Is The EEOC Messing With Texas?

Publication
12.11.12

Texas companies may be feeling the heat of potential Equal Employment Opportunity Commission investigations, including the agency's recent strategy of focusing on class-based situations against employers — large and small — in an effort to crack down on systemic workplace discrimination. The message is clear.

Instead of simply looking at individual discrimination and retaliation allegations, the EEOC is now often looking for policies, practices, procedures or other patterns of wrongdoing that may affect dozens or even hundreds of workers at a time in areas such as hiring, pay and termination. Unfortunately, the tale often lies in the cold realities of numbers, and if so, Texas employers may be wearing targets with bulls eyes.

In 2011,10 percent of all workplace discrimination complaints filed nationwide with the EEOC were from workers in Texas, the highest single-state percentage in the nation. The most common complaints involved claims about retaliatory charges, followed by claims of race and gender bias, national origin bias and religious discrimination claims. The high rate of complaints from Texans may be setting the stage for a greater number of "systemic" (or class-based) investigations in the Lone Star State by the EEOC.

Though all categories of EEOC discrimination charges have increased since 2007, five categories have seen the greatest growth. These are in claims for discrimination based on race, gender, age, disability and retaliation charges.

In light of the increased threat of class-based investigations and potential lawsuits, what should attorneys be telling employers to do in these difficult times? It is now more important than ever to thoughtfully manage the human resources aspects of the employer's business and to devote enough time and attention to ensure that compliance with fair employment practice laws is a real priority.

Employers can be proactive or reactive in dealing with the changing enforcement landscape of the EEOC. They can spend more time and resources up front — or they can sit back and wait to be taken to task by the government, acting on complaints from employees who already have stories to tell about inappropriate behavior and how their complaints fell on deaf ears. Employers who choose to play the waiting game are clearly making a mistake. In this arena, an ounce of prevention is worth far more than a pound of cure.

For the thoughtful, proactive employer who is seeking to avoid the courthouse in employment law matters, management should assign responsibility to someone who is knowledgeable in the area of fair employment practice laws administered by the EEOC and who is vested with authority and will command respect.

This article appeared on December 11, 2012 on *Employment Law360*.

Related People

Michael V. Abcarian
Senior Counsel
214.220.8300
Email