

Seyfarth Insight



Mining Discrimination Charge Data: What Your EEO-1 Reports Aren't Telling You

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When asked “where are the diversity issues in your company,” most employers immediately turn to their employee demographics, be they EEO-1 reports, human resources information systems, etc. Naturally, comparatively low numbers of particular minorities may signal issues. An expensive statistical analysis may also reveal other problem areas. But is that enough?

One often overlooked but crucial piece of information when assessing the overall “diversity health” of an employer is considering the nature and number of discrimination complaints. As we have reported [<http://www.workplaceclassaction.com/leec-litigation/employers-beware---the-eeocs-fy-2011-eeoc-annual-performance-and-accountability-report-confirms-its/>], employers faced an all-time record of charge filings with the EEOC in the agency's 2011 fiscal year. Those statistics are extremely helpful to track litigation trends across the country, and are closely scrutinized by in-house and external lawyers trying to read the tea leaves of how to best prevent future litigation. But these same statistics examined at the company level give us a unique window into the perception of diversity by an employer's own workforce.

For most companies, a charge filed with the EEOC is a matter for the legal department. The charge is handled by either in-house or external counsel, and human resources and operations are often asked to assist with those investigations. A discrimination charge is viewed as a threat, and there is typically a “circle the wagons” mentality when responding to that threat. A frequent goal when responding to the charge is often to compartmentalize the problem and insulate it from spreading. Employers will strive for a swift response that will have the least impact on day-to-day operations. Once that threat is addressed, and the charge is dismissed or otherwise resolved, most employers want nothing to do with revisiting the issue. This may be a lost opportunity. A discrimination charge - regardless of the merits of the allegations - is a barometer of employee perception of fairness in the workplace. Naturally, there will be opportunistic claimants who are only out to squeeze undeserved money from the employer. But most who file a charge have sincere (albeit misguided) feelings that there is a problem. Hiring and promotion claims are particularly important to consider when getting a ground-level view of employee perceptions of diversity.

One challenge is collecting this information. Charges typically live in legal or some insulated arm of HR or operations. The nature of the charge, where the charge was filed, and the specifics of the allegations are seldom tracked, or if they are, the data is kept only for legal review. With the proper database tool, however, a company can efficiently compile charge data for current and historical charges. Employers can develop these programs themselves, or use pre-existing tools like Seyfarth Shaw's *Charge Tracker* program to develop their charge database. As each new charge arrives, it should be logged into this database. If the opportunity and resources exist, historical charge data should be added to this tool. The more data that is collected, the more trends will emerge. With some foresight and discipline, a database can be developed that will be useful not only for legal, but for those focused on diversity issues as well.

Once an employer has all of its charge data in one place, there are a number of different analyses it can conduct. The types of analyses are limited only by one's imagination, but some examples:

- **Benchmarking against national trends** - How do the charges stack up against national charge trends? Are there, for example, more race claims than would be expected based on EEOC national data? That could represent an employee perception that the workforce is not diverse vis-a-vis a particular protected group.
- **Geographical/operational trends** - Are there particular hot spots, either in a given operational division or geographical area? It may be wise to consider more focused diversity attention to those areas, even though the raw EEO-1 numbers would otherwise suggest that all is well in that region/business unit. A geographical analysis may also reveal problem areas before they attract EEOC attention.
- **Year-over-year comparisons** - Comparing how particular categories of charges are increasing or decreasing over time is also a key consideration. Significant increases in failure-to-hire cases, for example, would require a qualitatively different response than an increase in harassment claims. Simply examining the total number of charges, however, would not expose these distinctions.

Of course, data analysis is only useful if it translates to action. The real challenge is taking these trends and converting them into a plan for addressing diversity issues in the workplace - be they real or perceived. For example, if the data shows that the employer has more than expected gender discrimination claims compared to national benchmarks, this may suggest revisiting hiring and promotion policies to determine if there may be "glass ceiling" or "sticky floor" problems. A spike in failure-to-promote claims for a certain racial or ethnic group would signal that the company's diversity efforts are potentially ineffective or, at a minimum, not being effectively communicated. A disproportionate number of age charges in a geographic region or operating unit may prompt an employer to focus additional diversity training in that area. The point is, simply relying on employee demographic data is not enough. Discrimination charge data provides unique and critical insight into a workplace - a view that is lost if ignored.

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To learn more about Seyfarth's Charge Tracker please contact *Rebecca Pratt Bromet* at rbromet@seyfarth.com or (312) 460-5956 or *Christopher J. DeGross* at cdegross@seyfarth.com or (312) 460-5982.

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