**Wimberly Lawson**  
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*Attorneys & Counselors at Law*

**MTSHRM**  
**EEOC Updates**

*Presented by:*  
**Fred Bissinger**

Knoxville   Morristown   Cookeville   Nashville   Chattanooga

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**I.**  
**STATISTICAL ANALYSIS OF**  
**EEOC CHARGES**



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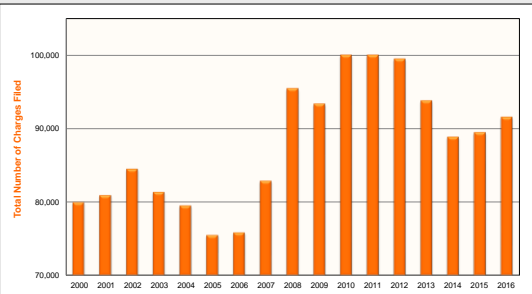
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**Total Number of Charges Filed**



Year	Total Number of Charges Filed
2000	79,000
2001	81,000
2002	84,000
2003	81,000
2004	79,000
2005	76,000
2006	77,000
2007	83,000
2008	94,000
2009	92,000
2010	99,000
2011	100,000
2012	99,000
2013	94,000
2014	89,000
2015	89,000
2016	91,000



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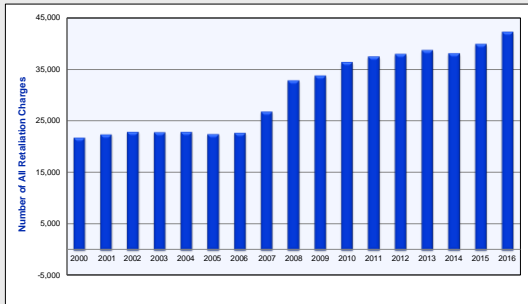
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## Retaliation Charges



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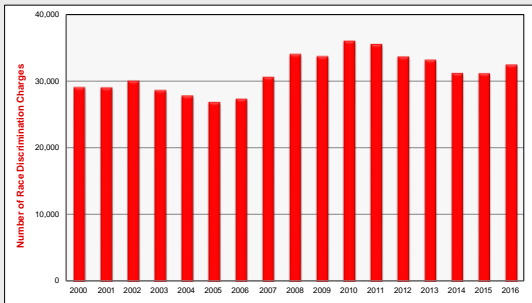
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## Race Discrimination



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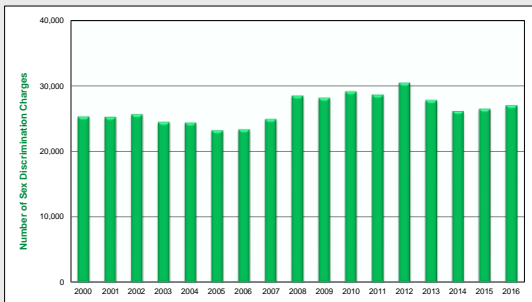
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## Sex Discrimination



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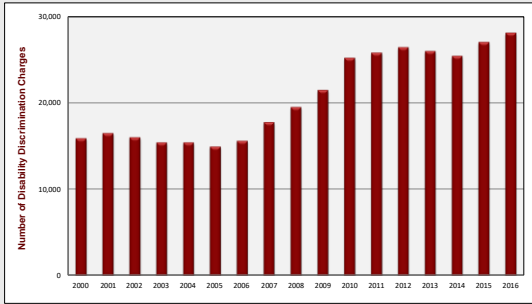
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## Disability Discrimination



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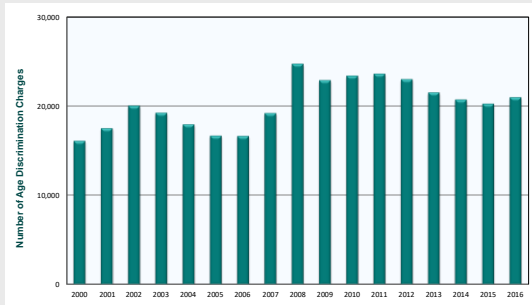
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## Age Discrimination



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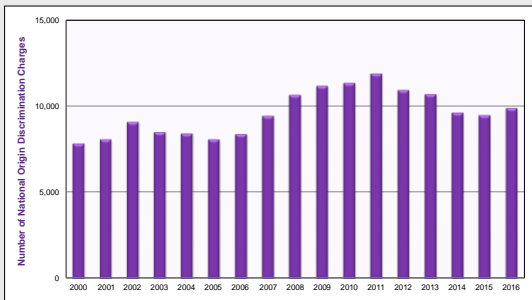
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## National Origin Discrimination



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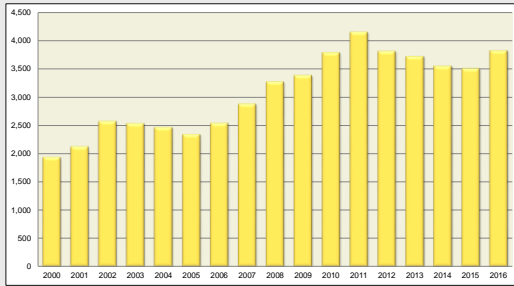
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## Religious Discrimination



