

## Employment Practices Liability Risk Management: Addressing the Current Threat Landscape

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The United States Equal Employment Opportunity Commission (EEOC) released its most recent statistics and in them, we see a continuing tendency toward instances of alleged employee retaliation. FMLA, wage, and hour lawsuits are also growing. Understanding the risk in employment practices can help businesses form more effective risk management approaches.

### EEOC Claims

Discrimination against individuals on the basis of race, sex, disability, and age continue to motivate large numbers of claims. On the other hand, claims of discrimination on the basis of religion or skin color, Equal Pay Act violations, and Genetic Information Non-Discrimination Act violations remain low. This information provides employers with a strong framework for reducing risk by focusing on the most prevalent claims.

#### The Big Five – Addressing the Most Common EEOC Claims

Looking at [EEOC lawsuit statistics](#), five types of claims stand out (understand that some of these numbers overlap, with claims alleging violations in more than one category):

- **Retaliation** – Representing 43 percent of all EEOC lawsuits, retaliation claims are easier to prove. Unlike discrimination claims, [retaliation claims](#) require only that the employer took negative action against the employee in response to a complaint of alleged discrimination or harassment.
- **Race** – 35 percent of all EEOC claims in 2014 were related to race, but not necessarily skin color.
- **Sex** – 29 percent of claims addressed sexual discrimination or harassment. These claims include those related to pregnancy and sexual orientation.
- **Disability** — Also at 29 percent, discrimination based on disability remains a common problem.
- **Age** — 23 percent of claims were for age discrimination, surprisingly low with a quickly aging workforce.
- **Other** – Religion (4%), Color (3.1%), violations of the Equal Pay Act (1.1%) and violations of the Genetic Information Non-Discrimination Act (0.4%) remain low.

### FMLA Lawsuits

According to Law360, FMLA lawsuits rose from 877 to 1,108 in 2014. Along with increased awareness among employees, the finalized rule issued in 2013 may also be a

factor contributing to the increase, as it extended protection to married same-sex couples.

Employers often face challenges in tracking claims, determining eligibility, complying with notification rules, and coordinating requirements of FMLA with workers' compensation, sick leave and other work policies and regulations. Businesses should seek guidance whenever they feel challenged by an FMLA situation to ensure they maintain best practices and appropriate responses to the request for leave.

## **Wage and Hour Lawsuits**

Recent statistics released by the Administrative Office of the U.S. Courts shows that Federal Labor Standards Act (FLSA) lawsuits are also at a 20-year high. [Wage and Hour lawsuits](#) have become a target for [litigators looking to profit](#) from employer mistakes.

Of course, every business needs to be concerned about these claims. Misclassifying exempt employees and taking inappropriate deductions can affect any worker, whether salaried or hourly.

## **Reducing the Risk of EPL Claims**

InsuranceThoughtLeadership recommends "[Three Cardinal Rules of Employment Practices Risk Management](#)":

- **Always Be Updating** – Keep employment practices up-to-date. You can do this by monitoring case law, EEOC recommendations, and changing legal statutes. Regular audits should compare your policies with changes in the EPL legal landscape and make changes as needed.
- **Always Be Training** – Regular training for managers is vital to ensuring your leadership follows through with the policies you set.
- **Always Be Covered** – Carrying EPL insurance is an important protection for company assets.