

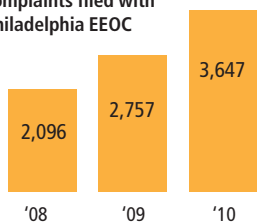
EEOC complaints spike

Claims rise in nation, Philadelphia area

Jeff Blumenthal
 Staff Writer

COMPLAINTS UP

Discrimination complaints filed with Philadelphia EEOC



Source: EEOC Philadelphia office

The number of workplace discrimination complaints filed with the Equal Employment Opportunity Commission's Philadelphia district office jumped 32 percent in fiscal year 2010.

Employment lawyers said a major reason for the spike revolves around retaliation claims, which continued to grow nationally at a staggering clip and surpassed race as the largest source of discrimination claims for the first time.

Retaliation claims in Philadelphia rose by 28 percent in fiscal year 2010, which ran from Oct. 1, 2009, to Sept. 30, 2010. That represents an 89 percent increase from fiscal year 2008 and makes it the most common basis for a claim charge.

Nationally, retaliation claims have increased by 60 percent over the past five years, while race claims have jumped by 32 percent.

Retaliation claims typically assert that an employer took some adverse action against an employee, because the employee exercised a legal right, such as filing a discrimination claim. Courts can rule in favor of employees in the retaliation part of their lawsuits, even when the original discrimination claim is dismissed.

EEOC officials and employment lawyers cited several reasons for the increase in retaliation claims. They say many complaints come from an increase in laid-off workers. Lawyers also say

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 Console Law Offices

retaliation is often easier to prove than discrimination, particularly since a 2006 Supreme Court decision adopted a broader definition of retaliation than some courts had used. Damages are also often higher than discrimination claims, making them more attractive to potential plaintiffs.

Peter Frattarelli, chairman of Haddonfield, N.J.-based Archer & Greiner's labor and employment department, defends local small and midsized employers in discrimination matters. He said employers have been trained about avoiding discrimination based on age, race, gender and disability. But employees have also become more savvy.

"When I do training [for companies], I tell them they need to follow up after the employee makes the first complaint," Frattarelli said. "That way maybe it can be addressed before the complaint is filed. The person complaining is Teflon for a while, so if you are going to fire them, you better have a good reason. So you have to make sure you don't treat an employee differently after they lodge a complaint because that opens you up for a retaliation claim."

Frattarelli said juries can more easily find in favor of a retaliation claim than a claim involving race, gender or age because most people can relate to an accusation that a manager retaliated much easier than they can with accusing someone of

being racist, sexist or ageist.

Spencer Lewis, director of the EEOC's Philadelphia district office, said retaliation claims began to increase even before the economy cratered in 2008.

"I think it's because [employees] are more sensitive to it and are more aware of it as a basis for a charge," Lewis said.

Lewis said the general increase in claims comes from two new anti-discrimination laws passed in recent years and a rise in unemployment with many feeling they were let go for reasons other than performance.

In 2008, Congress passed the Genetic Information Nondiscrimination Act, which, among other things, bars employers from using individuals' genetic information when making hiring, firing, job placement, or promotion decisions. In 2009, Congress passed amendments to the Americans with Disabilities Act that made it easier to make disability claims.

Stephen Console of Console Law Offices, who represents plaintiffs in workplace discrimination claims, said companies have made significant efforts to encourage employees to come forward with claims if they feel mistreated. While they do this to shield themselves from liability, Console said companies are also opening themselves up to more claims because employees are generally more aware of their rights than they were a decade ago.

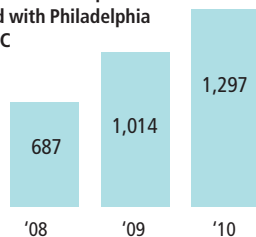
But he said the economic downturn has also had a profound effect on the number of claims filed.

"If you lose your job because of age discrimination and get another job within a year, the odds are less that you will file a claim than if you are 56-years-old and you just can't find another job," Console said. "The greater the loss, the more pressure there is to bring a claim."

Frattarelli said while that's true, it is also easier to settle claims because plaintiffs are often more desperate for money than they were before. So the number of claims filed goes up but not always the number of claims pursued.

RETALIATION CLAIMS

Retaliation complaints filed with Philadelphia EEOC



Source: EEOC Philadelphia office



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