

# PUBLICATION

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## EEOC Fiscal Year-End Lawsuits Filed Provide Insight into Agency Priorities

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Every year around this time, as regular as college football tailgates and traffic jams, the EEOC files a flurry of lawsuits before the completion of its fiscal year at the end of September. During August and September of this year, the EEOC filed dozens of new cases against employers across the country, launching a wave of litigation targeting large and small employers alike for a wide variety of alleged discrimination and retaliation. As might be predicted given the near constant barrage of sex harassment claims in the news, many of the cases involve claims of harassment, including sex, race, and national origin harassment claims. In fact, according to an EEOC press release, the agency filed 66 harassment lawsuits, including 41 involving claims of sexual harassment in Fiscal Year 2018. However, claims of disability discrimination, pregnancy discrimination, age discrimination, race discrimination, unlawful pay practices, and retaliation have also made appearances.

During the week of August 9, 2018 alone, the EEOC filed seven different lawsuits alleging harassment against employers, including claims against the Piggly Wiggly grocery store and United Airlines. The suit against United Airlines claimed one of the international airline's flight attendants suffered a hostile work environment over several years. The claims allege that a United Airlines pilot posted "sexually explicit images" of the flight attendant to various public websites. The images referred specifically to the flight attendant by name, her home airport, and even occasionally referenced the company's well-known ad, "Fly the Friendly Skies." The EEOC alleges that the company failed to take action to prevent the conduct of the pilot even after the flight attendant complained.

On September 25, the EEOC sued a national discount retailer for sexual harassment claims involving a store manager's alleged harassment of an assistant store manager that began within a week of her start date. The manager allegedly targeted the assistant manager with sexually suggestive and crude comments, as well as unwelcome touching, including ripping her blouse and forcefully grabbing her. However, what is even more surprising than the manager's initial unwelcome conduct is the company's alleged reaction to her complaints to management. Instead of punishing the manager, they transferred the assistant manager to a less convenient location on an earlier shift at a different store – resulting in an hour longer daily commute. The company refused to transfer her back to the more convenient location, and it let the manager accused of harassment work with the assistant manager at the new store on one occasion. The assistant manager resigned based on the company's inadequate attempt to remedy the situation.

Although sex harassment claims were plentiful in the wave of lawsuits the EEOC filed at its year-end, other issues, such as age discrimination, also made multiple appearances. For example, the EEOC filed age discrimination lawsuits against DG Grill & Chill, Norfolk Southern, and the University of Wisconsin.

The agency also targeted employers for disability and pregnancy discrimination, bringing lawsuits against such nationwide employers as Pilgrim's Pride and Bath and Body Works for such claims. The EEOC sued one major national retailer in two different lawsuits, alleging disability discrimination in one and pregnancy discrimination in the other. In the disability action, the EEOC alleged the retailer violated the ADA by refusing to hire a congenital amputee because the company assumed she could not perform the essential functions of the job. However, the applicant had previously worked as a stocker for a different retail company prior to applying to work at the company and was able to perform the duties of that job without accommodation. In the pregnancy

discrimination lawsuit, the EEOC alleged that the company refused to offer a light duty program to a class of pregnant workers even though it offered the benefits of a light duty program to other employees with work restrictions. The EEOC also sued another major national retailer for failing to interview a qualified applicant once the company's Human Resources representatives learned he was deaf.

### **What can employers glean from the EEOC's year-end lawsuits?**

As expected, employers should ensure that their anti-harassment policies are up-to-date in light of the #MeToo movement, and they should continue to be vigilant about enforcing those policies to minimize allegations of sexual or other harassment. What is notable in several cases filed is the inadequacy of the employer's response to complaints of harassment. In addition, the EEOC continues to maintain its focus on other discriminatory practices, such as targeting older workers for disparate application of policies and treating disabled individuals, whether as applicants or employees, less favorably than other individuals. So, employers should continue to be aware of the need to provide critical training to managers and HR that promotes fair and equitable treatment of all employees and gives appropriate guidance for responding to claims of harassment and discriminatory treatment.