

# EEOC Scores, Despite a Tumultuous 2020: Key Takeaways for Employers

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## Article

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Although the novel Coronavirus caused many industries to slow their normal operations last year, the Equal Employment Opportunity Commission remained largely steady, scoring a number of significant settlements from employers. As employers move into 2021, they need to continue to be mindful of the ever-elusive retaliation claim. Additionally, while harassment claims are down in number overall, our experience in our practice is that the seriousness with which the agency treats them is ever-heightened, and oftentimes will result in employer interviews and solicitations of other potential claimants, even where the substance of the claim lacks merit from the defense perspective.

## 2020 EEOC Statistics at a Glance

On February 26, 2021, the EEOC released a comprehensive statistical breakdown of the charges it received in the 2020 fiscal year. [1] While there were fewer charges in 2020—credited to the global pandemic—the historical trend concerning the most frequently cited charges remained largely consistent with prior years. According to the charge statistic report, the EEOC received a total of 67,448 charges last year, 5,277 less than that of the preceding year. Of those charges, retaliation remained the most frequently referenced, amounting to 37,632 or 55.8%, more than half of the total charges. Following retaliation, came disability discrimination at 24,324 or 36.1%, race discrimination at 22,064 or 32.7%, and sex discrimination at 21,398 or 31.7%. Age, national origin, color, religion, equal pay act, and genetic information charges followed behind respectively.

Interestingly, the EEOC reported a significant decrease in the number of harassment charges filed last year. [2] Those statistics, representing harassment charges filed with respect to all protected classes, showed a decrease from 26,221 in 2019 to 24,221 in 2020, the lowest number reported since the 2010 fiscal year. This decline is likely attributed to the 2020 stay at home orders which forced many companies to lay off employees or make the revolutionary shift to “at-home” or remote work. For example, the agency reported 6,587 sexual harassment charges last year which was 927 less than 2019, and the lowest number reported in the last decade.[3]

Despite the slight decrease of total charges in 2020, at the conclusion of the EEOC’s fiscal year, the agency collected \$439.2 million for discrimination victims by means of both voluntary resolution and litigation. This number, while less than the approximately \$486 million dollars secured in 2019, shows the agency’s significant efforts, despite such an abnormal year.[4]

### Exemplar EEOC Settlements of 2020

The \$439.2 million secured by the agency in 2020 is the result of a number of settlements ranging in value from a variety of workplace discrimination claims. The settlement agreements discussed below include some of the largest settlements procured by the agency last year.

One of the largest agreements reached by the EEOC in 2020 involved Jet Propulsion Laboratory, a federally funded research and development center located in California.[5] The lawsuit concerned an age discrimination charge alleging that the company strategically laid off older employees in efforts to create an environment comprised of young employees. The EEOC filed suit in the District of California on behalf of dozens of employees who were age 40 and above, falling within the ADEA’s protected class. To resolve the suit, the company agreed to pay a total of \$10 million. Along with the monetary award obtained, the agency was also able to procure a three-year consent decree including injunctive relief to prevent other workplace discrimination. The company also agreed to hire an EEO monitor, diversity director, and layoff coordinator to ensure compliance with the ADEA. These non-monetary remedies can cause a significant disruption to a company’s business.

By way of further example, the agency also reached a \$5,075,000 settlement with Performance Food Group, Inc. (PFG), a marketer and distributor of branded food and food-related products. [6] There, the EEOC settled an ongoing sex discrimination case in which PFG was accused of failing to hire female applicants for operative positions and failing to promote a qualified female employee for a nighttime warehouse training supervisor position. The agency was able to obtain a five-year consent decree which provided for \$5,000,000 in monetary awards to the discriminated group of female applicants, and \$75,000 in relief to the female employee who was not promoted to the supervisor position. Furthermore, the company agreed to implement equitable relief by hiring a Vice President of Diversity to ensure positions are filled without regard to sex, and to conduct affirmative recruiting towards female applicants.

In October 2020, the agency reported a settlement in the amount of \$900,000 with popular retail store, Dillard’s, for a race discrimination charge on behalf of the company’s African American employees.[7] Specifically, the EEOC itself brought a lawsuit against Dillard’s for failing to post supervisory and management positions at its

retail locations nationwide, which ultimately resulted in the failure to promote African American employees. In addition to the \$900,000 monetary relief awarded in back pay and compensatory damages to those denied promotions, Dillard's agreed to develop written policies for its stores nationwide, post all management positions, provide anti-discrimination training, and provide an email and telephone hotline for employees to address any complaints. Dillard's also agreed to partner with historically black colleges to recruit African American students into its work programs.

