



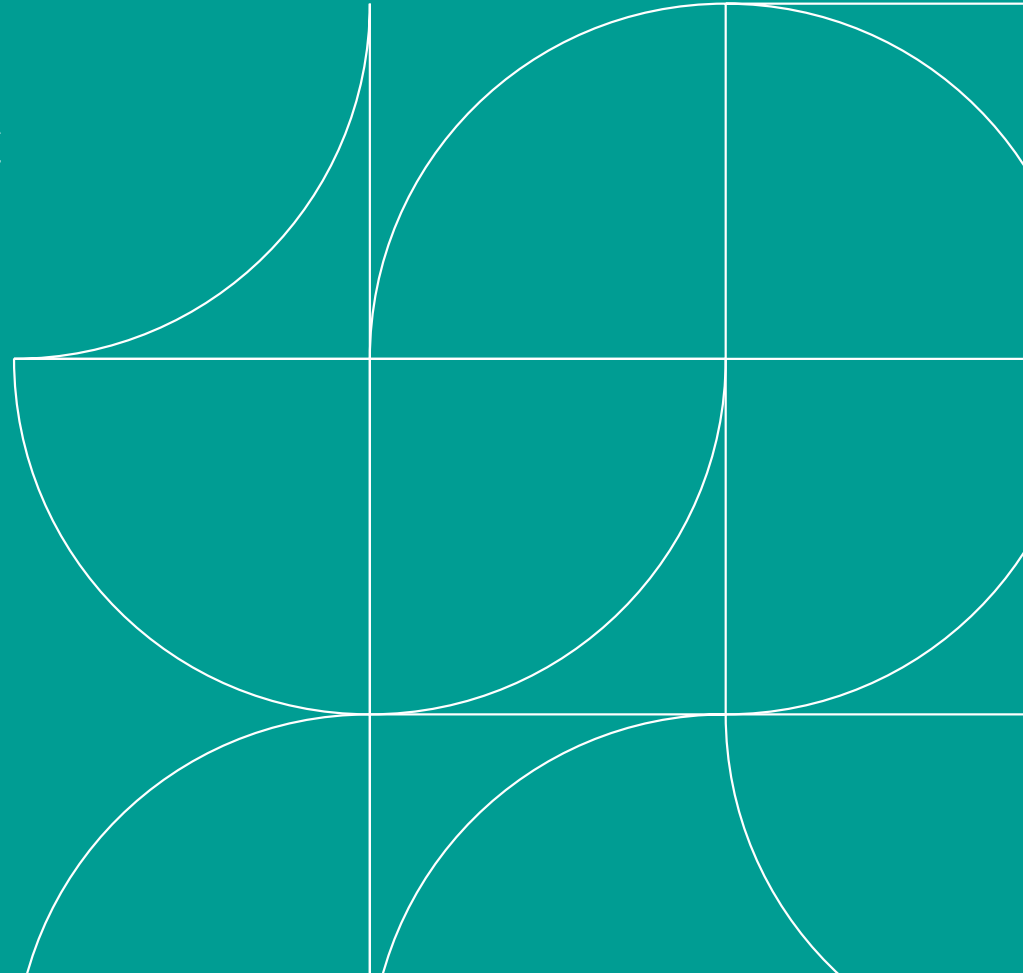
# Developments In EEOC Enforcement in 2023

## *From Charge Investigations to Systemic Litigation*

February 2023

**Seyfarth Shaw LLP**

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# Speakers

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# What We Will Cover

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- 01** The EEOC's Lineup
- 02** EEOC Charge Data By The Numbers
- 03** EEOC Conciliation Analysis
- 04** EEOC Litigation By The Numbers
- 05** EEOC Strategic Enforcement Priorities
- 06** EEOC Litigation – Emerging Issues
- 07** Things To Come In 2023

