



# **U.S. Equal Employment Opportunity Commission August 2020 Update**



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**Victoria A. Lipnic**  
**Commissioner**  
**U.S. Equal Employment Opportunity Commission**

# Status of EEOC Operations

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## Three Members:

Janet Dhillon, Chair  
(term ending July 1, 2022)

Victoria A. Lipnic, Commissioner  
(holdover per statute)

Charlotte A. Burrows, Commissioner  
(term ending July 1, 2023)

Vacancies: Two Commissioner seats

General Counsel: Sharon Fast Gustafson (term ending August 5, 2023)

# **Corona Virus Covid-19 Resources:**

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- *All EEOC materials related to COVID-19 are collected at [www.eeoc.gov/coronavirus](http://www.eeoc.gov/coronavirus).*
- [What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEO Laws](#)
- [Pandemic Preparedness in the Workplace and the Americans With Disabilities Act](#)
- Ask the EEOC Webinar on Corona Virus, March 27, 2020 ([seen on YouTube](#). A [transcript of the webinar](#) is also available).
- EEOC Chair's [statement](#) re discrimination against Asian Americans and people of Asian descent in the workplace during the pandemic

# Issuance of NRTSs During the Pandemic

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- EEOC suspended the issuance of Notices of Right to Sue (except when requested by Charging Parties) in April 2020 when courts were closed and there was concern that Charging Parties would have difficulties retaining private counsel and filing suit given the short statute of limitations.
- Resumed August 3<sup>rd</sup>
- Notices held in suspense will be issued over the next 6-8 weeks starting with the oldest.
- All Notices will be issued by mail.

# CHARGE STATISTICS

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FY18

FY19

554,000+

200,000+

40,000+

CONTACTS

INQUIRIES

INTAKE INTERVIEWS

76,418

72,675

CHARGE FILINGS



90,558

80,806

CHARGE RESOLUTIONS



\$354(MIL)

