, color, sex, national origin, religion, age, and disabilities discrimination may be addressed in litigation related to the new law.

Situations such as a female employee who is hired at the same salary as a similarly situated man, but then not promoted, being able to sue several years later will result in "the litigation tsunami," noted management attorney David Copus of Ogletree Deakins (Morristown, N.J.).

Will promotions, in fact, be included in interpreting the law? This is not clear. Justice Ruth Bader Ginsberg's dissent in the Ledbetter decision made the point that "compensation decisions were secret" but promotions are not, Copus noted. It is not clear yet if promotions may be included in the law's reach.

Reevaluate your records-retention policies, Copus recommends, including records about employees' starting salaries. This is especially important because, as Olson noted, the law makes it more likely that employees may link termination and other claims with pay discrimination claims dating back several years.

Keeping documents for longer periods can be very helpful. Olson added that employers should consider having standard forms on which managers can detail objective reasons for pay-related decisions.

It's also wise to reconsider your pay practices and how they link compensation to evaluations, Olson said. For instance, rewarding performance with a lump-sum bonus means compensation is not reflected in paychecks going years into the future.

### Future issues:

- Metrics 2010 Preview: A Peek Into IOMA's Updated Guide to HR Benchmarks
- An Affordable—Yet Effective—Learning Culture: How to Build Yours Today
- FMLA Follow-Up: How the Changes Are Working (or Not)
- The 'New' ADA and the 'New' FMLA: Still a Legal Collision Course?
- Low-Cost or No-Cost Retention Tips to Put to Use Now
- More Pay Updates: What Is the Outlook for 2010?

### Will Fair Pay Law Bring More Litigation?

The enactment of the Lilly Ledbetter Fair Pay Act could have a widespread impact on employers and lead to more employment lawsuits, according to attorneys at an American Law Institute-American Bar Association teleconference.

The new law states that the time limit for bringing a compensation-related charge with the EEOC starts to run with each paycheck an employee receives, not on the date a discriminatory pay decision is made. The law overturns the Supreme Court's 2007 decision in *Ledbetter v. Goodyear Tire & Rubber Co. Inc.*