

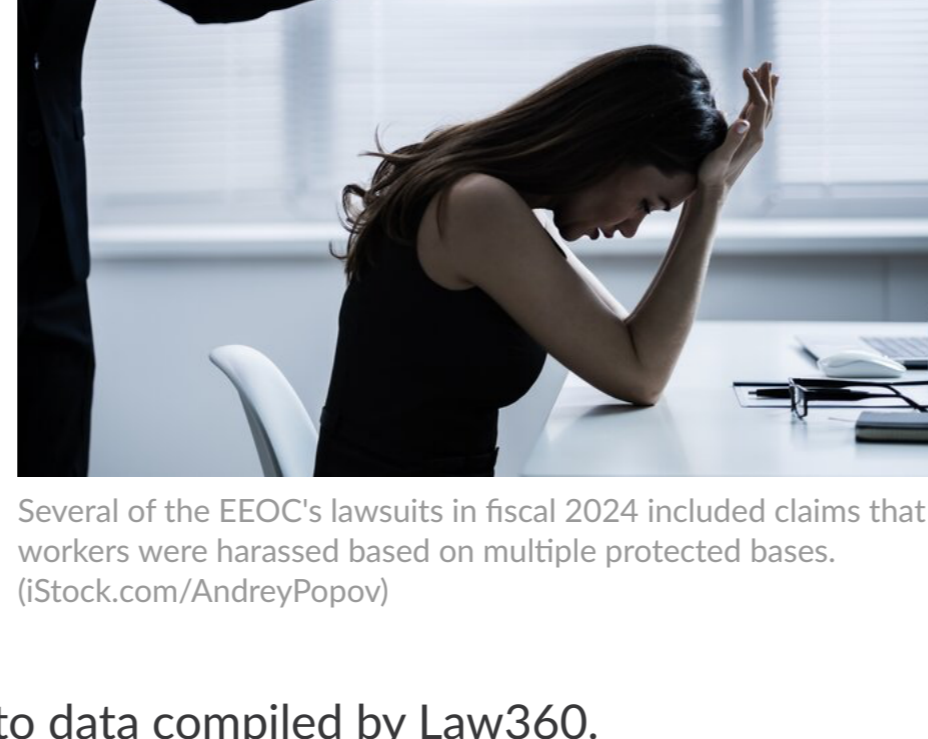
Analysis

EEOC Suits Warn Employers To Take Harassment Seriously

By [Vin Gurrieri](#) · 2024-10-04 21:54:21 -0400 · [Listen to article](#)

The EEOC's blitz of lawsuits at the end of its fiscal year included dozens of cases accusing employers of fostering environments full of harassment, highlighting an age-old priority for the commission that still catches employers flat-footed and prompts the agency to send stern warnings through its litigation docket, experts say.

The U.S. Equal Employment Opportunity Commission filed approximately 110 merit lawsuits in fiscal year 2024, which ended Sept. 30, and a large chunk of them accused employers of fostering environments in which workers were consistently harassed based on sex and race. The agency filed nearly 30 such cases in September, more than a dozen of which were launched on the fiscal year's final day, according to data compiled by Law360.



Several of the EEOC's lawsuits in fiscal 2024 included claims that workers were harassed based on multiple protected bases. (iStock.com/AndreyPopov)

Joshua Newville of plaintiffs-side firm [Halunen Law](#) said that the majority of employers aren't promoting or allowing the type of toxic behavior that gives rise to harassment lawsuits like the ones the EEOC is filing, but the problem remains pervasive among a "significant minority" of companies.

The commission, he said, is "sending a very clear and very strong message" with its enforcement approach, a message that is difficult for individual employees to send on their own.

"The EEOC is saying, 'Look, not only are we going to ensure that individual harassers are held responsible by holding the employers responsible, but they're also holding the entire company responsible for that conduct,'" Newville said. "I genuinely think employers should be terrified right now because this isn't about slapping a Band-Aid on a single incident. This is the EEOC coming after the roots of the problem, truly."

Here, experts discuss four things to know about the EEOC's latest anti-harassment enforcement push.

Late Flurry Boosts Numbers

Though the agency's overall number of new merit suits declined from fiscal year 2023, the commission remained active in filing suits on behalf of workers who have allegedly been sexually harassed.