\$385.75 (MIL) IN MONETARY BENEFITS



49,607

43,580

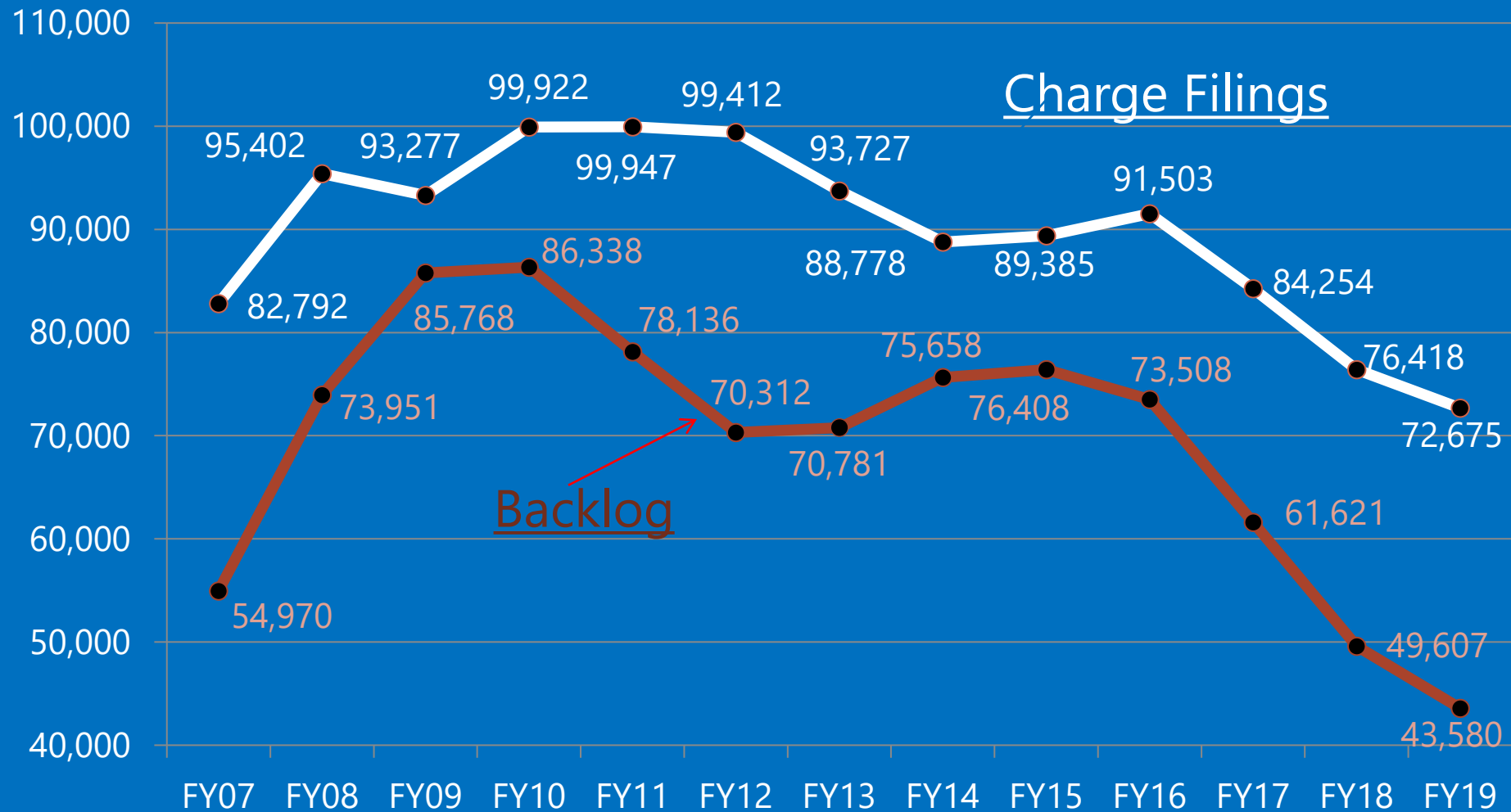
PENDING CHARGE INVENTORY





# EEOC CHARGE FILINGS TO BACKLOG (FY2007 – FY2019)

7





# FY2019 CHARGE ALLEGATIONS

9

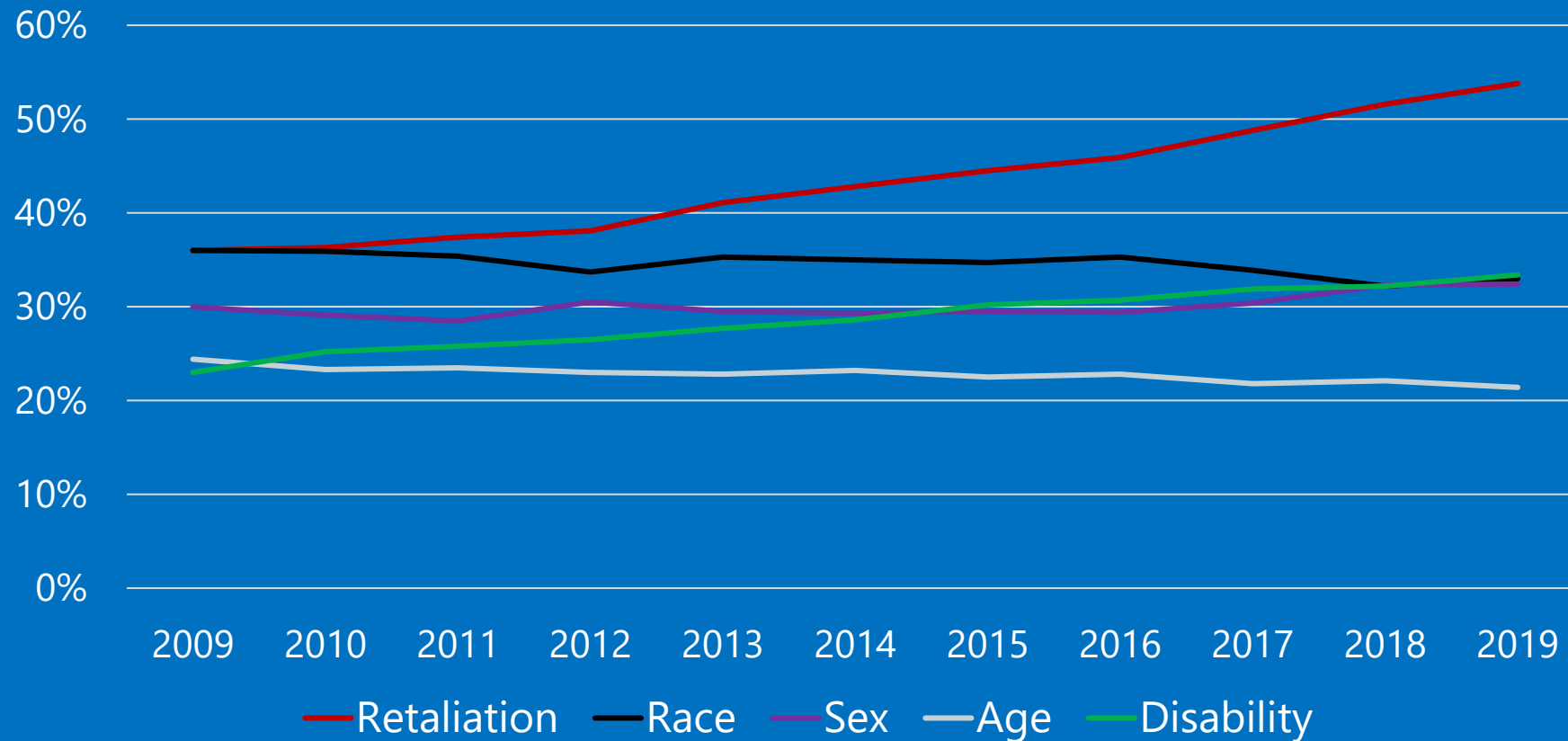
Retaliation:	39,110 (53.8%)
Disability:	24,238 (33.4%)
Race:	23,976 (33.0%)
Sex:	23,532 (32.4%)
Age:	15,573 (21.4%)
National Origin:	7,009 (9.6%)
Color:	3,415 (4.7%)
Religion:	2,725 (3.7%)
Equal Pay Act:	1,117 (1.5%)
Genetic Information:	209 (0.3%)

\*<https://www.eeoc.gov/eeoc/statistics/enforcement/charges.cfm>

# Trends in EEOC Charge Filings by Basis

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## Percent of EEOC Charges by Basis



