

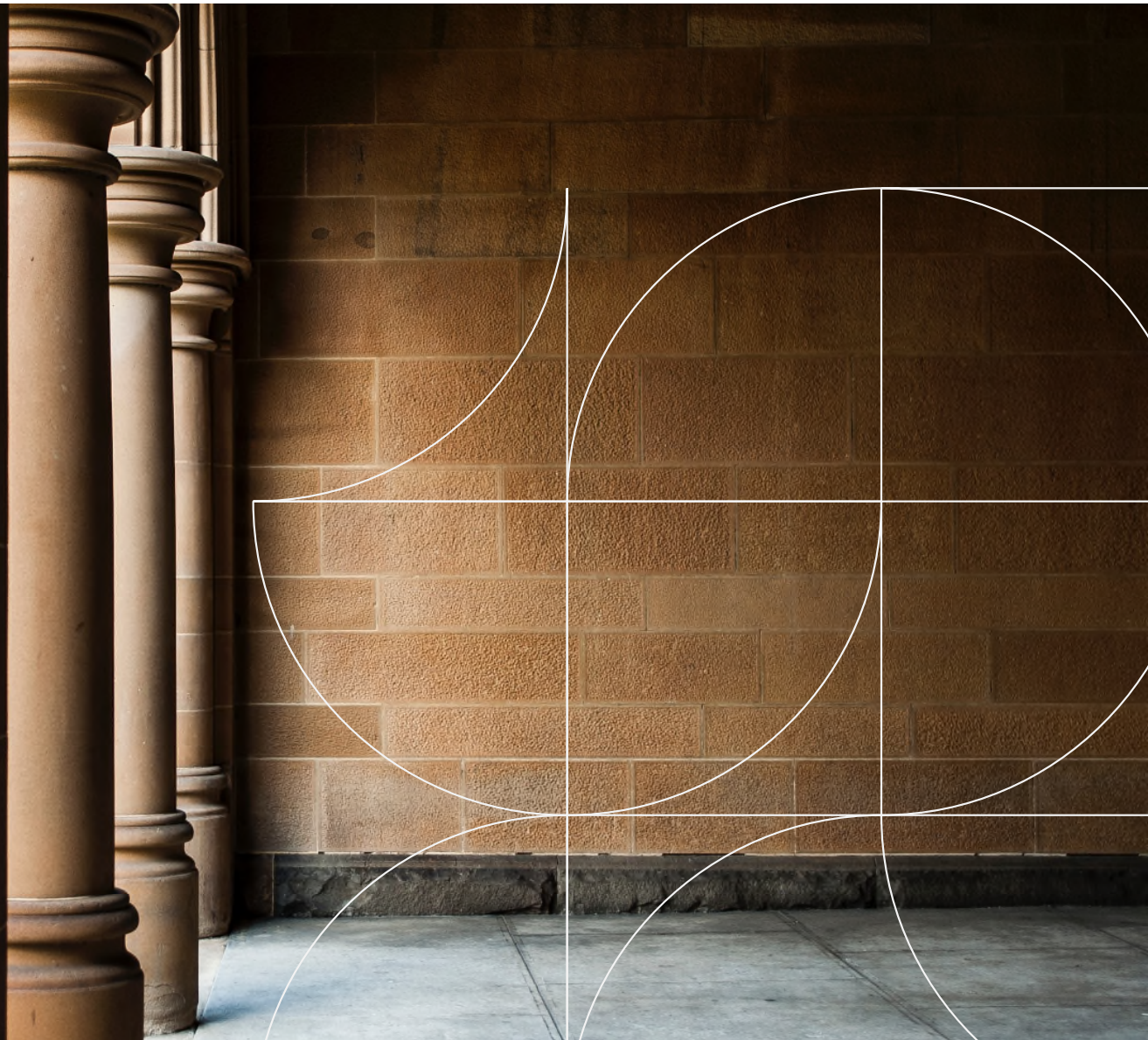


Developments In EEOC Enforcement in FY 2023

February 2024

Seyfarth Shaw LLP

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What We Will Cover

- 01** The EEOC's Lineup
- 02** EEOC Charge Data By The Numbers
- 03** EEOC Litigation By The Numbers
- 04** EEOC Resolution Analysis
- 05** EEOC Strategic Enforcement Priorities
- 06** EEOC Litigation – Emerging Issues
- 07** Things To Come In 2024

