

# EEOC: Workplace bias charges down

LI BUSINESS



Jherzlich@aol.com

**W**orkplace harassment has been a hot topic over the past few years.

Subsequently, employers are being held more accountable, which may be contributing in part to a decline in overall workplace discrimination charges, experts say.

According to the latest stats from the U.S. Equal Employment Opportunity Commission (EEOC), workplace discrimination charges filed with the EEOC declined from 76,418 in fiscal year 2018 to 72,675 in fiscal year 2019.

"The data is heading in the right direction," says Aoifa O'Donnell, CEO of National EAP, a Hauppauge-based company that provides employee assistance programs, corporate training and leadership coaching services.

In particular, charges alleging sexual harassment were down from 7,609 in fiscal year 2018 to 7,514 in fiscal year 2019.

This could be attributed in part to "the #MeToo movement and heightened awareness around inappropriate conduct," O'Donnell says.

Still, there's more work to be done. Two areas that saw increased charges were those alleging color discrimination and charges related to Equal Pay Act violations.



**Attorney Dominique Camacho Moran says wait to see how cases are resolved before drawing conclusions.**

When asked why those numbers might be up, EEOC spokesman James Ryan said: "The EEOC generally declines to give possible reasons for any type of discrimination charge going up or down in a certain area or during a certain time period. The possible causes for such developments are open to interpretation and/or speculation."

He added: "One may speculate on 'reasons' for discrimination . . . but there is never any excuse for it."

According to EEOC data, retaliation continued to be the most frequently filed charge, representing 53.8% of all charges filed.

## Defining retaliation

Retaliation is claimed when

an employee feels they were treated less favorably after engaging in a protected activity such as reporting discrimination or participating in a discrimination investigation, says Jonathan Bruno, a partner in the Manhattan office of Rivkin Radler LLP.

The reason these charges tend to be higher is "retaliation is much easier to prove than discrimination," he says, adding that's because retaliation "may be inferred when an adverse employment action happened in close proximity to the employee engaging in a protected activity."

With that in mind, employers need to take "some pause" before terminating/disciplining an employee especially if the employee is engaged in a protected activity such as complaining about their work environment or requesting some type of leave, Bruno says. Also they need to document employee performance issues in a timely and thorough manner, he says.

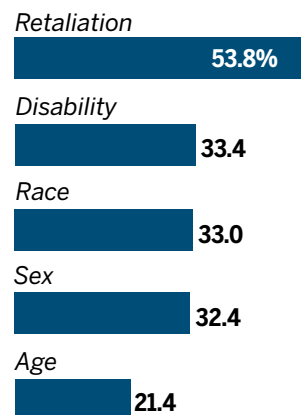
Barbara DeMatteo, director of HR consulting at Jericho-based Portnoy, Messinger, Pearl & Associates, agrees, noting that when a client asks for advice to fire someone, she asks if the employee has filed any complaint, taken a leave of absence or participated in an investigation.

Employers must objectively consider why a negative action is being taken, she says.

## More to the story perhaps

The overall decline in discrimination charges is encouraging, she said, but may not tell

## Top 5 charges filed with EEOC in fiscal year 2019 ranked by percentage of filings:



Source: EEOC

the whole picture considering there are a lot of unreported complaints filed internally at companies.

Still, it's good to see sexual harassment charges down, she said, noting it may be attributed to heightened awareness of the issue.

In New York, sexual harassment training is now mandated annually, which has led to increased training requests, she says.

"We very clearly saw an uptick in the last quarter of 2019, especially because of the NYS requirement," DeMatteo says.

O'Donnell says employers that had never conducted this training before are using New York's "training mandate as an opportunity to educate employ-

ees about all protected classes and increase respect."

In New York, total workplace discrimination charges filed with the EEOC declined from 3,478 in fiscal year 2018 to 3,220 in fiscal year 2019, says Domenique Camacho Moran, a partner at Farrell Fritz in Uniondale.

Sex-based charges, which includes sexual harassment charges, declined from 1,299 in fiscal year 2018 to 1,209 in fiscal year 2019, she says.

Still she says it may be too soon to tell if that downward trend will continue.

"The charges are only one piece of the story," says Moran.

It will be more telling to see how claims are ultimately resolved in federal and state court (i.e., whether they are dismissed, whether they go to trial and if the employee receives any monetary settlement), she says.

## Claim prevention

She says training and good performance management can help prevent claims.

Moran advises companies to look at five-year training windows, trying to differentiate the training each year so it doesn't become stale (i.e. alternate live training, webinars, etc).

The key is making it more than a mandate, but part of company culture.

"It behooves employers to prioritize creating healthy and positive workplace cultures as they are the driving force to an engaged workforce, essential for long-term business success," O'Donnell says.

## THE WEEK AHEAD

### TUESDAY

#### WORKSHOP | Farmingdale

"Communication Styles," learn how to communicate with and manage individuals in four different communication styles, featuring interactive activities, handouts and a question-and-answer session, coffee will be served, 9:30-11:30 a.m., Small Business Development Center, Farmingdale State College, 2350 Broadhollow Rd., \$10, register, farmingdale.edu/sbdc, 934-420-2765.

#### EZ SPEAKERS

#### TOASTMASTERS | Hauppauge

Learn how to become a public speaker, practice and learn skills by filling a meeting role, guests welcome, 11:50

a.m., H. Lee Dennison Building, 100 Veterans Memorial Hwy., free, ezspeakers.toastmastersclubs.org, 631-375-7407.

#### LI STOCK TRADERS

#### MEETUP | Plainview

"Selecting the Best Blue-Chip Stocks for Covered Call Writing," guest speaker Alan Ellman, president of The Blue Collar Investor, discusses covered call writing and presents a strategy where retail investors can create a free portfolio of large-cap technology stocks by selling options on blue-chip companies, 6:45-9 p.m., Plainview-Old Bethpage Library, 999 Old Country Rd., free, register, meetup.com/listmg, 516-330-9906.

### WEDNESDAY

#### BEYOND THE BUSINESS

#### PLAN | Farmingdale

Learn how to take action with your businesses and how to keep pushing to get results, coffee served, 9:30-11:30 a.m., Small Business Development Center, Farmingdale State College, 2350 Broadhollow Rd., \$10, register, farmingdale.edu/sbdc, 934-420-2765.

### THURSDAY

#### GROW YOUR E-COMMERCE

#### WEBSITE | Stony Brook

Get tools to help you compete in the online retail marketplace, 8:30 a.m. registration and refreshments, 9-11 a.m. program, Stony Brook

Small Business Development Center, Research and Development Park, Building 17, free, register, nwsdy.li/ecommerce, 631-632-9070.

#### NETWORKING MEETING |

#### Hauppauge

Hauppauge Chapter of LeTip International holds a networking breakfast, new members welcome to speak about their businesses and meet potential clients, 7-8:30 a.m., Hauppauge Palace Diner, 525 Smithtown Bypass, free for first-time guests, letipofhauppauge.com, 631-724-1775.

#### FOOD BUSINESS INCUBATOR

#### OPEN HOUSE | Calverton

Meet, taste, and explore the food and kitchen of the SBU Calverton Food Business Incubator that has over 40 startup food product companies producing innovative food; facility tours, food product discovery, guided tastings and networking, 3:30-7 p.m., Stony Brook Incubator at Calverton, 4603 Middle Country Rd., free, register, stonybrook.edu/ecodev, 631-216-7114.

— GINA TABARUS

SEND NOTICES to Business Calendars, Newsday Events, 235 Pinelawn Rd., Melville, NY 11747-4250; fax 631-843-2688, or email events@newsday.com