

The 2015
Hiscox Guide to
Employee Lawsuits

EMPLOYEE CHARGE TRENDS ACROSS THE UNITED STATES



The 2015 Hiscox Guide to Employee Lawsuits exposes the states with the highest probability of employees filing lawsuits and looks at the total cost of employee charges and litigation.

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 total impact of employee charges against your organization.

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Encourage Courage



What constitutes discrimination?

DISCRIMINATION COMES IN MANY DIFFERENT FORMS

<p>Age (over age 40)</p> 	<p>Disability</p> 	<p>Genetic information*</p> 	<p>National origin</p> 
<p>Race</p> 	<p>Color</p> 	<p>Religion</p> 	<p>Sex (including pregnancy)</p> 

It is also illegal to retaliate against a person because the person complained about discrimination, filed a charge of discrimination or participated in an employment discrimination investigation or lawsuit.

The laws apply to all types of work situations, including hiring, firing, promotions, harassment, training, wages, and benefits.

Federal employee discrimination laws apply to companies with 15 or more employees.

*Information about genetic tests and manifestation of disease or disorder in family medical history.

How are charges brought?

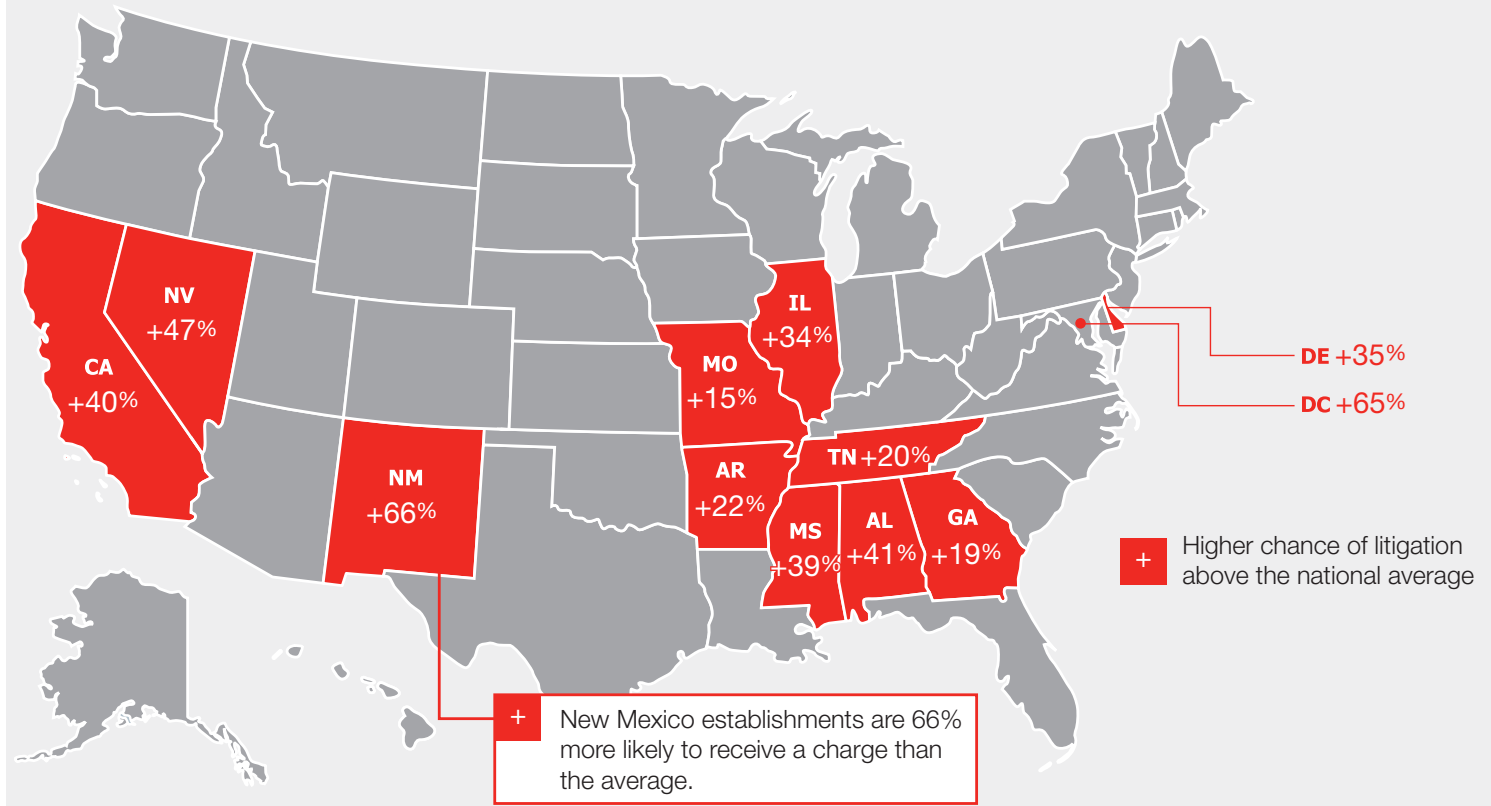
Any worker who feels they have been discriminated against may go to the U.S. Equal Employment Opportunity Commission (EEOC) or the equivalent state fairness agency. In order to get an accurate picture of discrimination charge activity, you need to look at both EEOC and state data.