## The EEOC's Lineup

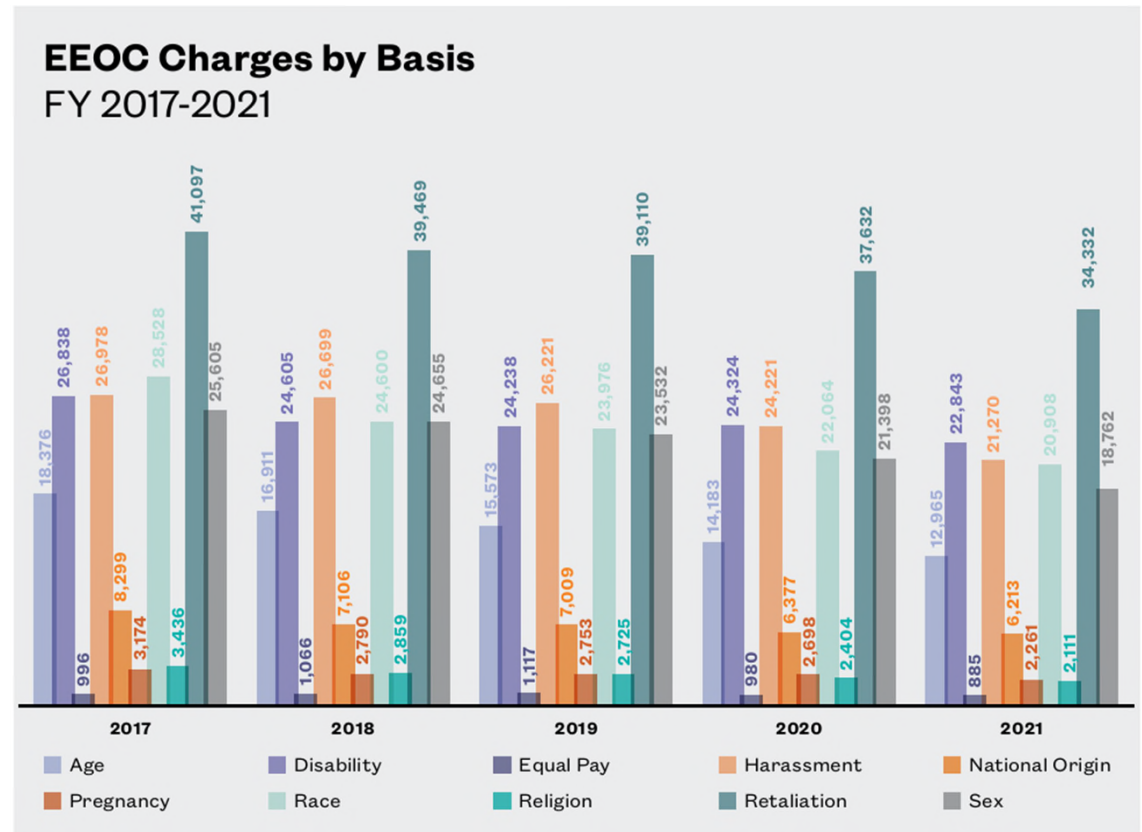
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- Why does it matter?
  - The Commissioners' new and expanded role
- Current Commissioners and their backgrounds
  - Biden appointee Kalpana Kotagal is still pending Senate approval as of February 2023
- \$60M budget increase in FY 2022