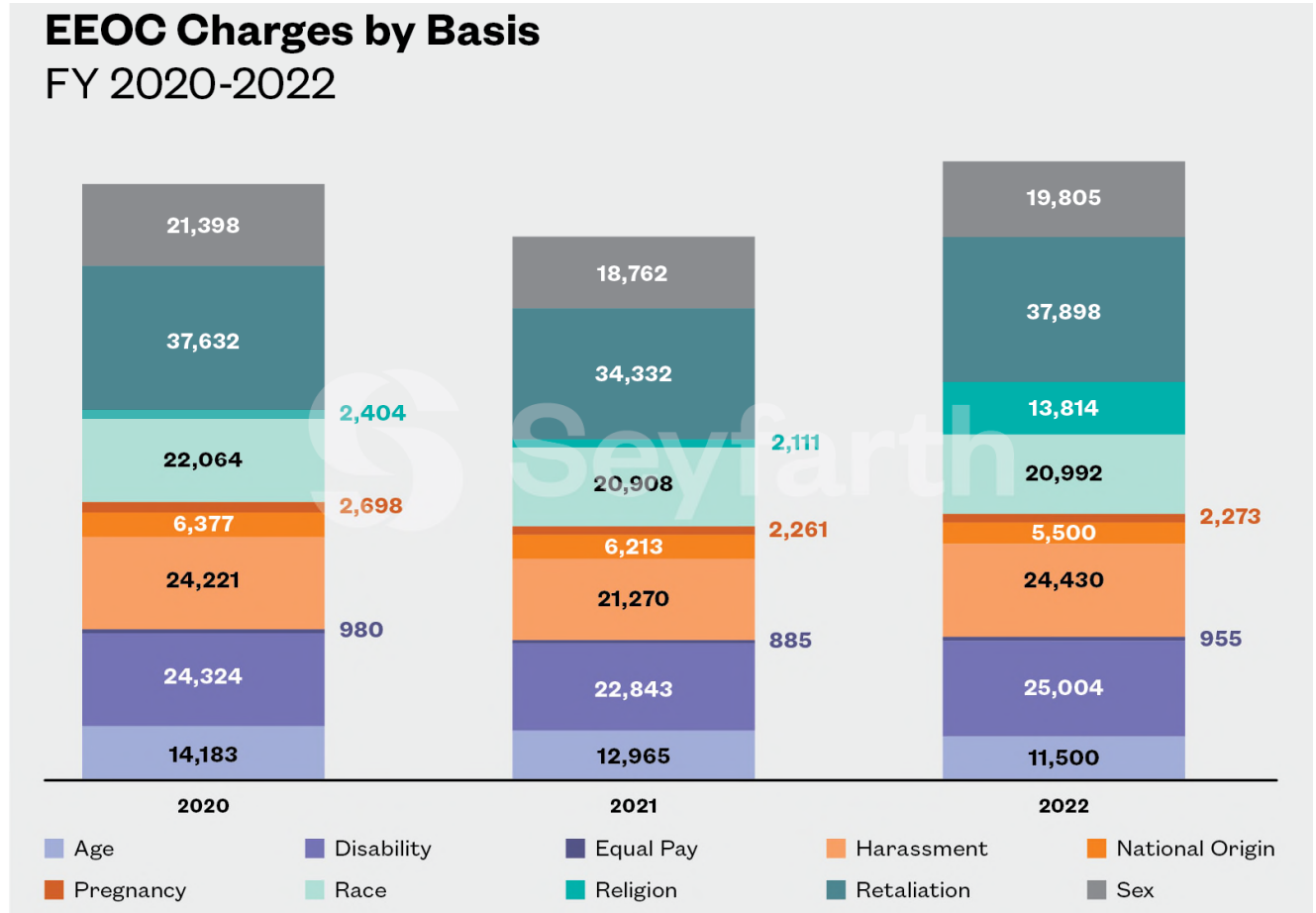
The EEOC's Lineup



- Why does it matter?
 - The Commissioners' new and expanded role
- Current Commissioners and their backgrounds
 - Biden appointee Kalpana Kotagal was confirmed by the Senate in July 2023. As a result, the Commission is now a 3-2 Democratic majority.

EEOC Charge Data By The Numbers

- Charge data demonstrates *how American workers* feel they are being treated by their employers
- **Retaliation** is consistently the most common allegation in EEOC charges
- FY 2022 saw a major spike in religious discrimination charges

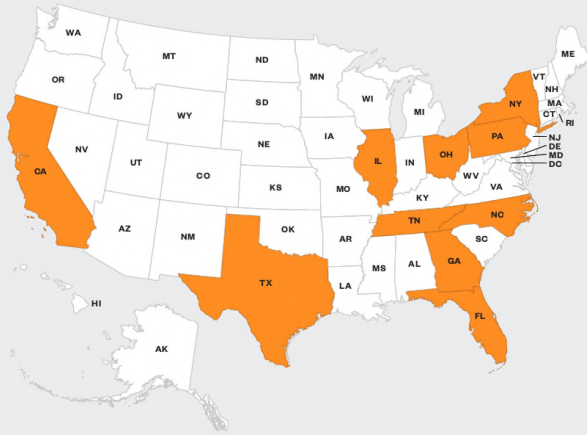


EEOC Charge Data By The Numbers