Some states are A LOT riskier than others

For 2014, US companies had at least an 11.7% chance of having an employment charge filed against them. However, some states have far higher instances of charge activity than the national average.*

STATES WITH THE HIGHEST EMPLOYEE LAWSUIT RISK



WHY DOES EMPLOYEE CHARGE ACTIVITY VARY SO MUCH BETWEEN STATES?

Many of the higher-risk states in this survey have state laws that go beyond US federal guidelines, creating additional obligations and risks for employers. It's important for corporations, especially those operating in several states, to keep track of developments and their related exposures.

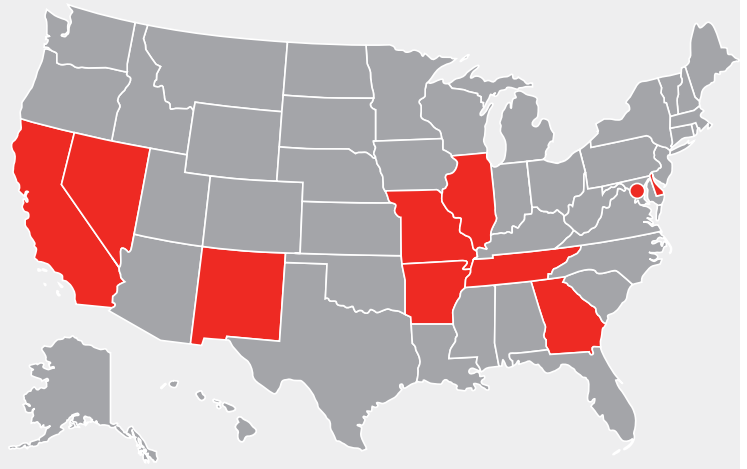
*The following states allow employees to go to court without filing a federal or state charge – AK, DC, KY, LA, MI, MN, NE, NJ, NY, OH, OK, OR, VT and WA.

Key state laws driving increased employee charge activity

ANTI-DISCRIMINATION/FAIR EMPLOYMENT PRACTICES

State laws are in place that exceed the US federal regulations either in terms of the types of protected classes or impose restrictions on smaller sized companies that need to comply.

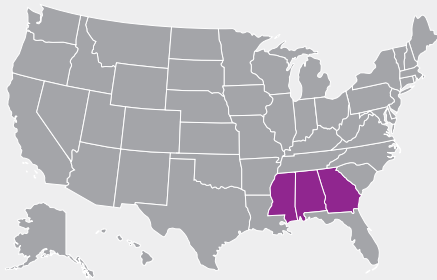
- Arkansas
- California
- Delaware
- District of Columbia
- Georgia
- Illinois
- Missouri
- Nevada
- New Mexico
- Tennessee



E-VERIFY*

All private sector employers must enroll in the federal e-Verify system and use it to ensure all new hires are legally allowed to work in the United States.

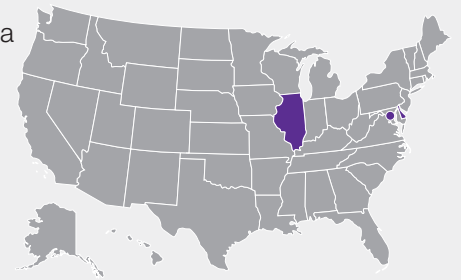
- Alabama
- Georgia
- Mississippi



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.

