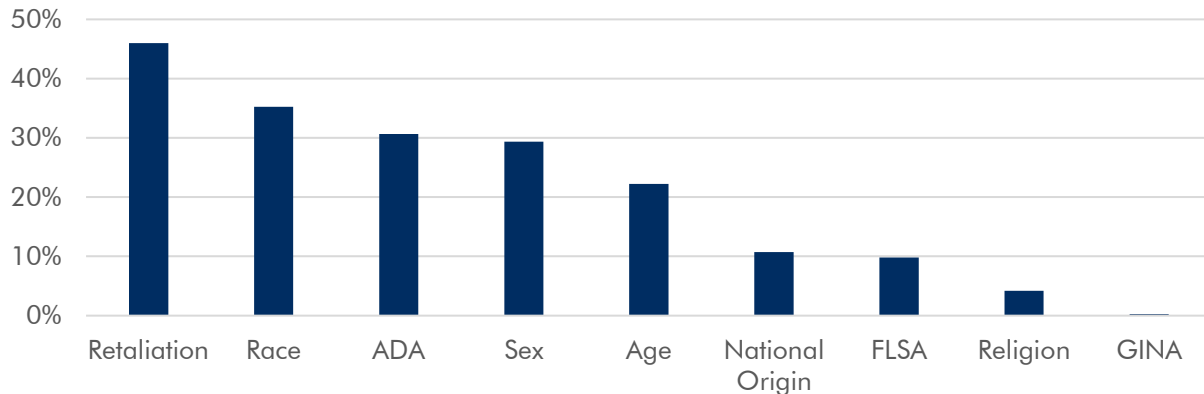


EMPLOYMENT PRACTICES LIABILITY

CLAIM TRENDS

2016 CLAIM STATISTICS

- 91,503 charges were filed with the EEOC in FY 2016, 2% increase over FY 2015.
- 81% of claims resulted in no settlement payment, but incurred defense costs of \$15,561.
- Average claim cost, with defense and settlement - \$45,548.
- Retaliation cases have remained the number one charge since 2010.
- Emotional damages allowed in retaliation cases.



BACKGROUND CHECKS

- Employers can no longer require job applicants to disclose prior criminal convictions on a job application (HB 156).

STEPS TO AVOID RETALIATION CLAIMS

- Establish a policy against retaliation.
 - Clearly define what retaliation is.
 - Ensure clear reporting process.
 - Outline employee protections.
- Train to your policy.
- Ensure reporting mechanism works, audit.
- Investigate all complaints.
- Ensure investigations are objective and thorough, hire outside investigator if needed.
- Implement a second level of review – From a member of management with no knowledge of the issue.
- Communicate with the complaining employee.
- Keep confidential any complaints that you receive.
- Consider additional protective measures – with employee sign off.
- Beware of unintended or ‘soft’ retaliation (e.g. shift change, department transfer, etc.), ‘adverse action’ not ‘tangible employment action’ is the standard.
- Be proactive – Follow up with complainants after an investigation.
- Document all steps taken to reduce retaliation.
- Timing is everything - If you must take adverse action against an employee for a separate issue who has complained, ensure you have valid reasons for discipline, unrelated to and before the complaint was made.