Top 10 States in EEOC Charges Received FY 2022

CHARGES RECEIVED BY STATE

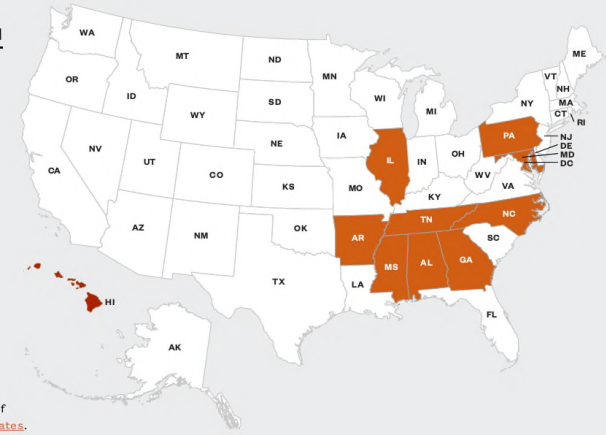
- Texas: **6,990**
- Florida: **5,192**
- Illinois: **4,909**
- California: **4,404**
- Pennsylvania: **4,058**
- Georgia: **3,729**
- New York: **3,534**
- North Carolina: **3,506**
- Tennessee: **2,599**
- Ohio: **2,342**



Top 10 States in EEOC Charges Received Relative to State Population FY 2022

CHARGES RECEIVED PER 10,000 POPULATION

- Mississippi: **4.08**
- Hawaii: **3.92**
- Illinois: **3.90**
- Arkansas: **3.80**
- Tennessee: **3.69**
- Georgia: **3.42**
- Alabama: **3.30**
- North Carolina: **3.28**
- Pennsylvania: **3.13**
- Maryland: **3.01**