Among just the [cases filed Sept. 30](#), the EEOC accused a cosmetics company of discriminating against a pansexual and nonbinary employee and allowing workplace hostility based on employees' sexual orientation and gender identity, and separately alleged that a sunroom design studio allowed its owner to sexually harass female employees for years.

The commission also accused a paper mill operator of firing a female employee soon after she obtained a protective order against a co-worker who had been harassing her for months, and claimed in another suit that the operator of dozens of fast-food franchisees in the central U.S. permitted rampant sexual harassment of employees, including minors.

Further still, the commission accused an [Applebee's](#) franchisee in Alabama of failing to address sexual harassment against at least six employees, some of whom were minors.

The suits in the EEOC's latest batch share many common themes. They include allegations of employees — most often women, and sometimes teens or young adults — being subjected to nonconsensual touching, sent sexually explicit messages, propositioned for sex, addressed using offensive language and punished by superiors if they raise any objection to their mistreatment.

"The fact that we're still seeing these kinds of cases in the wake of the #MeToo movement ... should be a wake-up call to employers," Newville said.

The commission also lodged multiple suits on behalf of LGBTQ+ people who allegedly faced on-the-job harassment, and workers who the commission says were targeted because of their race. In one such suit, the EEOC accused an auto parts retail chain of allowing gay and Black employees to be mocked and verbally abused at two store locations in Florida.

"Companies often, you see this with certain companies in particular, like to parade their diversity and inclusion programs. But the reality is that many of these are just window dressing," Newville said. "These systemic suits are really a direct result of that failed leadership that is aware this stuff is happening ... but they just don't care, or worse, they think that they can sweep this sort of behavior under the rug and deal with it until they're forced to deal with it in court."

A Long-Standing Priority

Even before the #MeToo movement went viral in late 2017 following allegations of sexual assault by disgraced film executive Harvey Weinstein, the problem of workplace harassment — both sexual harassment and harassment based on other protected bases — was [front and center](#) for the EEOC.

During the mid-2010s, the agency [convened a task force](#) led by then-commissioners Victoria Lipnic and Chai Feldblum that published a report in 2016 analyzing the breadth of the problem and offering recommendations for how best to prevent it.

More recently, the agency in April finalized a long-awaited [enforcement guidance](#) on workplace harassment that effectively served as a wide-ranging blueprint for eradicating that sort of misconduct.

The guidance addressed topics including the #MeToo movement and the U.S. [Supreme Court's 2020 Bostock](#) decision, which found that sexual orientation and gender identity fall within Title VII's sex discrimination umbrella. The guidance also included theoretical scenarios that highlight the myriad ways in which harassment can arise in workplaces.

Jonathan Segal of [Duane Morris LLP](#), a management-side attorney who was part of the 2016 EEOC task force, noted that the agency in its 2024 strategic enforcement plan specifically listed preventing and remedying systemic harassment as one of a half-dozen subject matter priorities, an emphasis that is nothing new for the agency.

Segal also noted that the strategic enforcement plan specifically mentioned the EEOC's focus on intersectional harassment, which is mistreatment based on the intersection of two or more protected characteristics. Several of the agency's lawsuits in fiscal 2024 included claims that workers were harassed based on multiple protected bases.

"This has been part of the EEOC guidance for many years, and it's been a priority for many years. I think the fact that [harassment] remains a priority among so many other issues is the fact that it's not going away," Segal said. "The fact that they're focusing on this is consistent with their strategic enforcement plan."

"It's not just sexual harassment. It's racial [harassment], sexual orientation, et cetera, [and] sometimes more than one at a particular worksite," Segal said. "The EEOC specifically talks about intersectional harassment in its strategic enforcement plan, race plus gender, for example. And I think we've seen that in some of their claims."

Regional Offices Also Zero In on Harassment

Although the commission as a whole has shown a long-standing desire to aggressively police workplace harassment, so too do the agency's network of 15 district offices, said management-side attorney Christopher DeGross of [Seyfarth Shaw LLP](#), who tracks EEOC litigation trends.

For fiscal year 2024, DeGross highlighted the EEOC's Phoenix district, which covers Arizona, Utah, Wyoming, Colorado and part of New Mexico, as a notable one where a number of the agency's new harassment cases emanated from, saying it tracks with the office's activity in prior years.