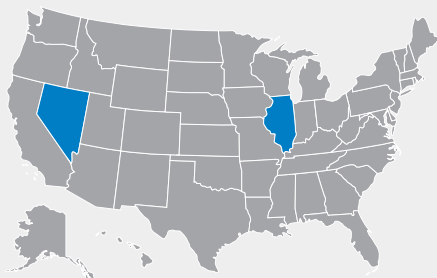
- Delaware
- District of Columbia
- Illinois



CREDIT CHECKS

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

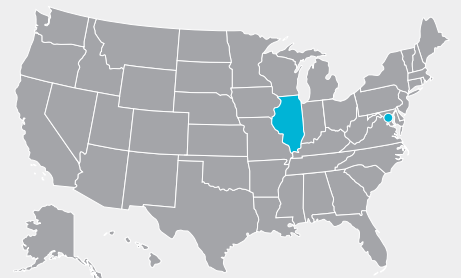
- Illinois
- Nevada



CRIMINAL BACKGROUND CHECKS

Employers are restricted in inquiring about, or requiring disclosure of, a job applicant's criminal record or criminal history.

- District of Columbia
- Illinois



*e-Verify is a federal program that verifies that an applicant is able to legally work in the United States.

275 DAYS

Average duration of an employment matter

19%

Percentage of matters that resulted in a defense and settlement payment

\$125,000

Average total cost of claims that resulted in a defense and settlement payment

81%

Percentage of charges that 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.

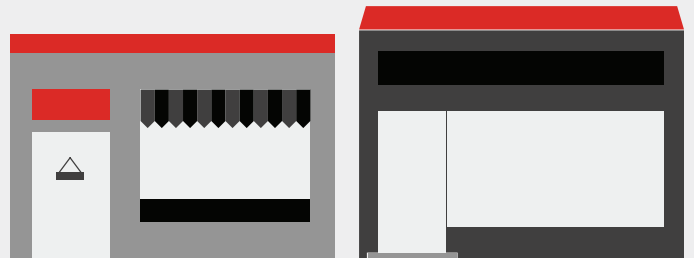
THE REAL COST OF EMPLOYMENT MATTERS AGAINST SMALL- TO MEDIUM-SIZED BUSINESSES

A representative study of 446 closed claims reported by small- to medium-sized enterprises (SMEs) with fewer than 500 employees showed that 19% of employment charges resulted in defense and settlement costs averaging a total of \$125,000. On average, those matters took 275 days to resolve.

The average self-insured retention (deductible) for these charges was \$35,000. Without employment practices liability insurance, these companies would have been out of pocket by an extra \$90,000.

Most employment matters don't end up in court, but for those that do, the damages can be substantial. The median judgment is approximately \$200,000, which is in addition to the cost of defense.* About 25% of cases result in a judgment of \$500,000 or more.

*Employment Practice Liability: Jury Award Trends and Statistics 2013 Edition, Thompson Reuters.



Common myths and mistakes

THE COST OF DISTRACTION

An allegation of discrimination in the workplace can be a big distraction. There will be time lost from work by the plaintiff and company representatives for meetings with attorneys, depositions and other matters related to the lawsuit. In addition, the plaintiff will likely still be employed by the company, which may make it difficult for others to concentrate on their work.

Once an employee files a claim with the Equal Employment Opportunity Commission or files a civil lawsuit, the charge could potentially be exposed to the public. Depending on the details of the claim, the size of the judgment being sought, or the community standing of the company, a claim may become front-page news. Companies then will have to undergo trials both in the courtroom and in the court of public opinion.

Regardless of the outcome of the complaint, the company may suffer a loss of goodwill. In cases that may be particularly egregious or salacious, the impact on the company's reputation can be significant.

These distractions are a real cost to companies facing legal action from employees, even though they don't carry a directly measurable dollar figure. In many cases, a fair settlement early on may be preferable to prolonged litigation with an unpredictable outcome.

MY EMPLOYEES ARE LIKE FAMILY. NO ONE WOULD DISCRIMINATE AND NO ONE WOULD FILE A CHARGE.