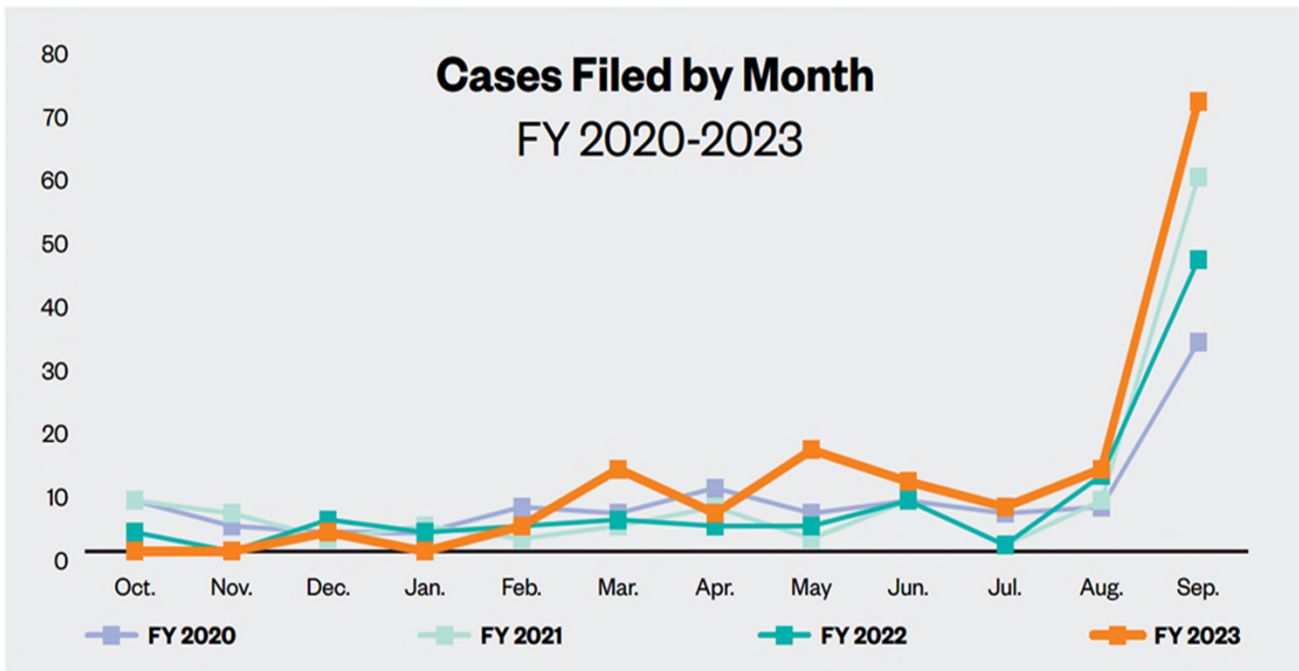


Compare overall charge data

vs.

