

The 2017
Hiscox Guide to
Employee Lawsuits™



The 2017 Hiscox Guide to Employee Lawsuits™ identifies the total impact of employee charges and litigation, and exposes the states in which employee lawsuits are most prevalent.

This report was compiled using the latest data on employment charge activity from the Equal Employment Opportunity Commission (EEOC) and its state counterparts across the US. Employment charges are often the first step towards employment suits.

Understanding the true exposure companies of all sizes face, and implementing effective risk-prevention, mitigation and transfer techniques can help minimize the impact of employee charges against your organization.

Hiscox
Encourage Courage®



What constitutes discrimination?

Lawsuits by employees against their employers may be brought when an employee or job applicant feels they have been discriminated against in the workplace. The discrimination can be perpetrated by management, another employee, or even someone outside the organization.

Discrimination comes in many different forms:



*Test results or manifestation of disease or disorder in family medical history

Laws against discrimination apply to all types of work situations, including hiring, firing, promotions, training, wages, and benefits. Most federal employee discrimination laws apply to companies with 15 or more employees. States may require compliance from smaller companies.



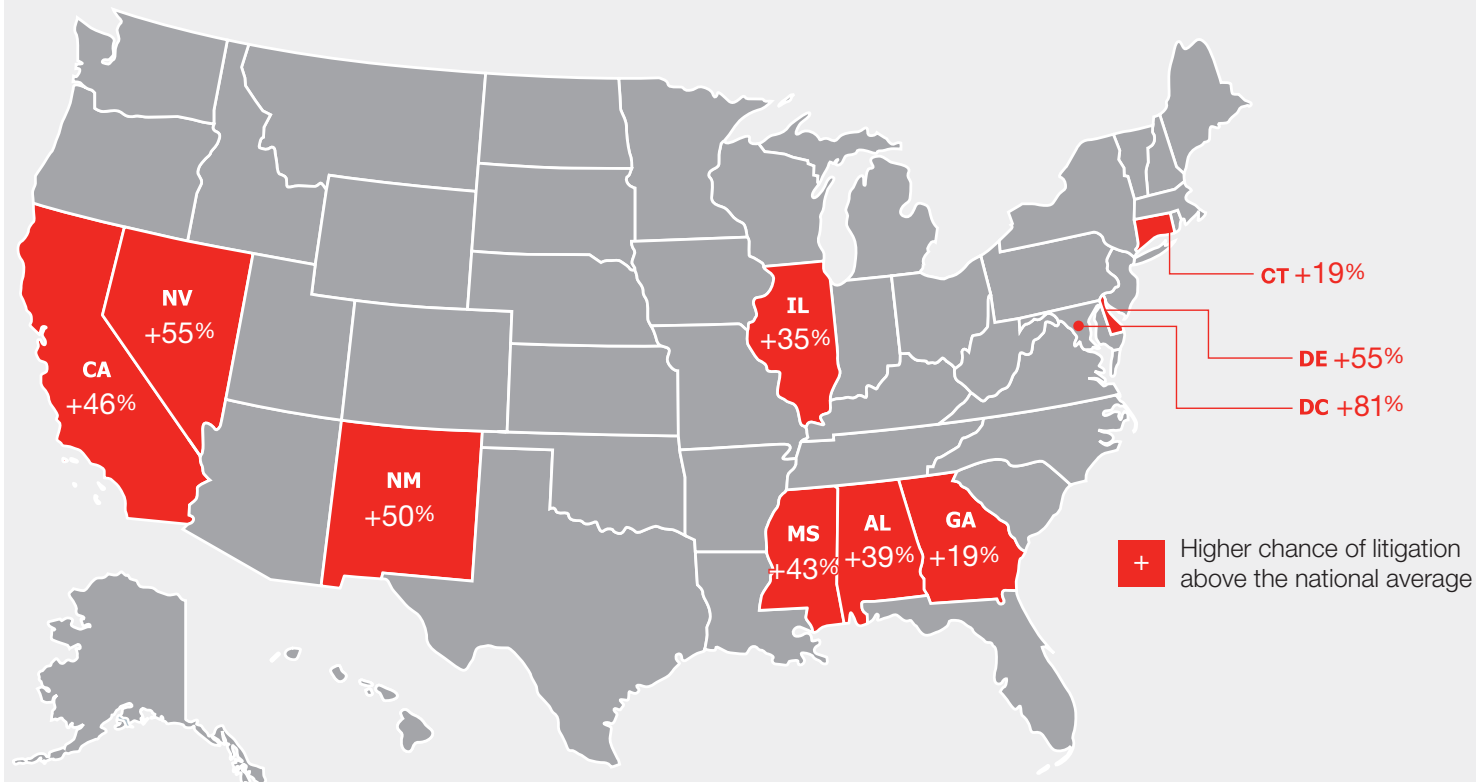
How are charges brought?

Any worker who feels they have been discriminated against, or who feels they have been retaliated against for supporting a discriminated worker, can bring a charge against their employer. Charges can be filed with the US Equal Employment Opportunity Commission (EEOC) or the equivalent state fairness agency. To get an accurate picture of discrimination charge activity, you need to look at both federal (EEOC) and state data.