# ENFORCEMENT FY2019 LITIGATION STATISTICS

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144 MERITS SUITS FILED

172 MERITS SUITS RESOLVED

\$38.6(MIL) IN MONETARY BENEFITS in CASES RESOLVED

## CHARACTERISTICS:

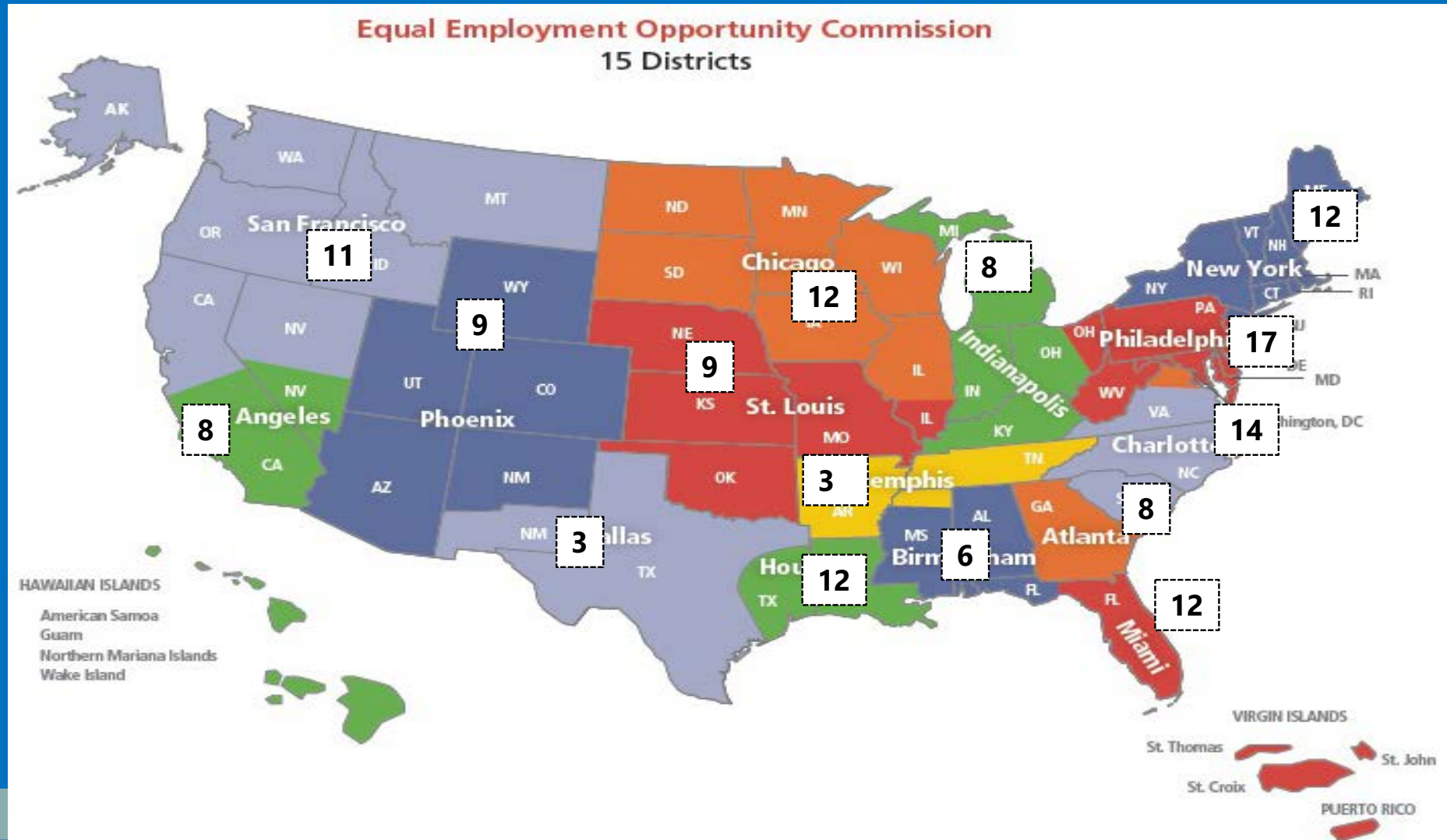
100	Individual Suits
27	Non-Systemic Class Suits
17	Systemic Suits