Charge data adjusted per capita

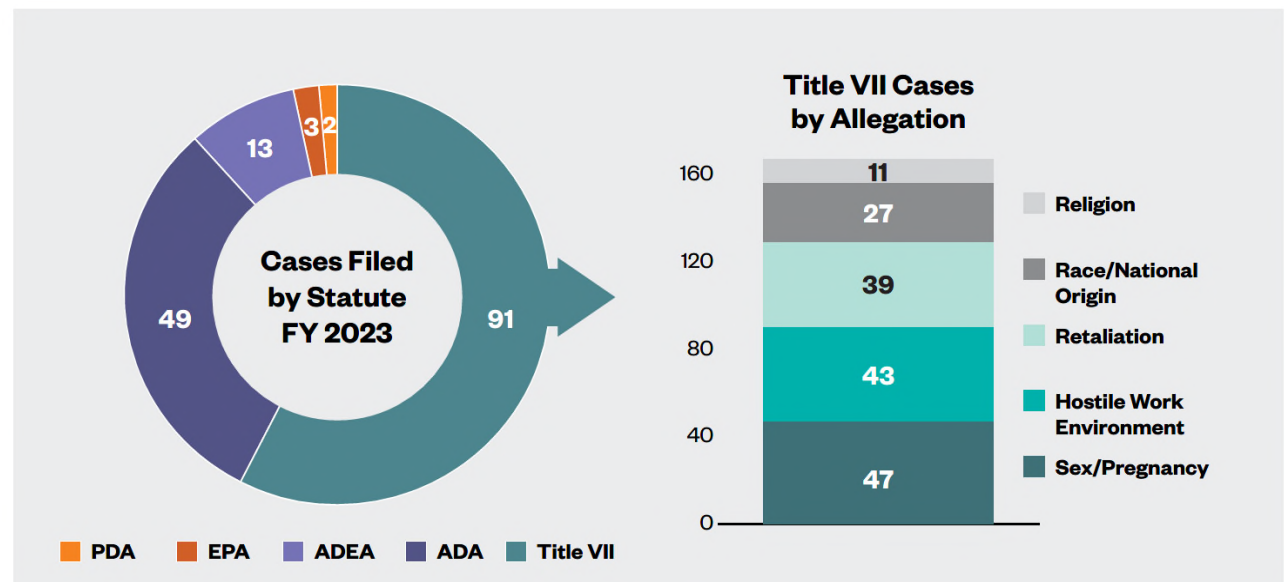
EEOC Litigation By The Numbers



- Overall merit filing numbers by month
 - Notable surge in filings in FY 2023
- **September** is always a busy time for the EEOC (end of its FY)
 - This September was the EEOC’s most active in its last four FYs