Some states are A LOT riskier than others

For 2016, US companies had at least a 10.5% chance of having an employment charge filed against them. However, some states have far higher instance of charge activity than the national average (see methodology on page 9).

STATES WITH THE HIGHEST EMPLOYEE LAWSUIT RISK



WHY DOES EMPLOYEE CHARGE ACTIVITY VARY SO MUCH AMONG STATES?

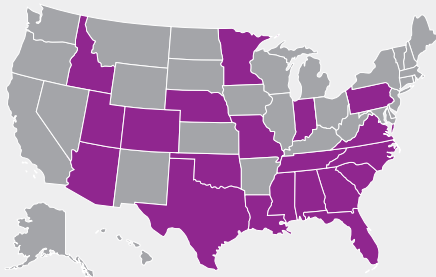
State laws on discrimination vary and many of the higher-risk states have laws that are more stringent than federal statutes, creating additional obligations and risks for employers. It's critical for companies, especially those with operations in multiple states, to stay current on employment law and the related exposures. Some states (AK, DC, KY, LA, MI, MN, NE, NJ, NY, OH, OK, OR, VT and WA) allow employees to go to court without filing a federal or state charge.

Key state laws driving increased employee charge activity

STATE LAWS ARE IN PLACE THAT EXCEED US FEDERAL RECOMMENDATIONS

E-VERIFY

E-Verify requires employers to confirm through a national register that a worker is authorized to work in the United States.

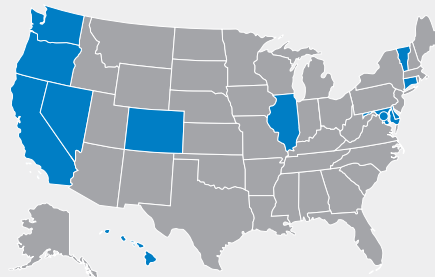


Source: US Citizenship and Immigration Services, 2016

— AL
— AZ
— CO
— FL
— GA
— ID
— IN
— LA
— MN
— MO
— MS
— NC
— NE
— OK
— PA
— SC
— TN
— TX
— UT
— VA

CREDIT CHECKS

Employers are restricted from taking employment actions related to the credit history or credit report of an employee or job applicant.

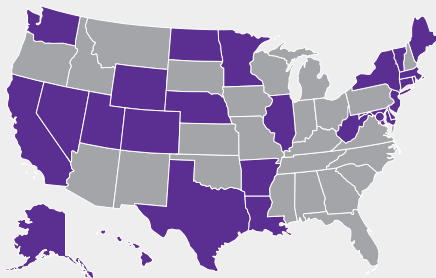


Source: Employment Screening Resources, States with Laws Regulating Credit Reports for Employment, 2017

— CA
— CO
— CT
— DE
— DC
— HI
— IL
— MD
— NV
— OR
— VT
— WA

PREGNANCY ACCOMMODATION

Employers must make reasonable accommodations to the known limitations related to the pregnancy of an applicant or employee, unless they can establish that this would impose undue hardship on the business.

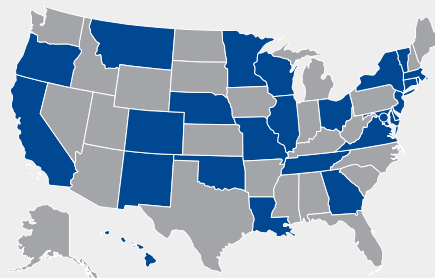


Source: National Women's Law Center, Pregnancy Accommodations in the States, 2017

— AK
— CA
— CO
— CT
— DE
— HI
— IL
— LA
— MA
— MD
— MN
— ND
— NE
— NJ
— NV
— NY
— RI
— TX
— UT
— VT
— WA
— WV

'BAN THE BOX'

'Ban the Box' prohibits employment applications from including a box that applicants must check if they have been convicted of a crime.



Source: SHRM, Ban the Box Movement Goes Viral, 2016

— CA
— CO
— CT
— DE
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— MA
— MD
— MN
— ND
— NE
— NJ
— NV
— NY
— RI
— TX
— UT
— VT
— WA
— WV

Retaliation is the Most Common Discrimination Finding

A typical charge can involve more than one claim or charge of discrimination.



According to the EEOC, many of those who complain of harassment in the workplace also face retaliation. Here's an example of what could happen.

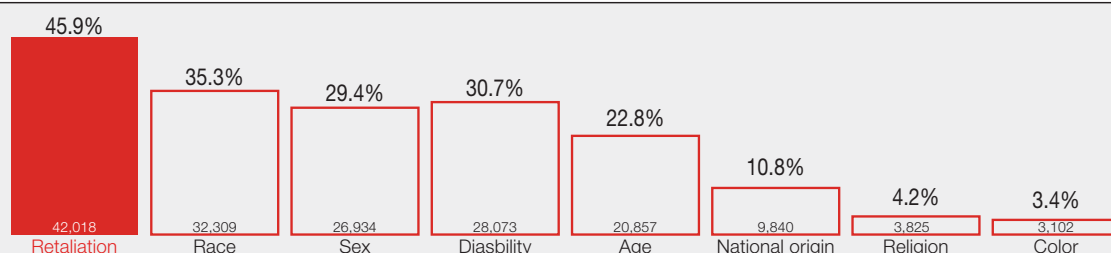
One of your employees comes to you to tell you that a co-worker has been making unwanted sexual advances. The two employees involved work together and are often the only two people in their shared work space.

