

# EEOC Releases Annual Performance Report for Fiscal Year 2023

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It comes as no surprise that the EEOC's enforcement activity, charge activity, and settlements have all increased under a Democratic administration. The EEOC's recent [Annual Performance Report](#) paints that picture in numbers, highlighting its Enforcement and Litigation Data for Fiscal Year 2023 (October 1, 2022 through September 30, 2023). Litigation commenced by the EEOC increased, along with a 50% increase in the amount recovered through those litigations and a 10% increase in charges filed with the EEOC. Some of that increased charge activity relates to the new Pregnant Workers Fairness Act ("PWFA"), which became effective on June 27, 2023. Overall, the report indicates that the EEOC has pursued an aggressive litigation strategy, and that the number of charges and complaints filed has increased since Fiscal Year 2022.

## Recoveries

The EEOC recovered \$665 million for employees, representing a 29.5% increase over Fiscal Year 2022. This figure includes the recovery of \$440.5 million for private sector and state and local government workers and \$202 million for federal employees. Recovery refers to amounts collected through litigation, mediation, conciliation, and settlement.

## Litigation

The EEOC reported filing 143 new lawsuits in 2023, which constitutes an increase of more than 50% from the previous year. Specifically, the lawsuits included 86 suits on behalf of individuals, 32 non-systemic suits with multiple victims, and 25 systemic suits involving multiple victims or discriminatory policies. Through litigation, the EEOC obtained more than \$22.6 million for 968 individuals while resolving 98 lawsuits and achieving favorable results in 91% of all federal district court resolutions. The breakdown of the recovery by claims is: \$16.5 million for Title VII claims, \$3.8 million for ADA claims, \$1 million for multi-statute claims, \$800,000 for ADEA claims, and \$500,000 for Equal Pay Act claims.

## Increased Demand

The statistics demonstrate an increase in demand for EEOC services. The EEOC received 81,055 new discrimination charges, 233,704 inquiries in field offices, more than 522,000 calls from the public through the agency contact center, and over 86,000 emails, representing respective increases of 10.3%, 6.9%, 10%, and 25% over Fiscal Year 2022. This increase signals a heightened awareness of the EEOC and corresponding likelihood of bringing a claim.

## Priority Areas

The EEOC identified the following as priority areas - addressing systemic, preventing workplace harassment, advancing racial justice, preventing and remedying retaliation, advancing pay equity, advancing diversity, equity, inclusion, and accessibility (“DEIA”) in the workplace, and addressing the use of technology, including artificial intelligence, machine learning, and other automated systems in employment decisions. These priorities reflect many of the hot button topics in employment law.

## PWFA

The PWFA addresses workers who face discrimination based on pregnancy, childbirth, or related medical conditions and was signed into law on December 29, 2022. As we previously [reported](#), it requires covered employers to provide reasonable accommodations to a worker’s known limitations related to pregnancy, childbirth, or related medical conditions. The PWFA became effective June 27, 2023, and the EEOC began accepting charges arising from the PWFA on that date. As this change occurred towards the end of Fiscal Year 2023, it will be interesting to see the evolution of PWFA claims into the remainder of 2024.

## Conclusion

Given the increases in charges, litigation, and demand for EEOC services, employers should continue to keep their guard up, particularly due to the increases in monetary recovery. With the upcoming presidential election, employers face the potential for the continuation of the EEOC’s aggressive agenda or a potential shift in a different direction. Below are some best practices for employers for the remainder of 2024:

- Continue to provide regular training and make sure internal complaint and investigation procedures and policies are properly followed.
- Review and update pregnancy accommodation policies to make sure they comply with the PWFA.
- Identify any potential risk areas and work with counsel to develop mitigation strategies.