

Out of the Frying Pan, into the Fire: Let the Litigation Commence

Richard M. Mitchell, Esq.

EEOC Mission Statement

- The U.S. Equal Employment Opportunity Commission (EEOC) is responsible for enforcing federal laws that make it illegal to discriminate against a job applicant or an employee because of the person's race, color, religion, sex (including pregnancy), national origin, age (40 or older), disability or genetic information. It is also illegal to discriminate against a person because the person complained about discrimination, filed a charge of discrimination, or participated in an employment discrimination investigation or lawsuit.

EEOC Litigation Statistics, FY 1997 through 2014

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
All Suits Filed	332	414	465	329	428	370	400	421	416	403	362	325	314	271	300	155	148	167

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009	FY 2010	FY 2011	FY 2012	FY 2013	FY 2014
Monetary Benefits (\$ in millions)	114.7	95.6	98.7	52.2	49.8	56.2	146.6	168.6	104.8	44.3	54.8	102.2	82.1	85.1	91.0	44.2	38.6	22.5

The Laws

- Americans with Disabilities Act
- Title VII – Civil Rights Act of 1964
- Age Discrimination Employment Act
- Pregnancy Discrimination Act
- Equal Pay Act of 1963
- Genetic Information Nondiscrimination Act of 2008

Factors in Determining to Bring Suit

- Severity of Offense
- Frequency of Offense
- Systemic Discrimination
- Broader Impact of Discrimination

Before Litigation Even Starts

- Preserve all documents and data
- Save/Isolate Emails and Hand Drives
- Spoliation – Presumption that you have something to hide

Discovery

- Exchange of documents can be voluminous
- Depositions
 - Key management personnel
 - Non-managerial employees
 - Disgruntled former employees

Depositions

- Preparation is critical
- Employees must remember they are on the record
- EEOC will likely have already talked to the key employees in the investigation phase

Resolution

- Trial – very public
- Settlement
 - Confidentiality
 - Public Consent Decree
- Remedial measures beyond money