## BY STATUTE

Title VII	87
ADA	55
ADEA	7
EPA	7

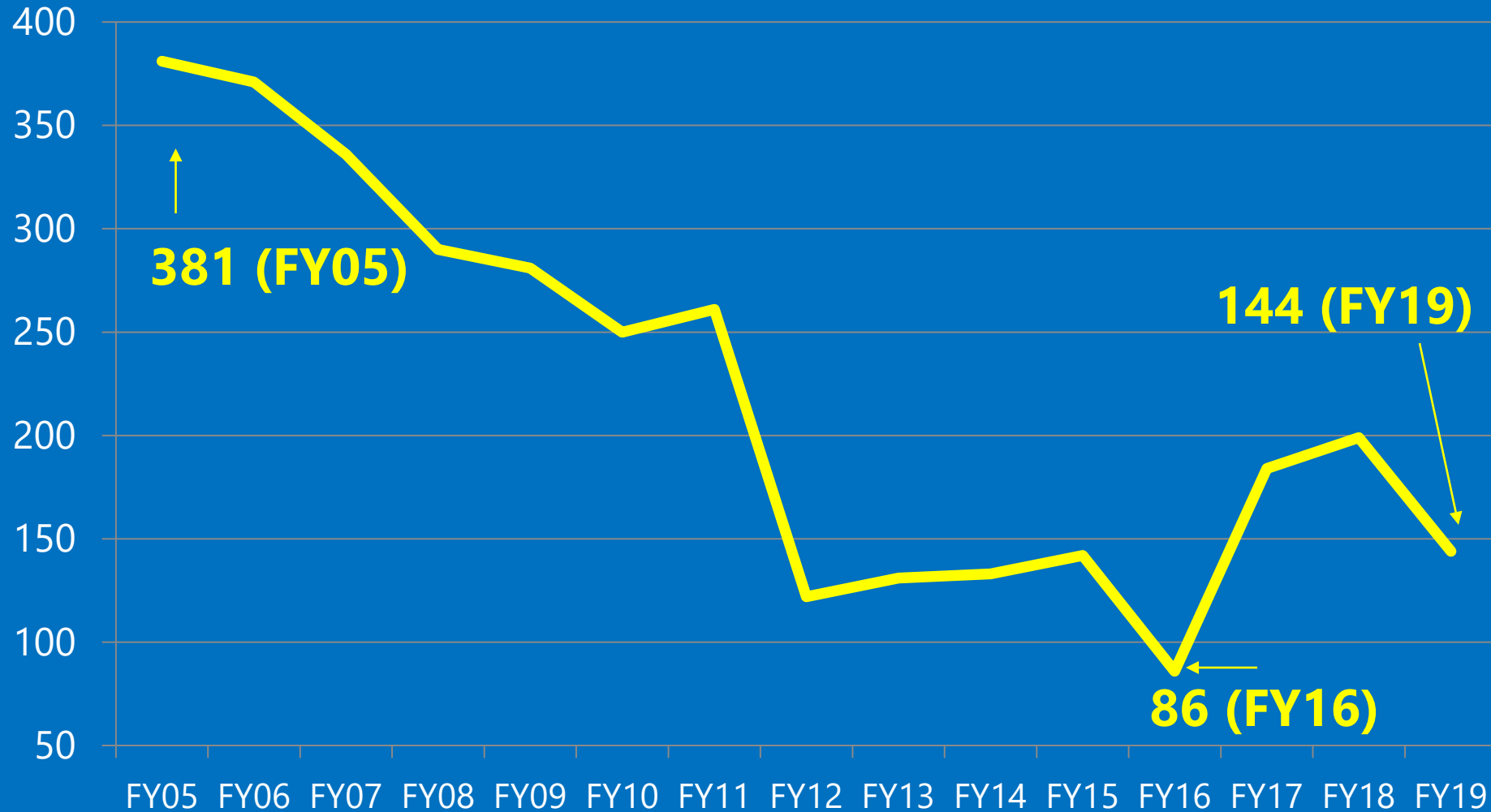
# FY19 Lawsuit Filings by District Office

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# EEOC MERITS SUITS FILED (FY2005 – FY2019)

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# Major Recent EEOC Lawsuits

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- Wal-Mart (Aug. 2020) - \$20 million sex (proposed consent decree)
  - Wal-Mart will cease using physical abilities testing for grocery order fillers at all U.S. distribution centers
  - EEOC alleged the testing discriminated against female applicants based on sex
  
- Jet Propulsion Lab (6/11/20) - \$10 million ADEA RIF case
  - Requires retention of an EEO monitor, diversity director and layoff coordinator to monitor compliance with the ADEA
  - JPL agreed to provide training to all employees on age discrimination and report to the EEOC on recruitment, hiring, layoffs, terminations and complaint

# Major Recent EEOC Lawsuits

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- FedEx (5/19/20)- \$3.3 million Systemic disability case
  - \$2.5 million to 37 applicants and employees
  - denied deaf and hard-of-hearing package handlers reasonable accommodations
  - discriminated against deaf and hard-of-hearing applicants to the package handler position.
  
