

Employment Practice Update

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EEOC Charges Hit Record High in 2011

By Christopher B. Lunny and
Angela D. Miles



On November 15, 2011, The U.S. Equal Employment Opportunity Commission ("EEOC"), released its annual [Performance & Accountability Report](#) to for its fiscal year 2011 (ending September 30, 2011). Given the poor economy and corresponding increase in employee layoffs, employers may not be surprised to learn that the EEOC received a record high number of discrimination charges this past year. In FY 2011, the EEOC received 99,947 charges of discrimination against private sector employers. This represents the highest number of charges filed in any year in the agency's 46-year history. The EEOC also recovered historic relief through administrative enforcement – more than \$364.6 million in monetary benefits for victims of workplace discrimination. By comparison, this is \$45 million more than the EEOC recovered in FY 2010 and represents this highest level of monetary relief ever obtained by the EEOC through the administrative process.

The 2011 report emphasizes the EEOC's focus on systematic discrimination "as a top agency priority." Through its systematic enforcement program, the EEOC seeks to identify and investigate "pattern or practice, policy and/or class case[s]"

where the alleged discrimination has a broad impact on an industry, profession, company or geographic location." At the end of FY 2011, the EEOC was working on 580 systemic investigations, involving more than 2,067 charges. Employers can expect the EEOC's focus on systemic discrimination to continue, as the EEOC indicated it will continue to devote resources to combating systemic discrimination and place a high priority on litigating these types of cases.

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In reviewing its efforts over the past year, the EEOC placed a strong emphasis on its mediation program, touting that the program "has continued to be a very successful part of our enforcement operations." In 2011, the EEOC's private sector national mediation program secured the highest number of resolutions in the history of the program, with a total of 9,831 resolutions. The EEOC reported that, according to a survey of participants in the mediation program, 96.9% reported confidence in the program.

The bottom line is that there are more employment discrimination charges being filed, which will inevitably lead to more employment litigation. Accordingly, employers should document performance problems as they arise and, in the event of an EEOC charge of discrimination, clearly articulate the reasons for the challenged action in the employer's position statement to the EEOC. If you have any questions regarding the EEOC's Performance & Accountability Report or need assistance responding to a charge of discrimination, please contact our office at (850) 425-6654.

EEOC Charge Receipts FY 2004 to FY 2011



Christopher B. Lunny

Angela D. Miles

This article is meant to provide a brief overview and points of discussion regarding employment and labor law topics. Should a particular issue arise or should you desire additional consultation to protect your firm, the advice of a competent counsel should be sought.