You move the employee who made the complaint to another area while you investigate. As you begin to investigate, you interview the two employees involved, as well as others who might have seen or heard something.

Eventually, you find that there is merit to the complaint and you terminate the harasser. This apparently satisfies the employee who was harassed. Shortly afterward, however, the accuser is passed over for a promotion. The accuser feels that the promotion was denied because of the complaint, and files a charge and a lawsuit for sexual harassment and retaliation.

Retaliation

was the most prevalent charge category, named in nearly half of all charges. In many cases, more than one category was cited.



Source: Information was referenced from www.eeoc.gov, fiscal year 2016

318 days

is the time it takes for the average claim to be resolved

24%

of matters resulted in costs for defense and settlement

\$160,000

is the average cost for cases that resulted in a defense and settlement payment

76%

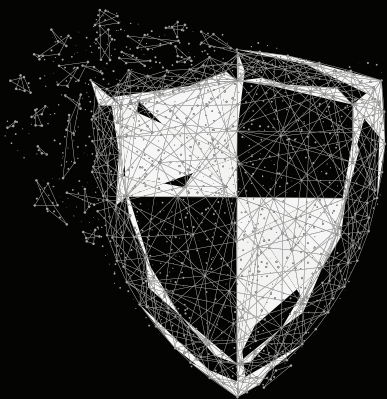
of cases resulted in no payment by the insurance company, highlighting the nuisance potential of employment charges; even if they are unfounded, allegations are made and must be handled carefully.

Representative Hiscox claims data.

The Cost of Employee Lawsuits

A representative study of 1,214 closed claims reported by small-to medium-sized enterprises (SMEs) with fewer than 500 employees showed that 24% of employment charges resulted in defense and settlement costs averaging a total of \$160,000. On average, those matters took 318 days to resolve.

The average employer's self-insured retention deductible for these charges was \$50,000. Without employment practices liability insurance, each of these companies would have been out of pocket by an extra \$110,000 on average.



Prevent, Detect, Mitigate

We often think of our employees like family, and hope that they feel the same way. But the employer-employee relationship is different than that of a family, and there are laws that govern the behavior of the employer toward the employee. If those laws are breached, the employer can be sued. To protect your company, follow these three steps.

Prevent the behavior that could cause a lawsuit.

- Be aware of the laws that affect your business and your employees. Be sure to stay up to date on changes in employment law. Post all required notices and update them as required.
- Ensure your managers and employees know what the laws are and that they will be upheld in your company. Ongoing training on employment practices should be required at all levels.
- Stay vigilant. An employee can file a charge of discrimination against your company for the actions of an executive, a manager or another employee – or even for the actions of a customer or vendor, if the employer doesn't take steps to stop it.
- Immediately address any action that could be interpreted as discriminatory, whether a claim is made or not. The person demonstrating the discriminatory behavior should be informed of the consequences of their actions, and that a claim or complaint against the employer and the employee may follow.

Detect discriminatory behavior even if it's not reported.

- Take every complaint of discrimination seriously. Make it clear to your employees that you will thoroughly investigate any accusations of harassment or discrimination and that no one will be retaliated against for reporting or corroborating such behavior.
- Launch an investigation immediately if an accusation of discrimination is brought to your attention.
- Interview the employee who is making the accusation.
- Your goal in the detection process is two-fold. You need to determine whether discrimination took place, and, if it did, how to rectify the situation.

Mitigate the impact on your business in the event of a charge.

- Insure your company against employee lawsuits. The right insurance will cover the cost for your company to defend itself, as well as any settlement or judgment.
- You can potentially reduce the impact on your company by settling a charge before going to court. Even if you think you may prevail at a trial, the distraction on your business and the potential for damage to your company's reputation may make it advisable to settle. Consult your legal counsel for advice on your particular situation.

Equal Employment Opportunity Commission

The EEOC provides outreach and education at no cost for businesses, associations and non-profits.

Learn more at

www.eeoc.gov/eeoc/outreach/nocost.cfm

Methodology

The study analyzed recent employment discrimination charge receipts by state at the federal and state commission levels focusing on establishments with more than ten employees in each state or jurisdiction.

Charge frequency was determined by the number of charges divided by the number of establishments with more than ten employees.

To compare the states, Hiscox analyzed credibility-weighted frequency relativities and compared each state to the national average. The results are based on frequency of charge receipts, but the receipt of a claim is not limited to only those claims that result in a settlement or other meritorious resolution.

Hiscox
520 Madison Avenue
32nd floor
New York, NY
10022

T 646 560 9358
www.hiscox.com

Patrick Mitchell
Management Liability Product Head
patrick.mitchell@hiscox.com