

RACIAL DISCRIMINATION: THE NEW RISK IN EDUCATORS' PROFESSIONAL LIABILITY?

Education professionals have made significant strides in their efforts to prevent sexual harassment in the workplace. In doing so, however, have they neglected other forms of discrimination?

In recent years, K-12 institutions and administrators, mirroring private sector businesses, have been promoting awareness, policies and education in an effort to prevent sexual harassment in the workplace. In fact, many school officials are justifiably adamant about providing ongoing sexual harassment training that is effective, current and satisfies state mandates. However, if districts narrowly focus training and policy development efforts on only one aspect of a spectrum of legal issues, they may risk exposure in the areas that are not receiving similar levels of attention.

DISCRIMINATION

Unlawful discrimination involves treating one person differently from another based on a legally protected characteristic, such as race, sex, age, disability, religion, color or national origin. Some state and local laws go further by prohibiting discrimination based on sexual orientation or gender identity (*UE Risk Research Bulletin*, "Legal Literacy for Supervisors," January 2008). **While no one type of discrimination deserves more attention than another, it is important to remember that your district's policy and your faculty and staff training should adequately reflect current federal and state laws regarding discrimination of all kinds.**

RACIAL DISCRIMINATION EMPLOYMENT DISPUTES

In the summer of 2000, United Educators published an article in *UE Employment Action* reporting that, based on United Educators internal statistics, the period from 1991 to 1997 saw race discrimination as the second fastest growing discrimination cause of action alleged in employment-related claims, behind disability claims (*UE Employment Action* Vol. 3, No. 3, Summer 2000, pg. 1).



STATE-REQUIRED SEXUAL HARASSMENT TRAINING

Several states have adopted laws requiring training for certain employees.

- **California** requires two hours of sexual harassment training every two years for all supervisors at organizations with 50 or more employees
- **Pennsylvania:** State employees are required to be educated on sexual harassment issues
- **Tennessee:** The state's personnel department is required to assist state agencies in planning and conducting sexual harassment training
- **Texas** state agencies are to provide discrimination training (including sexual harassment) to all their employees within 30 days of hiring and again every two years

Equal Employment Opportunity Commission (EEOC) historical data confirms the trend. More recently, in February 2005, United Educators reported on this trend once again when it published a Risk Research Bulletin indicating that, based on EEOC data, discrimination claims involving race and national origin have increased since the early 1990s. And according to data on **EEOC's website**, for the past 10 years (FY 1997 – FY 2007), race-based charges have been the leading type of charge filed with EEOC – surpassing sex- and national origin-based charges. (See Chart 1 for a summary of EEOC's statistics for FY 2005 – FY 2007.)

In the November 2007 issue of *Public School News*, United Educators noted that discrimination claims accounted for 46% of their employment legal liability claims in the private school sector from 2001 – 2006. Race-based claims comprise 19% of the total number of discrimination claims made (third highest behind disability [25%] and gender [22%]). Unlike UE's experience, EEOC's data suggests that race-based claims are the leading type of charge made.

CHART 1 CHARGE STATISTICS FY 2005 - FY 2007

	FY 2005	FY 2006	FY 2007
TOTAL CHARGES	75,428	75,768	82,792
RACE	26,740	27,238	30,510
	35.5%	35.9%	37.0%
SEX	23,094	23,247	24,826
	30.6%	30.7%	30.1%
NATIONAL ORIGIN	8,035	8,327	9,396
	10.7%	11.0%	11.4%
RELIGION	2,340	2,541	2,880
	3.1%	3.4%	3.5%
RETALIATION - ALL STATUTES	22,278	22,555	26,663
	29.5%	29.8%	32.3%
RETALIATION - TITLE VII ONLY	19,429	19,560	23,371
	25.8%	25.8%	28.3%
AGE	16,585	16,548	19,103
	22.0%	21.8%	23.2%
DISABILITY	14,893	15,575	17,734
	19.7%	20.6%	21.4%
EQUAL PAY ACT	970	861	818
	1.3%	1.1%	1.0%

CHART 2

RACE-BASED CHARGES FY 2005 - FY 2007

	FY 2005	FY 2006	FY 2007
RECEIPTS	26,740	27,238	30,510
RESOLUTIONS	27,411	25,992	25,882
SETTLEMENTS	2,801	3,039	2,945
	10.2%	11.7%	11.4%
NO REASONABLE CAUSE	18,608	17,324	16,773
	67.9%	66.7%	64.8%
REASONABLE CAUSE	1,161	1,016	998
	4.2%	3.9%	3.9%
SUCCESSFUL CONCILIATIONS	377	292	285
	1.4%	1.1%	1.1%
UNSUCCESSFUL CONCILIATIONS	784	724	713
	2.9%	2.8%	2.8%
MERIT RESOLUTIONS	5,129	5,232	5,178
	18.7%	20.1%	20.0%
MONETARY BENEFITS (MILLIONS)*	\$76.5	\$61.4	\$67.7

**Does not include monetary benefits obtained through litigation*

Chart 2 information was taken from the **EEOC website**.

For definitions for the above categories, please visit www.eeoc.gov/stats/define.html.

DATA INTERPRETED

Over the past three years (FY 2005 - FY 2007) and even since FY 1997, EEOC has seen an increase in received race-based charges. Resolved claims have decreased, while settlements of these claims have seen a slight increase over the documented three-year period.

REASONABLE VS NO REASONABLE CAUSE

It is interesting to note that in the past three years, over half of all race-based claims received by EEOC have been categorized under no reasonable cause, while only a small fraction of the claims originally filed have been deemed reasonable.

MERIT RESOLUTIONS

These resolutions basically are favorable to the charging party. From FY 2005 - FY 2007, merit resolutions have decreased slightly. Only ADA's (Americans with Disabilities Act) merit resolutions are slightly higher than race, national origin and age discrimination charges.

MONETARY BENEFITS

Monetary benefits awarded to race-based charges have fluctuated during the past three years. From FY 2005 to FY 2006, there was a significant decrease in monetary benefits awarded (based on EEOC only). But from FY 2006 to FY 2007, monetary benefits increased. When compared to other discriminatory categories, such as national origin, disability and age, with the exception of FY 2004, race-based charges saw greater monetary benefits (*please note that monetary benefits do not include benefits obtained through litigation*).

FINAL THOUGHTS

Education professionals must revisit the full spectrum of legal issues surrounding Employment Practices Liability in light of the 10-year trend in race-based charges. Federal and state laws exist to provide employers and employees the opportunity to protect their rights – the same laws that enable employees to bring suit in protection of rights provide employers with protections against meritless charges. EEOC's data and claims data from insurers focusing on educational institutions underscores the need to go through the risk assessment/risk management process, to identify and mitigate the potential adverse effects of race-based discrimination allegations against your district.

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