Companies Must Now Prepare For The EEOC's New War

Publication
11.05.12

The Equal Employment Opportunity Commission (EEOC) has the authority to investigate charges of discrimination against employers who are covered by the law. (The agency's) role in an investigation is to fairly and accurately assess the allegations in the charge and then make a finding. — An EEOC overview statement from its website says.

The EEOC's mission to stop and remedy unlawful employment practices has not changed. However, the methods the agency utilizes to achieve its goals have markedly evolved, especially in recent years. Indeed, some argue that the EEOC has turned into an agency that "shoots first and aims second." Others are more diplomatic and say that the EEOC has become "increasingly aggressive." Regardless of the characterization, it is clear that the EEOC's process of investigating claims is different.

It appears that the EEOC is no longer motivated by the amount of readily identifiable claimants. Instead, the EEOC is focusing on remedying discrimination for unknown and unnamed classes of individuals and pursuing a new number with public relations appeal and record settlement amounts.

The EEOC's draft strategic plan for fiscal years 2012-2016 came as no surprise to many employers. Employers already felt the effects of the agency's initiative. They experienced more onsite interviews relating to administrative charges and broad requests for information that sought documents and data sometimes unrelated to the case at issue. Too often, the agency was less willing to compromise and more likely to cast them as wrong-doers. Employers should take action to protect themselves from systemic investigations. In particular, employers should conduct regular audits of their hiring, pay, promotion and termination policies and practices. Employers should also thoroughly review their background and credit-check policies to ensure that they are substantially related to the applicant's/employee's position. In addition, companies should train human resource personnel and members of management on these policies. Engage outside counsel to perform the audits so that the audit results are protected by the attorney-client privilege and work-product doctrine.

Companies should not be afraid to pushback on EEOC demands that stand in contradiction to agency publications, like requests for applicant age data. Employers should propose alternate means as a compromise. If compromise is not possible, the companies should reject the EEOC's demand and/or

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.

challenge the EEOC in court. In today's climate, companies must be cognizant of the fact that they are vulnerable to a systemic investigation and take appropriate steps to protect themselves.

This article appeared in the November 5, 2012 edition of the *Chicago Daily Law Bulletin*.

Copyright © 2024 Fisher Phillips LLP. All Rights Reserved.