# 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

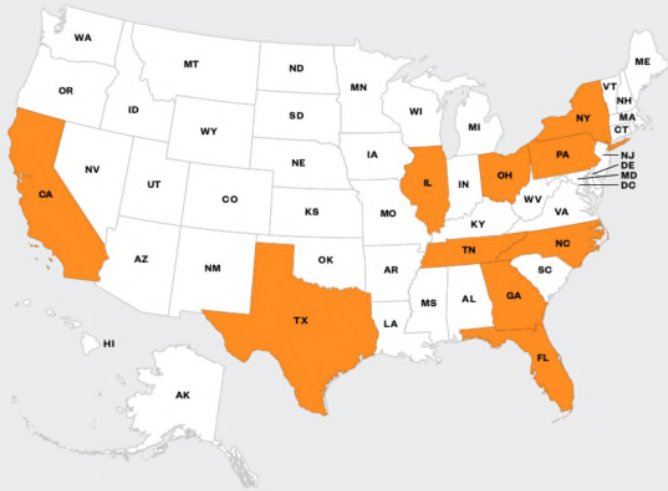


# EEOC Charge Data By The Numbers

## Top 10 States in EEOC Charges Received FY 2021

### CHARGES RECEIVED BY STATE

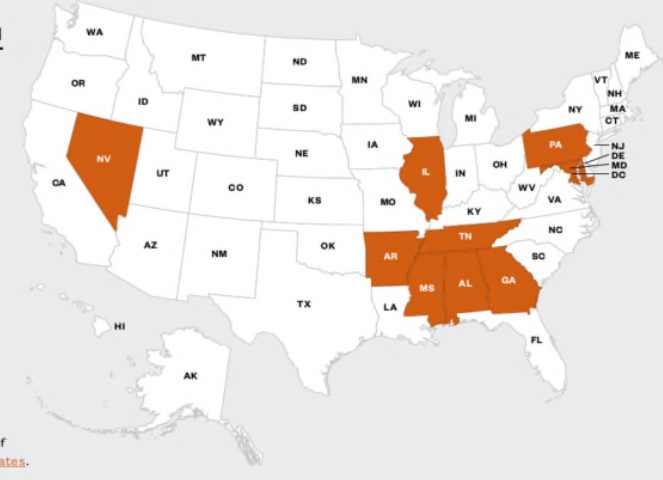
- Texas: **6,508**
- Florida: **4,941**
- Pennsylvania: **3,960**
- California: **3,865**
- Illinois: **3,634**
- Georgia: **3,362**
- North Carolina: **2,958**
- New York: **2,580**
- Ohio: **2,265**
- Tennessee: **2,256**



## Top 10 States in EEOC Charges Received Relative to State Population FY 2021

### CHARGES RECEIVED PER 10,000 POPULATION

- Arkansas: **3.65**
- Mississippi: **3.54**
- Alabama: **3.27**
- Tennessee: **3.21**
- Nevada: **3.16**
- Georgia: **3.08**
- Pennsylvania: **3.03**
- Maryland: **2.91**
- Illinois: **2.84**
- North Carolina: **2.79**



2022 state population data courtesy of <https://worldpopulationreview.com/states>.

*Compare overall charge data*

*vs.*

*Charge data adjusted per capita*

# EEOC Conciliation Analysis

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*EEOC must conciliate (attempt settlement) after finding reasonable cause that a violation has occurred before filing suit.*

According to  
our analysis of  
complaints filed in  
EEOC District  
Offices in FY2022:

# 120

Average days spent in conciliation

## Most Time for Conciliation:

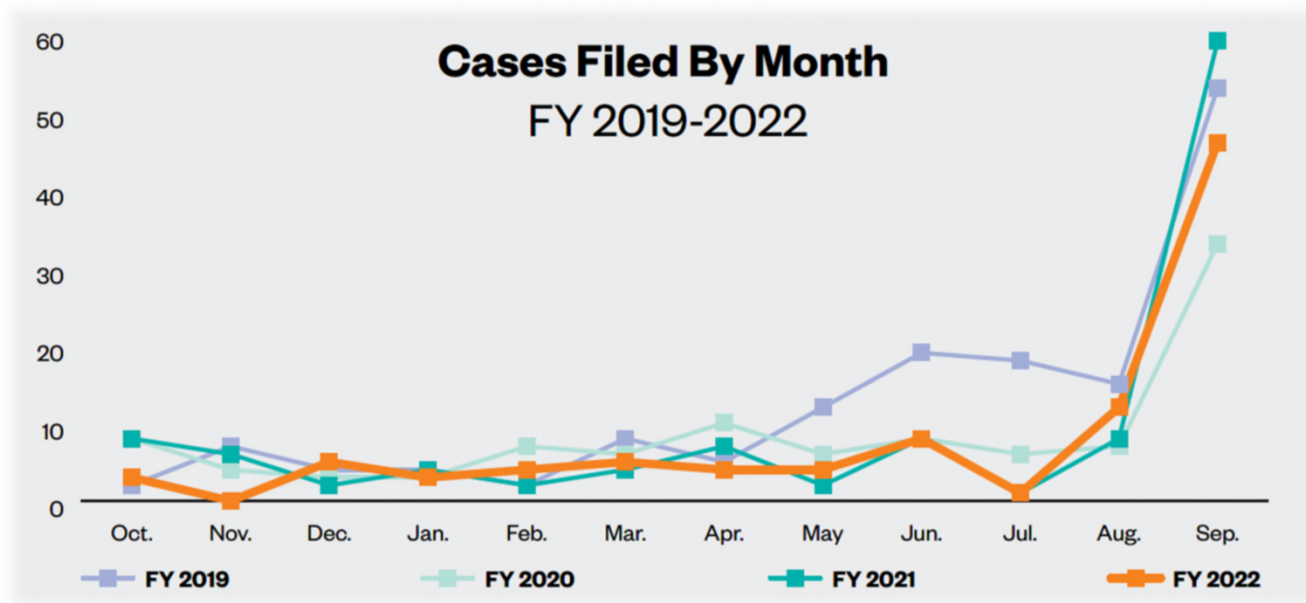
- Phoenix (**171** days)
- Chicago (**163** days)
- Los Angeles (**155** days)
- San Francisco (**151** days)