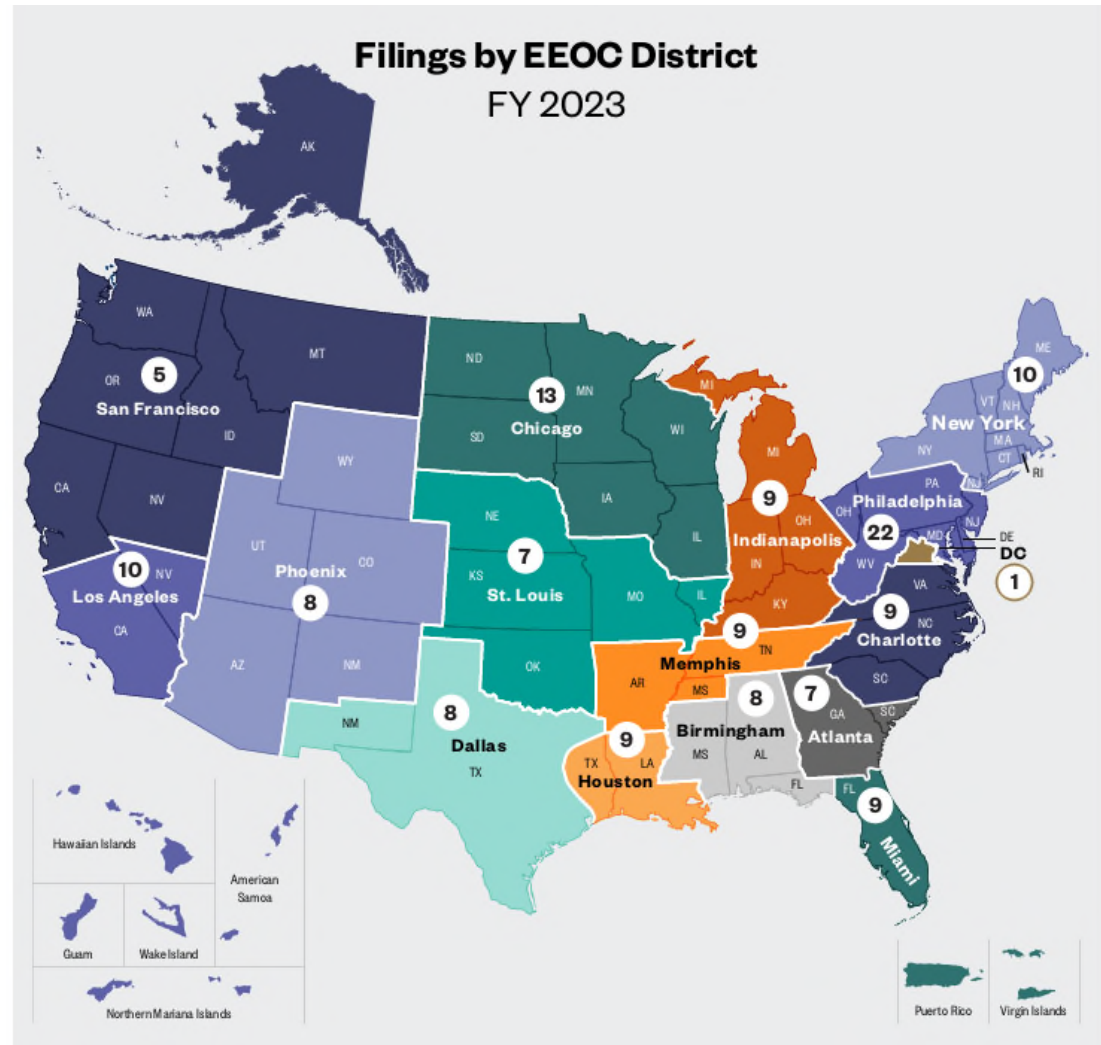
EEOC Litigation By The Numbers

- Breakdown of claims
- **Title VII** is always the most commonly cited statute, followed by the **ADA**
 - Notable **ADEA** increase, going from 1 in FY 2021 and 7 in FY 2022 to 13 in FY 2022



EEOC Litigation By The Numbers

- **Philadelphia Office** led the way, going from 7 filings in FY 2022 to 22 filings in FY 2023
- The only EEOC District Office that saw a year-over-year decrease was **Charlotte**, which filed 10 lawsuits in FY 2022 and 9 in FY 2023



EEOC Resolution Analysis

- The EEOC must **conciliate** (attempt settlement) after finding reasonable cause that a violation has occurred before filing suit.
- If an employer engaged in litigation with the EEOC makes a strategic decision to settle, the EEOC will offer its terms of settlement in a **consent decree**.
 - The terms of a settlement with the EEOC may also be set out in a more traditional **settlement agreement**.
- The EEOC will occasionally obtain a **trial judgment**, in which case it will likely seek to enforce every injunctive relief provision in the consent decree without revision or limitation.

EEOC Strategic Enforcement Priorities – New SEP for FY 2024-2028

1

Eliminating Barriers In Recruitment and Hiring: The EEOC will focus on recruitment and hiring practices and policies that discriminate on any basis unlawful under the statutes EEOC enforces, including sex, race, national origin, color, religion, age, and disability.

2

Protecting Vulnerable Workers: The EEOC will focus on harassment, retaliation, job segregation, labor trafficking, discriminatory pay, disparate working conditions, and other policies and practices that impact particularly vulnerable workers and persons from underserved communities.

3

Addressing Selected Emerging And Developing Issues: The EEOC will continue to prioritize issues that may be emerging or developing, including issues that involve new or developing legal concepts or topics that are difficult or complex.

4

Advancing Equal Pay For All Workers: The EEOC will continue to focus on combatting pay discrimination in all its forms—on the basis of sex under the Equal Pay Act and Title VII, on other protected bases covered by federal anti-discrimination laws, including race, national origin, disability, and age, and at the intersection of protected bases.

5

Preserving Access to the Legal System: The EEOC will focus on policies and practices that limit substantive rights, discourage or prohibit individuals from exercising their rights under employment discrimination statutes, or impede the EEOC's investigative or enforcement efforts.

