



Be Careful, Employers: You're In The 'Red Zone'

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Most employers don't even realize that they are smack-dab in the middle of the most dangerous time of year – the so-called "red zone." It refers to the months of August and September, the last two months in the federal government's fiscal year.

All of the federal agencies handle the close of the year differently, but the one that should be observed most closely is the Equal Employment Opportunity Commission. That's because, just as the proverbial traffic cop seems to get more aggressive in handing out tickets at the end of the month to meet his quota, the employment watchdog agency usually files most of its discrimination lawsuits against employers at the close of its fiscal year.

There are many ways that an adversarial situation with a disgruntled former or present employee could arise – a company could get hit with a union grievance, a wage-and-hour demand, a state agency discrimination charge, an attorney demand letter, an OSHA complaint, an NLRB unfair labor practice charge, or a tried-and-true civil lawsuit filed in court by a private attorney.

But the "red zone" can lead to a special type of challenge that may be the most fearsome of all – a lawsuit filed in federal court by the EEOC on behalf of one or more current or former employees. They are somewhat rare, at least in comparison to discrimination charges filed with the EEOC by employees. Whereas employees have filed more than 90,000 charges alleging workplace wrongdoings in each of the past four years, the EEOC itself has initiated litigation between 250 and 300 times each year during the same period.

The EEOC usually doesn't stop at simply aiming for a monetary payout; it also consistently demands that the employer enter into a formal agreement called a "consent decree" that requires it to jump through certain compliance hoops for a period of several years after the lawsuit is completed. When these pit-bull litigators get their teeth locked into a case, shaking them is not an easy task.

So, what can employers do to survive this difficult period? Unfortunately, there isn't much one can do at this point to avoid a lawsuit if one is in the pipeline. The good news is that EEOC lawsuits don't come out of nowhere – before any litigation is filed, an employer will have faced and defended an administrative charge. Also, it likely will have been invited to a "conciliation," which is a negotiation meeting or process to try to settle the matter before a lawsuit is filed.

However, an employer that is dealing with an EEOC claim right now should be aware that the odds of it blooming into a full-fledged lawsuit are greatest in the coming weeks. If an EEOC claim is pending, but a labor attorney has not been consulted yet, get him or her on the phone right now to discuss the matter.

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