It's nice to think that all of your employees are as dedicated to the success of your business as you are, and in many cases that may be true. But a single employee who believes they have been discriminated against, or a single inappropriate comment or action, can become a complaint or a lawsuit that is expensive and time-consuming.

MY BUSINESS IS SMALL. NO ONE WOULD FILE CHARGES AGAINST ME FOR THE MONEY.

An employee who feels they have been discriminated against may want to make a point, particularly if the discrimination represents a pattern. They may also assume that your company has insurance to cover such a suit, even if you don't.

MY COMPANY WOULD CERTAINLY PREVAIL AT A TRIAL.

Remember that once a case goes to trial it becomes a matter of public record. Should your company be the subject of a complaint that is especially noteworthy, it may become fodder for the media. Regardless of the merit of the complaint or the final outcome, the publicity could seriously damage the company's reputation. Being insured against an employment practices liability claim gives the company the ability to settle a claim with indemnity rather than 'rolling the dice' by going to court.



Risk management and best practices

Prevention is the best defense against discrimination claims. The EEOC provides outreach and education at no cost for businesses, associations and non-profits. They will provide representatives who can speak at conferences and seminars, based on availability. The commission also has small business liaisons at each regional office to answer questions about compliance and anti-discrimination laws.

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

Employers can minimize the risks of navigating the federal and state employment law patchwork by instituting these best practices.

PREVENTION

Hiring

Have written procedures that outline federal and state requirements for applications, background checks and permissible interview questions. If you do business or have employees in more than one state, adhere to the most stringent regulations and develop a job application that can be used across the geographies where your company operates.

Provide orientation for new employees, including policies and how to adhere to them, and document employees' participation.

Employment policies

Maintain an employee handbook, customized for each state in which you have operations, or general enough to apply to all states. Distribute the handbook to new employees, along with applicable written notification of specific laws where required. Employees should acknowledge in writing that they have received and read the handbook.

Make sure the handbook includes an anti-discrimination, equal opportunity employment statement and a disclaimer that its provisions do not constitute a contract or a contractual commitment of continued employment.



MITIGATION

Independent contractors

Be careful when designating independent contractors. There are variations among states and areas of law as to the test for an independent contractor. It is possible for a worker to be considered an independent contractor for some purposes and an employee for others.

Preventing discrimination and harassment

Every employment decision to hire, fire, promote or demote, has to be motivated by legitimate, business-related concerns. Be consistent in your treatment of all employees.

Conduct harassment training

Some states mandate this, but others consider voluntary training by employers to be a potential defense to liability.

Leaves of absence and accommodation for disabilities

A medical condition can trigger federal and state leave and disability laws, which vary, as well as workers' compensation laws. Make it a policy to recognize events or discussions that create an obligation to discuss accommodations or a possible leave of absence.

Employee performance

Ensure that all supervisors and managers are aware of the procedure for addressing unacceptable employee performance. Communicate to the employee about what they are doing (or not doing) that is unacceptable, and make sure they understand what constitutes acceptable performance. Document all communications. Conduct factual, honest performance evaluations. Develop and maintain a procedure for corrective action plans.

Termination

To minimize litigation around termination, avoid surprises. Make sure that all guidelines have been followed for addressing unsatisfactory performance, particularly the corrective action plan. Prior to termination, assess the risk for litigation: is the employee a member of a protected class, involved in protected labor activities, or a potential whistleblower? Is the employee under an express or implied-in-face employment contract? Gather and review the documentation that supports the termination and interview relevant players.

RISK TRANSFER

Even companies who use their best efforts to avoid a claim and who follow all of the proper procedures can find themselves having to defend themselves against an employee lawsuit. An employment liability insurance policy can cover the cost of defending against a suit, as well as any settlement or judgment.

DEVELOPING ISSUES

Recent court rulings on major societal issues including immigration, same-sex marriage, discrimination against transgender employees and minimum wage increases are also important for employers to pay attention to in relation to potential employee charges. Many of the states with the highest rates of employee charges have existing state statutes prohibiting discrimination against employees related to these classes and others may add these in 2016.

Employers should update their risk management plans periodically to account for new court rulings and related legal obligations at federal, state and even local levels to minimize their employee litigation risk.

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 countrywide 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 646 442 8322
www.hiscoxbroker.com

Bertrand Spunberg
Practice Leader – Executive Risks
bertrand.spunberg@hiscox.com