## Least Time for Conciliation:

- Atlanta (**73** days)
- Houston (**52** days)
- Memphis (**40** days)
- Miami (**37** days)



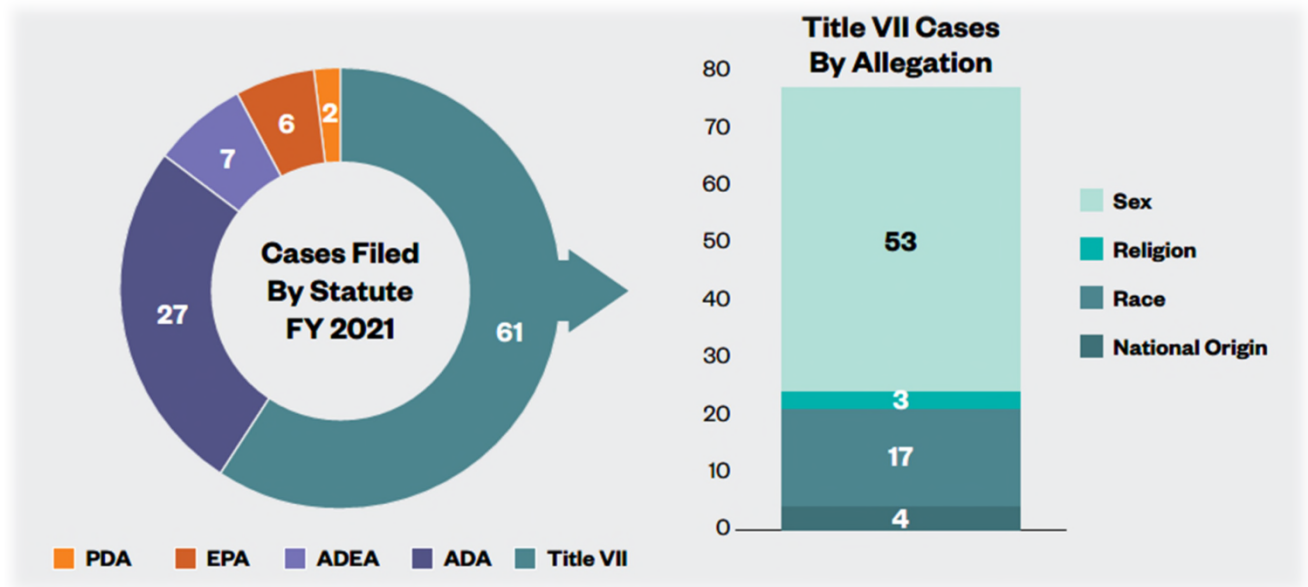
# EEOC Litigation By The Numbers



- Overall merit filing numbers by month
  - Relatively low number of filings in FY 2022
- **September** is always a busy time for the EEOC (end of its FY)
  - This September was somewhat less active than prior years

