



EEOC's Year-End Enforcement Actions Highlight Ongoing Focus On Stopping Sexual Harassment and Disability and Age Discrimination

10.16.2018

The U.S. Equal Employment Opportunity Commission (EEOC) wrapped up its fiscal year on September 30, 2018. Leading up to this close out, the EEOC filed numerous enforcement actions against large companies for various alleged violations of workplace discrimination laws. These lawsuits not only show what the EEOC was most concerned about in FY2018, but they also help to guide employers on how the EEOC may focus its enforcement efforts in the new fiscal year.

Sexual Harassment

2018 has been the year of the #MeToo movement, which has sought to bring awareness to the prevalence of sexual assault and harassment, especially in the workplace. Even before #MeToo became a household phrase, the EEOC dedicated considerable resources to combating workplace harassment, as most aptly shown by the formation of an anti-harassment task force. The year-end flurry of enforcement actions highlights the EEOC's continued attention to the issue of workplace harassment.

Among these lawsuits was one brought against Dollar General in the U.S. District Court for the District of Maryland (*EEOC v. Dolgencorp, LLC, t/a Dollar General Stores Inc.*, Civil Action No. 1:18-cv-02965). The EEOC alleged that the company failed to take the necessary steps to prevent a manager in a Maryland store from sexually harassing an assistant manager in 2016. According to the EEOC's Complaint, this manager "repeatedly subjected the assistant manager to unwelcome touching . . . ; rubbing her shoulders; and grabbing her and ripping her blouse." Such conduct, the EEOC alleged, violated Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on sex.

This lawsuit continues the exploration of the variety of ways that sexual harassment can present itself in the workplace, and is indicative of the EEOC's ongoing efforts to send a clear message regarding the unlawfulness of inappropriate behavior by managers directed at subordinates.

Disability Discrimination

A considerable number of the EEOC's enforcement actions filed at the close of Fiscal Year 2018 focused on alleged disability discrimination by employers of all sizes. For example, Bath & Body Works, LLC was sued for refusing to consider a request by an employee for a larger monitor at the cash register to accommodate her vision issues stemming from diabetes (*EEOC v. Impressions Incorporated*, Civil Action No. 0:18-cv-02758 (D. Minn.)). Next, the company that operates the IHG Army Hotel in Fort McCoy, Wisconsin, was sued because the hotel's manager and a supervisor allegedly fired an employee following an incident where the employee requested two additional days off work because he suffered a seizure (*EEOC v. PML Services, LLC*, Civil Action No. 3:18-cv-00805 (W.D. Wis.)). And lastly, SoftPro, LLC, a company based in Raleigh, North Carolina, that provides real estate closing and title insurance software solutions, was sued by the EEOC for allegedly terminating an employee's employment after learning he had been receiving treatment for addiction to opioids (*EEOC v. SoftPro, LLC*, Civil Action No. 5:18-cv-00463 (E.D.N.C.)).

These lawsuits, and numerous others brought by the EEOC through September 2018 under the Americans with Disabilities Act, demonstrate the EEOC's continued focus on how employers respond to employees' requests for reasonable accommodation and intermittent leave for disabilities. This area is one of the most complicated for employers and human resources professionals to evaluate, and a nuanced look at requests for accommodation remains important as the EEOC continues to scrutinize employers' responses to such requests.

Age Discrimination

The EEOC has recently prioritized pursuing violations of the Age Discrimination in Employment Act. In fact, the agency issued a report earlier this year finding that age bias is still widespread in the workplace. The EEOC's attention to age discrimination is reflected in the enforcement actions it recently filed. For example, a DQ Grill & Chill franchisee in Bellevue, TN, was sued by the EEOC for purportedly routinely failing to hire employees over the age of forty (*EEOC v. Tennessee Restaurant Group, LLC d/b/a DQ Grill & Chill*, Civil Action No. 3:18-cv-00975 (M.D. Tenn.)). The event that gave rise to this lawsuit was when the restaurant told Theresa Chandler, age 60, that she was a good fit for a position, but, rather than hiring her, the company hired five younger employees. The EEOC also sued online auto parts retailer RockAuto LLC alleging that it violated the ADEA when it did not hire a 64-year-old applicant for a job because of his age, but ultimately hired two less experienced, significantly younger individuals (*EEOC v. RockAuto, LLC*, Civil Action No. 3:18-cv-00797 (W.D. Wis.)). It is unsurprising that the EEOC is focusing on age discrimination violations, as America's workforce is becoming **older** due to the country's aging population and the increased time that employees are working before retirement.

Take Aways

On October 4, 2018, the EEOC released preliminary data concerning its efforts to enforce anti-discrimination laws in the United States during Fiscal Year 2018. According to this [report](#), the EEOC filed 66 harassment lawsuits in FY 2018, including 41 that included allegations of sexual harassment. In

fact, claims of sexual harassment filed with the EEOC increased by 12 percent, which is undoubtedly influenced by the #MeToo movement. This data, coupled with lawsuits that the EEOC has initiated since the close of FY 2018 and the EEOC's [Strategic Enforcement Plan](#), are strong indicators of where the EEOC will continue to expend its energy and resources in the coming year. There is no question that combatting workplace harassment in all forms remains a top priority for the EEOC. This, coupled with employees' increased inclination to file charges of discrimination with the EEOC, should serve as a driving motivator for employers of all sizes to review their policies and procedures to ensure compliance with federal and state laws.

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