

EEOC

EEOC Charges Climbed to Record High During Fiscal 2008, Preliminary Data Show

The Equal Employment Opportunity Commission received a record-high 95,402 private-sector discrimination charges in fiscal 2008, up 15.2 percent from the previous fiscal year, according to preliminary year-end data released by the commission last week.

The numbers contained in EEOC's annual Performance and Accountability Report, released Nov. 17, indicated the commission had a pending case inventory of 73,951 charges as of Sept. 30, 2008, compared with a backlog of 54,970 charges a year earlier.

The report also indicated that EEOC resolved 81,081 charges in fiscal 2008 and obtained about \$274.4 million in remedies for charging parties, down slightly from \$290.6 million recovered in fiscal 2007. EEOC also filed 290 "merits" lawsuits in fiscal 2008, while also resolving 339 suits for a total recovery of about \$102.1 million, according to the report.

The data reflect preliminary results for fiscal 2008, and final statistics on EEOC charge and enforcement activity are expected to be released early in 2009.

Union Decries Understaffing.

In a Nov. 20 statement, the National Council of EEOC Locals No. 216, American Federation of Government Employees, said "rock-bottom staffing" and a record volume of charges "add up to another failing grade for the beleaguered civil rights agency."

The union, which represents EEOC attorneys, investigators, and other employees, said EEOC has lost 25 percent of its workforce during the Bush administration and that with enactment of new laws that prohibit genetic discrimination and broaden coverage under the Americans with Disabilities Act, EEOC's workload only will increase.

"Maintaining fewer and fewer EEOC employees to process a rising amount of discrimination charges has resulted in a terrible bottleneck that is delaying justice for many Americans," said Gabrielle Martin, president of the employees' union. EEOC's report indicated that less than half (48.5 percent) of charges filed with the agency were resolved within 180 days, the union said. The union said that in 1994, the last time EEOC received close to the number of charges filed in fiscal 2008, the commission had 650 more employees than the 2,166 employed as of Sept. 30, 2008. The union criticized EEOC management for not filling more than 200 additional positions authorized by Congress.

"Instead of asking Congress for the resources it really needs to get a handle on its mushrooming caseload, EEOC lowballs its budget request," Martin said. "EEOC makes up the missing budget dollars each year by not hiring to its approved staff ceiling."

A spokesman for EEOC said Nov. 21 that the commission is "doing the best we can with the resources we have available during these challenging times."

EEOC's budget was \$329.3 million for fiscal 2008, and the Bush administration requested about \$342 million for fiscal 2009. The House Appropriations Committee has approved \$350.4 million in fiscal 2009 funding for EEOC, while the Senate appropriations panel approved the administration's request. Congress has not voted on EEOC's fiscal 2009 budget, and any further action on commission funding is unlikely until after President-elect Obama takes office in January 2009.

Progress on Systemic Program.

EEOC's report indicated the commission's Office of General Counsel made the pursuit of systemic investigations and lawsuits a top priority in fiscal 2008, implementing the commission's renewed emphasis on discrimination cases with the potential to affect broad classes of alleged discrimination victims.

Of the 290 merits lawsuits filed by EEOC in fiscal 2008, 111 were class suits, according to the report. As of Sept. 30, 2008, 38 commissioner's charges were being investigated, compared with 15 such charges in March 2006, the month before EEOC adopted an internal task force's recommendations to revitalize its systemic program (65 DLR AA-1, 4/5/06).

The report highlighted "four noteworthy resolutions" of EEOC systemic cases reached in fiscal 2008, led by a \$27.5 million settlement of age discrimination claims against the law firm of Sidley & Austin (194 DLR A-12, 10/9/07). Other cases cited by EEOC included: a \$4.3 million settlement on behalf of a class of Hispanic warehouse workers at B&H Foto & Electronics (201 DLR A-13, 10/18/07); a \$2.2 million settlement of harassment and retaliation claims against New York's Tavern on the Green (106 DLR AA-1, 6/3/08); and a \$1.6 million race discrimination settlement with Visteon Corp. and Ford Motor Co. on behalf of black workers allegedly denied entry to apprenticeship programs (245 DLR A-1, 12/21/07). EEOC said that while it is "shifting the balance" toward systemic cases in allocating litigation resources, it is not neglecting cases on behalf of individuals seeking relief, particularly those under the Americans with Disabilities Act.

Of the 339 lawsuits resolved by EEOC during fiscal 2008, 265 involved claims under Title VII of the 1964 Civil Rights Act, 47 involved claims under the ADA, 41 involved Age Discrimination in Employment Act claims, and three involved Equal Pay Act claims, according to the report. EEOC recovered \$65.6 million in resolutions of Title VII suits; \$30.3 million in resolutions of ADA suits; \$3.5 million in resolutions of ADEA suits; \$971,961 in resolutions of Equal Pay Act suits; and \$1.7 million in resolutions of suits that involved more than one statute, the report said.

Mediation Results.

EEOC reported that in fiscal 2008, the commission secured 8,840 resolutions of bias charges through its national mediation program, up 2.2 percent from 8,649 such resolutions in fiscal 2007. The commission obtained about \$124.1 million in monetary benefits through mediation in fiscal 2008, nearly identical to the \$124 million obtained in fiscal 2007, the report said. More private sector employers signed "universal agreements to mediate" (UAMs) with EEOC in fiscal 2008, increasing the cumulative total of such agreement to 1,452 as of Sept. 30, 2008. At

the close of fiscal 2007, EEOC and employers had reached 1,269 UAMs, under which companies commit to mediate with EEOC any employment discrimination charges filed against them.

EEOC's FY 2008 Performance and Accountability Report may be accessed at <http://op.bna.com/dlrcases.nsf/r?Open=kmgm-7llqld>.