At the conclusion of last year, the EEOC obtained a \$420,000 settlement with City Sports, a sports fashion store with various locations in Chicago, Illinois.[8] The EEOC brought a race and national origin lawsuit against the company for its refusal to hire and promote African Americans and Hispanics into management positions, while favoring only Koreans to fulfill such roles. Under the consent decree, City Sports agreed to pay \$420,000 to nineteen current and former employees, and hire a consultant to implement objective criteria for its hiring and promotions process. The company also agreed to provide anti-discrimination training and report all management selection and complaints of harassment, race, and national origin discrimination to the EEOC.

In total, the EEOC received 46,158 Title VII charges in 2020 and was able to reach a settlement on 7.3% or 3,603 of those charges.[9] These numbers reflect an increase in the percentage of Title VII settlements compared to 2016-2019. Based on Title VII charges alone, the EEOC collected \$234,000,000 in monetary benefits in 2020.

### Insights for Employers in 2021

Considering the forecast of the 2021 year, as businesses reopen and resume normal operations, the volume of workplace discrimination charges will likely increase, returning to numbers seen in years prior to 2020. This uptick will come as a result of the delayed charges from last year, in conjunction with the charges to be filed in the 2021 year. As such, employers should continue to comply with all EEOC and Title VII requirements in efforts to minimize their exposure to workplace discrimination claims. Additionally, having robust policies in place and documented evidence of company-wide employee and management training at least annually, to provide to the EEOC if a claim is filed, provides significant defenses for employers both at the charge stage and in the event the EEOC makes a for cause finding and seeks to impose non-monetary penalties.

Nexsen Pruet's employment law team is always here to help with daily advice and counseling, as well as litigation defense, in the event your company receives a charge.

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[1] Press Release, EEOC, EEOC Releases Fiscal Year 2020 Enforcement and Litigation Data (Feb. 26, 2021), <https://www.eeoc.gov/newsroom/eeoc-releases-fiscal-year-2020-enforcement-and-litigation-data>.

[2] All Charges Alleging Harassment (Charges filed with EEOC) FY 2010- FY 2020, EEOC, <https://www.eeoc.gov/statistics/all-charges-alleging-harassment-charges-filed-eeoc-fy-2010-fy-2020>.

[3] Charges Alleging Sexual Harassment FY 2010- FY 2020, EEOC, <https://www.eeoc.gov/statistics/charges-alleging-sex-based-harassment-charges-filed-eeoc-fy-2010-fy-2020>.

[4] Press Release, EEOC, EEOC Issues Fiscal Year 2019 Agency Financial Report (Nov. 20, 2019), <https://www.eeoc.gov/newsroom/eeoc-issues-fiscal-year-2019-agency-financial-report>.

[5] Press Release, EEOC, Jet Propulsion Laboratory to Pay \$10 Million to Settle EEOC Age Discrimination Lawsuit (June 11, 2020), <https://www.eeoc.gov/newsroom/jet-propulsion-laboratory-pay-10-million-settle-eeoc-age-discrimination-lawsuit>.

[6] Press Release, EEOC, Performance Food Group Will Pay Over \$5 Million to Resolve EEOC Nationwide Sex Discrimination Lawsuit (Dec.16, 2020), <https://www.eeoc.gov/newsroom/performance-food-group-will-pay-over-5-million-resolve-eeoc-nationwide-sex-discrimination>.

[7] Press Release, EEOC, Dillard's to Pay \$900,000 to Resolve EEOC Race Discrimination Lawsuit (Oct. 9, 2020), <https://www.eeoc.gov/newsroom/dillards-pay-900000-resolve-eeoc-race-discrimination-lawsuit>.

[8] Press Release, EEOC, City Sports to Pay \$420,000 to Settle EEOC Race and National Origin Discrimination Lawsuit (Nov. 2, 2020), <https://www.eeoc.gov/newsroom/city-sports-pay-420000-settle-eeoc-race-and-national-origin-discrimination-lawsuit>.

[9] Title VII of the Civil Rights Act of 1964 Charges (Charges filed with EEOC) (includes concurrent charges with ADEA, ADA, EPA, and GINA) FY 1997-FY 2020, EEOC, <https://www.eeoc.gov/statistics/title-vii-civil-rights-act-1964-charges-charges-filed-eeoc-includes-concurrent-charges>.