- Jackson National Life Insurance (1/9/20) - \$20.5 million
  - 21 class members
  - Race, national origin, and sex discrimination suit alleging harassment, unequal pay, denials of promotions, and retaliation
  - 4-year consent decree; internal and external monitors and training



# FY19 Race Discrimination Lawsuit Allegations

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## Race Discrimination Issues

	Count	Percent
Harassment	13	81.3%
Discharge	5	31.3%
Hiring	3	18.8%
Terms/Conditions	1	6.3%

# Workplace Harassment

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- EEOC Select Task Force on the Study of Harassment in the Workplace – 2016 Report of Co-Chairs Chai R. Feldblum & Victoria A. Lipnic
- Hits on EEOC's sexual harassment page **doubled in wake of Weinstein allegations – NYT Oct 5., 2017**
- Charges alleging sexual harassment up by 13.6% in FY18
- Reasonable cause findings on harassment charges increased by 24% from FY17
- 66 lawsuits filed alleging harassment in FY18 - 50% increase from FY17; filed 48 and resolved 48 harassment suits in FY19 (10 more resolutions than FY18)
- \$70 million recovered overall in FY18 for victims of sexual harassment – 47% increase from FY17

# Workplace Harassment

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- EEOC Leads the Way in Preventing Workplace Harassment (October 2018).
- A Reconvening of the Select Task Force on the Study of Harassment in the Workplace (June 11, 2018).
- Breaking the Silence (Harvard Business Review Jan. 2018).
- Promising Practices for Preventing Harassment

# EEOC's Respectful Workplaces Training

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- ✓ **Interactive, skills-based training**
- ✓ **Separate modules for supervisors and employees**
- ✓ **Reviews acceptable conduct in the workplace**
- ✓ **Teaches how to create respectful workplaces**
- ✓ **Provides tools for responding to harassing conduct**
- ✓ **Teaches bystanders when and how to intervene**

# EEOC RW Trainings Since October 2017...

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- Provided over 1,000 sessions
- Trained over 32,000 employees and supervisors in private, public and federal workplaces



# ➤ Issues to Watch – Harassment

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## ➤ Harassment

- Retaliation - concerns about blacklisting of those who come forward
- General Motors LLC, N.L.R.B., No. 14-CA-197985, 7/21/20
  - ✦ Reinstates Wright Line standard, requires proof that the worker's protected union activity was a motivating factor in their discipline, then shifts the burden to the employer to demonstrate they would have taken the same action in the absence of that activity

# ➤ Issues to Watch – Supreme Court

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**LGBT** – Bostock v. Clayton County, 140 S.Ct. 1731 (2020)

(Consolidating R.G. & G.R. Harris Funeral Homes, Inc. v. EEOC and Aimee Stephens and Altitude Express, Inc. v. Zarda)

- Plain language of Title VII's prohibition against employment discrimination "because of . . . sex" forbids termination based on an employee's sexual orientation or transgender status
- But-for causation is a "sweeping standard" that allows for "multiple but-for causes"; But-for causation is established when an employer relies "in part" on an employee's sex, even if other factors also motivated the adverse action (at 1739)



# ➤ Issues to Watch – Supreme Court

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- **Ministerial Exemption** - *Our Lady of Guadalupe School v. Agnes Morrissey-Berru, and St. James School v. Biel*, 2020 WL 3808420 (S.Ct. July 8, 2020)
  - First Amendment bars age and disability discrimination claims of two teachers employed by Catholic elementary schools
  - *Hosanna-Tabor* factors are not a “rigid formula,”
  - Ministerial exception applied here because the teachers were required to instruct their students in the Catholic faith and to guide them in how to live their lives according to Catholic principles
- *Babb v. Wilkie*, 140 S.Ct. 1168 (2020) – fed employee causation standard
  - Broad language of ADEA §15 that personnel actions by federal agencies must “be free from” discrimination means “untainted by any consideration of age”; but-for cause doesn’t apply to finding of liability
  - To obtain relief, federal employee must show that age was a but-for cause of the decision

# Issues to Watch - Pay

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## ➤ **EEO-1/Component 2 Pay Data Collection**