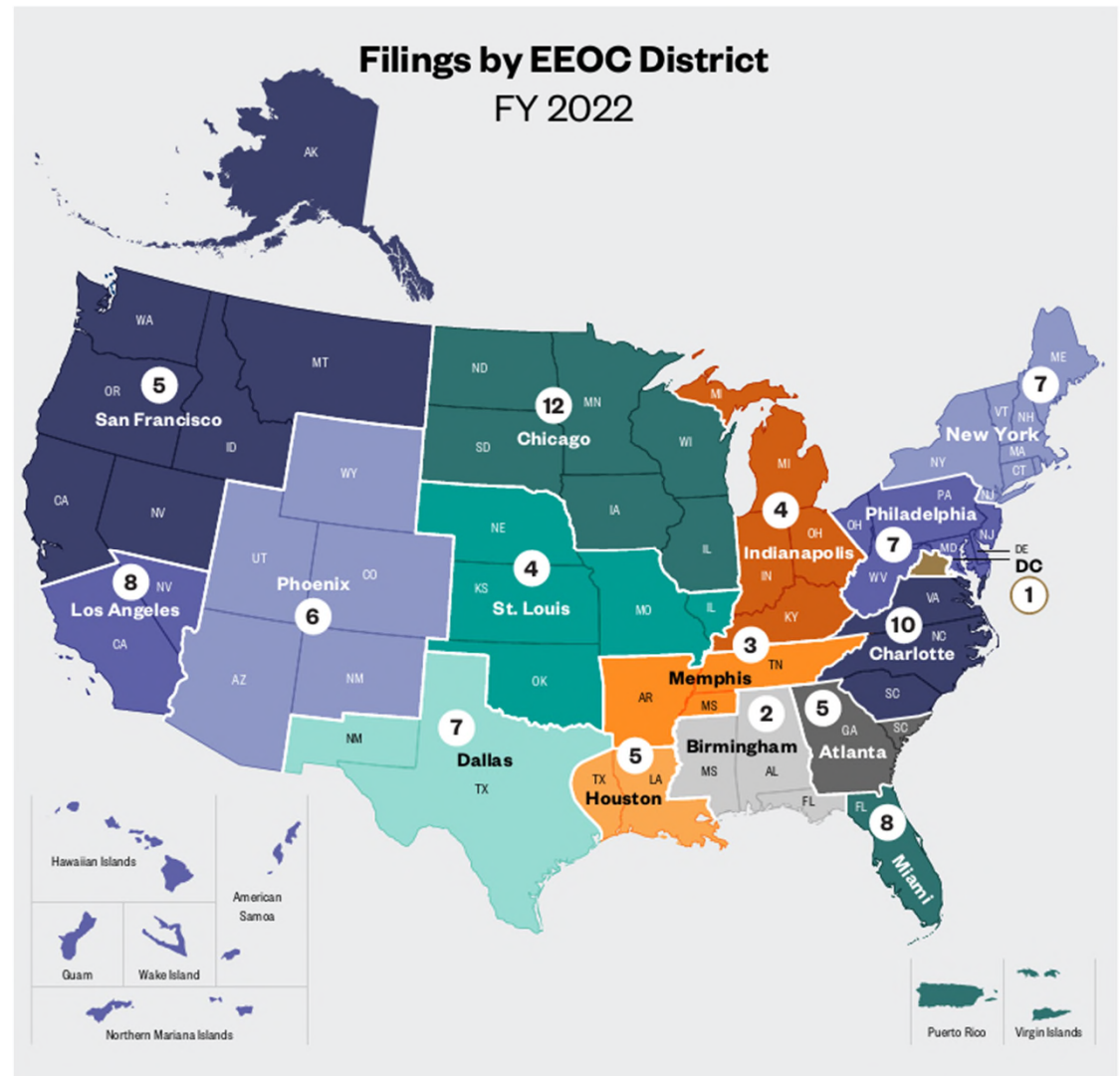
# EEOC Litigation By The Numbers

- 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 to 7 in FY 2022



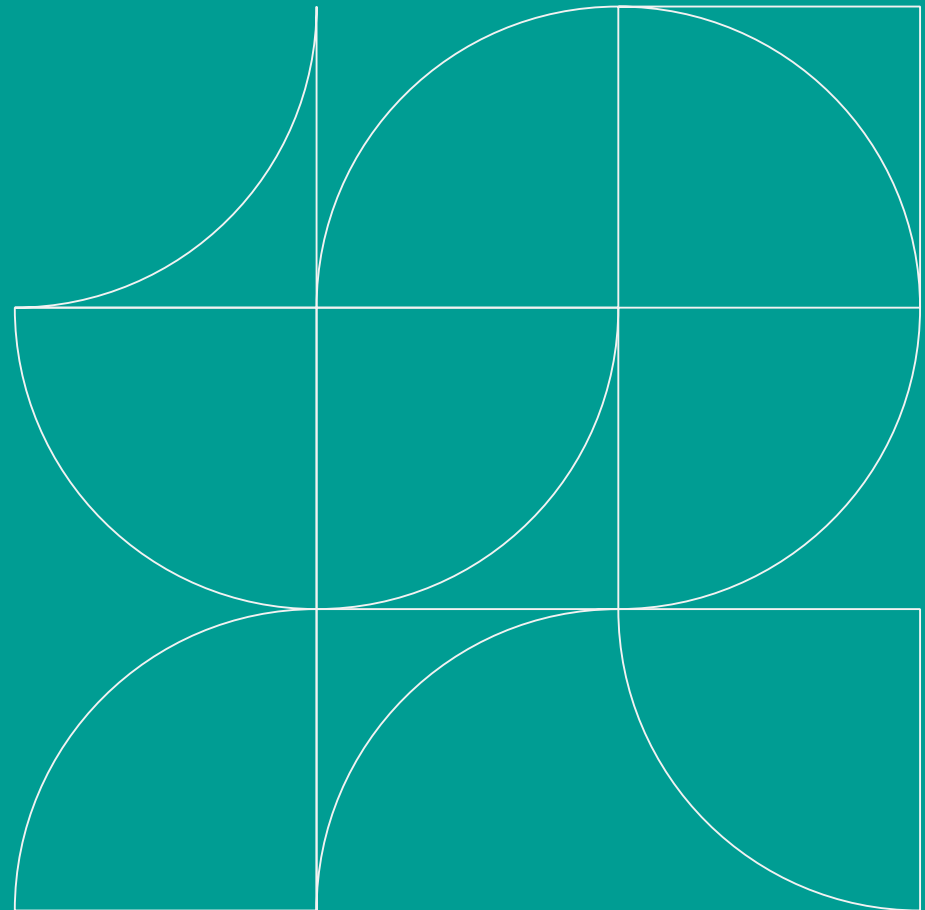
# EEOC Litigation By The Numbers

- **Chicago Office** led the way in FY 2022
- *Notable increase:* **Charlotte Office** going from 4 to 10 filings
- *Notable decrease:* **Philadelphia Office** going from 14 to 7 filings



**CLE Code:**

**SS6559**



# EEOC Strategic Enforcement Priorities – New Proposed SEP for FY 2023-2027

1

**Eliminating Barriers In Recruitment and Hiring:** The EEOC will focus on recruitment and hiring practices and policies that discriminate against racial, ethnic, and religious groups, older workers, women, pregnant workers and those with pregnancy-related medical conditions, LGBTQI+ individuals, and people with disabilities.

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 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