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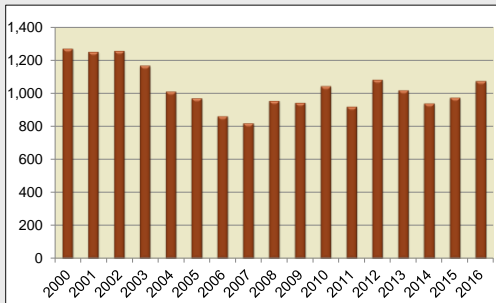
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## Equal Pay Charges



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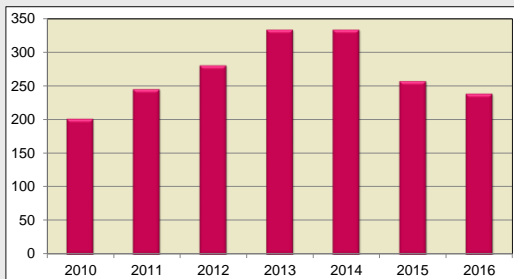
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## GINA Discrimination



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**II.**

**Strategic Enforcement Plan  
For Years 2017-2021**

- 1) Eliminating Barriers in Recruitment and Hiring
- 2) Protecting Immigrant, Migrant, Other Vulnerable Workers, and Underserved Communities from Discrimination



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**II.**

**Strategic Enforcement Plan  
For Years 2017-2021**

- 3) Addressing Selected Emerging and Developing Issues
- 4) Ensuring Equal Pay Protections for All Workers
- 5) Preserving Access to the Legal System
- 6) Preventing Systemic Harassment



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**III.**

**EEOC Charge Classification Process  
/ Cause Findings**

- A. Charges
- B. Charges
- C. Charges



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**IV.**

**Systemic Investigations /  
Class Investigations**

- What is likely to trigger one, or both?
- Procedural process when one occurs



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**V.**

**EEOC's August 2016 Enforcement  
Guidance on Retaliation and Related  
Issues**

- Protected Activity
  - Participation v. Opposition Clauses
- Adverse Action
  - Types of Materially Adverse Actions
  - Harassing Conduct as Retaliation
  - Third-Party Retaliation



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**V.**

**EEOC's August 2016 Enforcement  
Guidance on Retaliation and Related  
Issues**

- Causal Connection
  - But for requirement (not the same as sole cause)
  - "Convincing Mosaic" analysis
- Liability Analysis
- ADA Interference Provision



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**VI. EEOC's November 2016  
Enforcement Guidance on National  
Origin Discrimination**

- What is National Origin Discrimination?
  - Place of Origin
  - National Origin or Ethnicity
- Employment Decisions
  - Recruitment
  - Hiring, Promotion and Assignment
  - Discipline, Demotion and Discharge



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**VI. EEOC's November 2016  
Enforcement Guidance on National  
Origin Discrimination**

- Harassment
- Language Issues
  - Accent Discrimination
  - Fluency Requirements
  - English-Only Rules
  - Notice & Enforcement of Restrictive Language Policy



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**VII. EEOC's December 2016  
Proposed Guidance on Harassment**

- Harassment Charges made in 1/3 of all 90K charges filed in 2015:
  - 45% = Sex Harassment Allegations
  - 34% = Race Harassment Allegations
  - 19% = Disability Harassment Allegations
  - 15% = Age Harassment Allegations
  - 13% = National Origin Harassment Allegations
  - 5% = Religion Harassment Allegations



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Guidance = Companion to 2016 Task Force Report
- Covered Bases & Causation
  - Race, Color, National Origin, Religion, Sex, Age, Disability, etc.



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Sex
  - Stereotyping
  - Pregnancy / Related Issues
  - Gender Identity
  - Sexual Orientation
- Retaliation by Harassment



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Causation: "Because of" Protected Characteristic
  - Facially discriminatory conduct
  - Context – It matters
  - Link between discriminatory conduct & harassment that is not explicitly connected to a protected basis
  - Timing
  - Comparative Evidence



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Harassment = Discrimination regarding a Term, Condition, or Privilege of Employment
  - Severe / Pervasive
  - Subjective / Objectively Hostile Work Environment (HWE)



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Scope
  - Conduct Must be Sufficiently Related
  - Types of Conduct
    - Not directed at Complainant
    - Occurs in Work-Related Context Outside of Regular Work Place
    - Occurs in Non-Work-Related Context; Impacts Workplace
      - Example: Social Media



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## VII. EEOC's December 2016 Proposed Guidance on Harassment

- Liability
  - Standard Depends on Harasser's Role
    - Alter Ego / Proxy
    - Supervisor
    - Co-Workers / Non-Employees
- Systemic Harassment



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**VII. EEOC's December 2016  
Proposed Guidance on Harassment**

- "Promising Practices"
  - Leadership & Accountability
  - Comprehensive & Effective Policy
  - Effective / Accessible Complaint System
  - Effective Training



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