

EEOC Reports Employers Paid Record \$372.1 Million in Settlements in FY 2013

Labor & Employment Law Update

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The EEOC's administrative division raked in a record \$372.1 million in voluntary payments from private sector employers in fiscal year 2013 (9/2012-9/2013) according to its Performance Accountability Report issued December 16. This figure, the highest in the Commission's history, surpassed FY 2012 by nearly \$7 million and comes despite sequestration which forced budget cuts, a hiring freeze and mandatory furloughs on the agency. The Commission reported resolving nearly 14,000 fewer charges in FY 2013 (97,252) than it did in FY 2012, indicating an increase in the average amount employers agreed to pay per charge. The \$372.1 million represents sums paid through reported settlements, EEOC sponsored mediation, and conciliation efforts to some 70,522 individual private sector employees. It does not include amounts paid after a lawsuit was filed whether through settlement or verdict.

The EEOC followed through on its stated goal of beefing up its systemic enforcement program during 2013. Of the settlements reported in FY 2013, 63 involved allegations of systemic discrimination and accounted for approximately \$40 million in payments. Nearly a quarter of the EEOC's pending lawsuits allege systemic discrimination — the largest percentage ever reported. "Systemic" cases allege broad based discrimination and often accuse an employer of having a pattern and practice of discrimination. Based the 2014 budget request submitted to Congress, we expect the agency to continue on this path.

The EEOC's legal enforcement division resolved 209 lawsuits during FY 2013 bringing in another \$39 million. Amounts paid to resolve lawsuits filed by private individuals (as opposed to actions filed by the EEOC itself) are not included in these figures. EEOC litigators filed 131 lawsuits in FY 2013. Of those 131 lawsuits, 21 alleged systemic discrimination, 21 were non-systemic class based suits and 89 alleged individual discrimination.

The number of private sector charges filed in FY 2013 was down slightly from recent years at 93,727. The Commission has not yet released statistics of how these charges break down by the type of discrimination alleged.

While these figures are certainly daunting, they are small compared to amounts paid to resolve private lawsuits. Federal Courts throughout the country receive roughly 17,000 lawsuits alleging employment discrimination and another 18,000 labor based lawsuits every year. Particularly problematic for employers is the prospect of being held liable for plaintiffs' attorney fees. In December, two separate Federal Courts of Appeals upheld attorney fee awards that dwarfed plaintiffs' actual damages — \$700,000 in fees on a \$27,000 award in the 9th Circuit and \$105,000 in fees on an award of only \$7,650 in the 1st Circuit.

The best defense is always to avoid EEOC involvement whenever possible. Employers can do this by implementing and consistently enforcing sound employment policies and by getting experienced labor and employment counsel involved at the first indication of a problem. May your 2014 be litigation free!

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