- On July 16, 2020, the Commission authorized statistical study of the EEO-1 Component 2 data collected for 2017 and 2018 by the Committee on National Statistics (CNSTAT) of the National Academies of Sciences, Engineering, and Medicine.
  - Public Hearing – Nov. 20, 2019
- 
- NWLC v. OMB lawsuit – 1:17-cvm-02458-TSC (D.D.C.)
    - Order dismissing case as moot as government substantially complied (June 9, 2020)
    - ORDER – Finding data collection complete (Feb. 20, 2020).pdf
    - Order directing EEOC to collect pay data (April 25, 2019)
    - Order vacating OMB's stay of EEOC's revised EEO-1 form and Sept. 15, 2017 Fed. Reg. Notice; reinstituting previous approval of the EEO-1 form (March 4, 2019)

# Issues to Watch - Age

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- June 2018 Report of EEOC Acting Chair Victoria A. Lipnic, *The State of Age Discrimination and Older Workers in the U.S. 50 Years After the Age Discrimination in Employment Act (ADEA)*
- But-For Causation
  - Babb v. Wilkie, 140 S.Ct. 1168 (2020) federal employee causation standard
  - House passed Protecting Older Workers from Age Discrimination Act (POWADA) on Jan. 15, 2020
- Disparate Impact Claims by Applicants (Rabin v. PWC pending in 9<sup>th</sup> Cir)
- Horizontal Well Drillers (4/29/20) \$650,000 to Settle Age And Disability Claims (failure to hire older applicants; plus unlawful medical exam)
- EEOC v. White River Health System – insurability of older drivers (filed Feb. 2020)

# Spring 2020 Regulatory Agenda

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1. Pay Survey – amendments to 29 C.F.R. § 1602
2. Joint Employer Status under the federal EEO statutes
3. Official Time in Fed Sector EEO Process, 84 FR 67683
4. 2020 Adjustment of the Penalty Violation of Notice Posting Requirement
5. Updating Procedural Regs. Re Digital Charge System, 29 C.F.R. §§ 1601, 1626

# Spring 2020 Regulatory Agenda

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6. Fed Sector Time Limits for Filing a Civil Action, 29 C.F.R. §1614.407 (Final regulation, 85 Fed. Reg. 3558 June 11, 2020)
7. Fed Sector EEO Process – 15 specific changes, 29 C.F.R. §1614.407
8. Sec. 504 update, 29 C.F.R. Part 1615
9. Updating Procedures for complaints under Sec. 304 of the Govt. Employee Rights Act (GERA)
10. Revising ADA regs. re wellness programs
11. Revising GINA regs. re wellness programs

# 100<sup>th</sup> Anniversary of the Ratification of the 19<sup>th</sup> Amendment to the Constitution – Aug. 18, 2020

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*The right of citizens of the United States to vote shall not be  
denied or abridged by the United States or by any state on  
account of sex.*

(certified August 26, 1920)

From there to: Title VII of the Civil Rights Act of 1965  
Sec. 2000e-2 [Section 703]

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*It shall be an unlawful employment practice for an employer –  
to fail or refuse to hire or to discharge any individual, or  
otherwise to discriminate against any individual with respect  
to his compensation, terms, conditions, or privileges of  
employment because of such individual's race, color, religion,  
sex or national origin; . . .*



# Remember the Ladies

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This year's President: John Adams, and, most importantly, First Lady Abigail Adams, who writes to her husband on March 31, 1776 while he is at the first Continental Congress, to:

*“Remember the Ladies.”*

While John Adams is in France in the summer of 1781, Abigail Adams is at home in Braintree, Massachusetts. She gets word that some in the Continental Congress are blackening her husband's good character. She defends her husband in a letter to a family friend and, in doing so, says:

*“It needs great courage, sir, to engage in the cause of America.”*

# EEOC 2020 Update

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*COURAGE*

# SAVE THE DATE!

We hope you'll join us at the  
NILG 2021 National Conference

August 1 – August 4, 2021  
Omni® Nashville Hotel  
Nashville, Tennessee

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Registration to the NILG 2021  
National Conference!

TO LEARN MORE VISIT:

<https://www.nationalilg.org/2021-conference-giveaway/>



2021 NATIONAL CONFERENCE

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FOR EQUALITY AND COMPLIANCE**









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