

New risk: EEOC now suing over small claims

For years now, when the EEOC has decided to haul employers into court, it has focused on bringing one of two kinds of cases:

- Cases that test the agency's new or novel interpretation of laws that it enforces, or
- Cases in which its investigation reveals a widespread pattern of discrimination or harassment affecting many workers.

Employers haven't worried as much about being sued by the EEOC in smaller, less unique cases in which workers had to rely on finding an attorney willing to take their case. As a practical matter, if cases were worth a few thousands to a few tens of thousands, it was unlikely the employee would find a willing lawyer.

But that's all changing. The EEOC is increasingly taking on more run-of-the-mill discrimination cases on behalf of employees who would otherwise have to represent themselves or give up on the idea of recovering anything for the alleged harassment or bias.

In fact, the EEOC is filing a record number of such cases, and regularly settling them before trial for \$10,000 to around \$20,000. A quick look at settlements in the past 30 days shows multiple lawsuits settled in that range. Two examples:

- \$2,100 in backpay and \$25,000 for pain and suffering to settle an EEOC lawsuit over failure to approve unpaid leave as an accommodation for anxiety.
- \$25,000 to a pregnant nurse to settle an EEOC lawsuit over refusing to accommodate a temporary lifting restriction.

And for the employers caught up in these lawsuits, the costs are far higher than the settlement amount. That's because litigation is expensive, especially when the company's law firm know it's up against a government agency with almost limitless resources.

What should employers do? If you receive an EEOC complaint, take full advantage of the mediation offered by the agency. Also, consider settling early if there's any indication that the agency may file a lawsuit.

EEOC, DOJ cooperate to stop public-sector harassment

Earlier this year, the EEOC and the U.S. Department of Justice signed a memorandum of understanding that will allow faster federal intervention in sexual harassment complaints involving state and local government employees.

According to an EEOC statement, the move enhances the commission's efforts to "ramp up its role as enforcer, educator, and leader" on workplace harassment.

Just as it does when it receives harassment complaints from private-sector employees, the EEOC uses a conciliation process to try to resolve complaints from government workers. If conciliation doesn't work, the EEOC can decide to sue on the employee's behalf.

However, a state or local government employee's complaint also triggers a referral to the Justice Department. It must independently determine if a lawsuit is warranted.

Under the memorandum of understanding, if the EEOC determines immediate action is necessary to prevent further harm, it can immediately provide the DOJ with the information necessary to act.

That clears the way for the DOJ to immediately obtain a temporary injunction in federal court for the affected employees, pending the final outcome of the charge.

Note: State and local government employers now have more incentive than ever before to settle harassment claims at the conciliation stage.

Of course, prevention is the best cure. All employers should monitor harassment complaints and address the underlying behavior when it crosses the line.