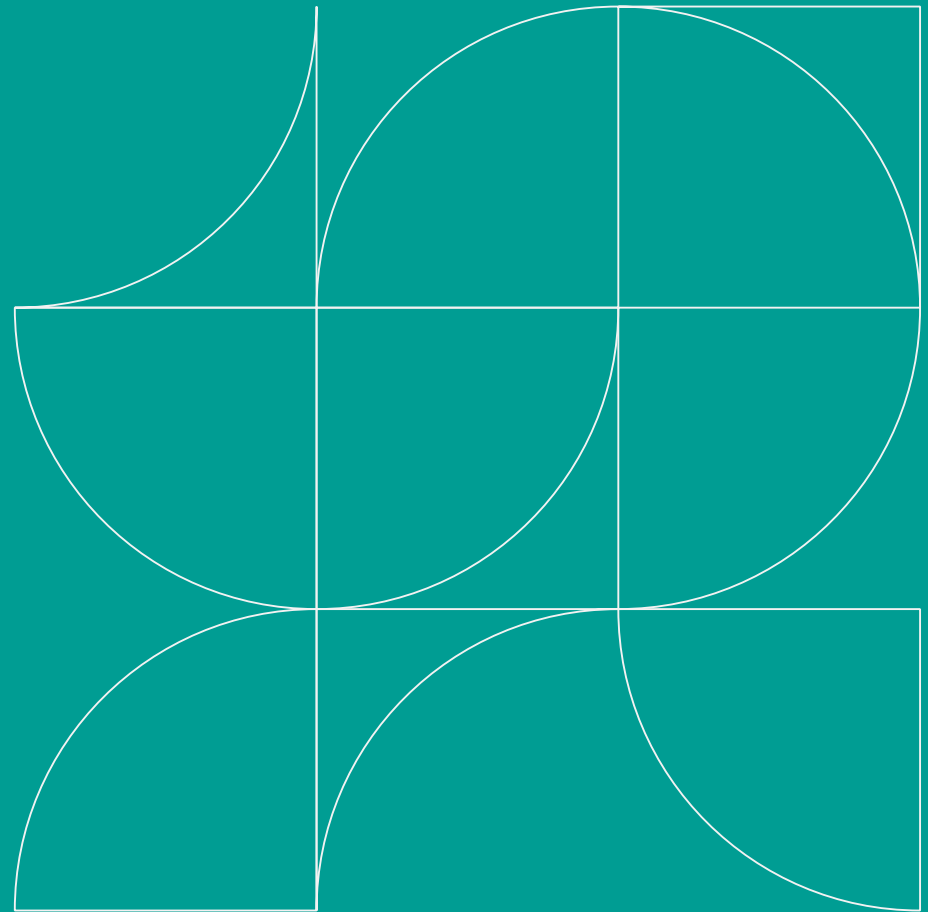
6

Preventing and Remediating Systemic Harassment: The EEOC will continue to focus on combatting systemic harassment in all forms and on all bases—including sexual harassment and harassment based on race, disability, age, national origin, religion, color, sex (including pregnancy, gender identity, and sexual orientation) or a combination or intersection of any of these. A claim by an individual or small group may fall within this priority if it is related to a widespread pattern or practice of harassment.

EEOC Litigation – Emerging Issues

- The developing conflict between **religious** and **LGBTQI+ rights** after the Supreme Court's decision in *Bostock v. Clayton County, Ga.*, 140 S. Ct. 1731 (2020)
- Continued emphasis on **qualification standards** and **inflexible leave policies that discriminate against individuals with disabilities**
- The new SEP also highlights **discrimination** that can arise as a **backlash in response to local, national, or global events**
 - The EEOC identified some groups in particular, including Jews, Muslims, racial or ethnic groups, and LGBTQI+ individuals
- The EEOC continues to focus on **AI-related disability discrimination**
 - Issued guidance titled: “Americans With Disabilities Act and the Use of Software, Algorithms, and Artificial Intelligence to Assess Job Applicants and Employees”

CLE Code



Things To Come In 2024

- Expected litigation focus for the remainder of FY 2024
- Early trends in the litigation data
- Best practices to stay off EEOC's radar



About The Book



- Analyzes new lawsuits filed and other enforcement activities initiated in the EEOC's most recent fiscal year
- Analyzes recent court decisions impacting substantive and procedural developments in EEOC-initiated litigation
- Distributed to thousands of companies, corporate counsel, and journalists

**thank
you**

contact information

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