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- 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)
  - The State of Texas directly challenged *Bostock* in *Texas v. EEOC*
  - Other case examples include: *Christian Employers Alliance v. EEOC*, *Bear Creek Bible Church v. EEOC*
- Emphasis on **pre-employment screening tests**
  - Ex. *EEOC v. Stan Koch & Sons Trucking, Inc.*
- EEOC taking interest in **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”

# Things To Come In 2023

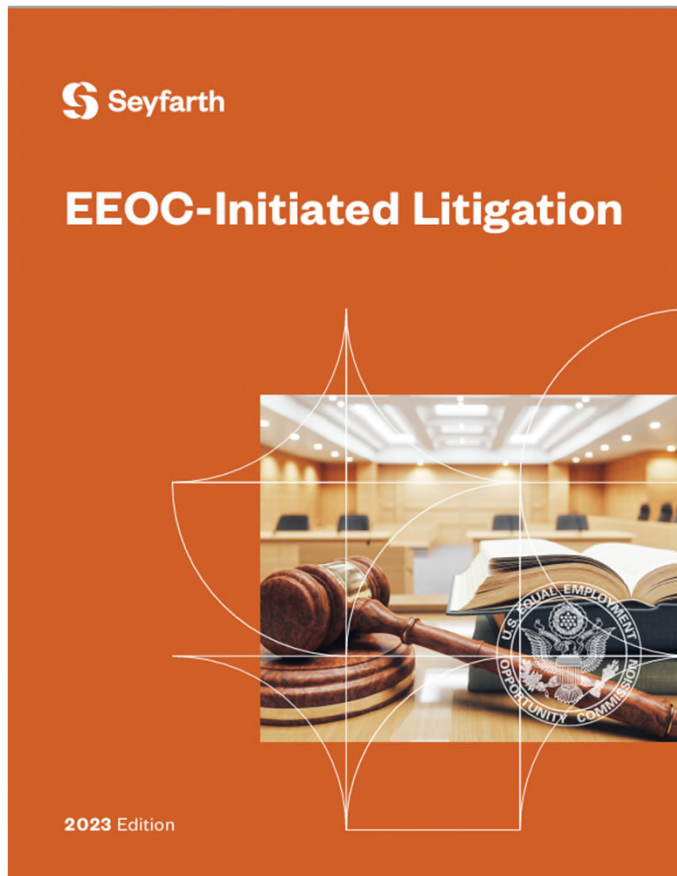
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- Expected litigation focus for the remainder of FY 2023
- Early trends in the litigation data
- Best practices to stay off EEOC's radar



# About The Book

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- 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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