On Tuesday, the agency's Phoenix office issued a press release touting sexual harassment suits it had filed the day before against a janitorial services company in Utah, a trucking company in Wyoming and a senior living facilities operator in Arizona, making clear that such harassment isn't acceptable.

"Federal law prohibits sexual harassment in the workplace, regardless of whether the offender is the owner of the business, a co-worker, a customer or a resident," regional attorney Mary Jo O'Neill of the EEOC's Phoenix district office said in the statement. "The EEOC has pursued, and will continue to pursue, charges of sexual harassment against employers regardless of the status of the offender. Employers have a legal duty to stop sexual harassment and to protect their workers from such egregious sexual harassment in the workplace."

EEOC general counsel Karla Gilbride also issued a statement as part of that press release in which she said the EEOC's April anti-harassment guidance "is a helpful resource for employers, employees and practitioners that reflects the continued importance of this issue to the agency."

DeGross said the large-scale cases that the EEOC filed in fiscal 2024 are a manifestation of its focus on combating harassment.

"Systemic sexual harassment and just systemic harassment generally is certainly a national focus, but I note that the Phoenix District Office definitely has a laser-type focus on that issue," DeGross said. "I tell employers all the time, when you're dealing with the EEOC, you're dealing with 15 distinct districts, and each one ... has their own priorities, each one has their own resources, they have their own personality."

"This isn't just a fiscal year 2024 thing — the Phoenix office has focused on systemic harassment, and sexual harassment in particular, for the better part of the last five years," DeGross added.

DeGross also said it's clear from the EEOC's current approach that it won't pull back the reins on policing harassment anytime soon, either nationally or at the district office level.

"It is one of those traditional areas that we still see, in 2024, employers having problems with, and I believe the EEOC feels that it's part of its mandate to really root this out," DeGross said. "They've done multiple guidance[s] on the subject and it's a standard enforcement focus, so I don't see the next fiscal year being any different."

A Hard Puzzle to Solve

Although the EEOC and employers themselves have made great strides in attempting to eliminate harassment from workplaces, part of why the problem continues to fester is that there isn't a singular reason it exists.

Lawyers on both sides of the bar point to various factors that perpetuate harassment, ranging from new workers not yet knowing how to navigate legal hurdles that disincentivize some employers from making a more than nominal effort to eliminate misconduct.

Carolyn Wheeler, a partner at worker-side whistleblower and employment firm [Katz Banks Kumin LLP](#) who spent decades as an EEOC appellate lawyer, said the agency has been at the forefront of combating workplace sexual harassment for more than a half century, but the problem isn't one that is easily eliminated both due to legal and cultural reasons.

Among them, Wheeler cited [long-standing caps](#) on monetary damages for lawsuits brought under Title VII that she said impact harassment and retaliation cases more so than termination or failure-to-hire cases in which economic damages are more clear. Additionally, some private-sector workers erroneously believe that First Amendment free speech rights allow them to say certain things without repercussion, she said.

"Part of it, I think, is [that] every kind of new generation of workers needs to be educated about appropriate conduct in the workplace," Wheeler said. "I think, frankly, the penalties are not nearly severe enough so that employers don't have the incentives they ought to have to make sure harassment does not occur."

While states are making strides to remove some legal hurdles that exist for workers, like doing away with requirements that harassment be severe or pervasive to be viable, Congress could increase penalties so that employers make more serious efforts to eradicate harassment, she said.

Duane Morris' Segal also noted that employers themselves may be relaxing too much in their efforts to train workers on appropriate workplace behavior.

"We saw with #MeToo, obviously, significant attention being paid to preventing and remedying harassment. Then what I saw in 2021 and 2022 was people either tiring of the issue or people believing, 'Everyone gets it so there's not the same need to focus on it,'" Segal said.

Over the past few years, some organizations have also shifted toward online anti-harassment training seminars, which Segal said may not hold a person's attention as well as a session that is held in person. He also said that some people who've returned to offices following periods of remote work are more rusty in terms of how to properly conduct themselves in the workplace, and that some people who are new to workplaces aren't getting the same level of attention or training that those before them received.

"I have a concern that we're focusing on more peripheral issues at times and not on hard core, 'What harassment is.' And if we don't focus on it, it's going to continue to occur," he said.

--Editing by Abbie Sarfo and Bruce Goldman.

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