A Self Fullfilling Prophecy? Discriminatory Business Practices or Governmental Victims in an Analysis of Eeoc Claims and Their Causal Factors

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ABSTRACT

The Equal Employment Opportunity Commission has reported that discrimination claims have continued to rise even though companies are spending more time, effort, and resources in training their employees to be sensitive to discriminatory behaviors. Managers are required to sign codes of conduct they will not tolerate discrimination in any form as part of their employment. Human Resource professionals are classically trained to prevent discrimination practices form occurring in the work environment.

Given the statistics from the government one would believe that businesses have failed in their attempts to address discrimination in the workplace. This research was conducted to analyze the government’s reporting on discrimination claims through the EEOC. Ana analysis of each category was conducted. Findings show that claims filed may not be valid or even have any merit for filing. This is a Self Fulfilling Prophecy the EEOC has created to perpetuate themselves and their own importance.

INTRODUCTION

Robert King Merton one of American most distinguished sociologist coined the phrase Self Fulfilling Prophecy. A self-fulfilling prophecy is a prediction that directly or indirectly causes it to become true, by the very terms of the prophecy itself, due to positive feedback between belief and behavior. Although examples of such prophecies can be found in literature as far back as ancient Greece and ancient India, it is 20th-century sociologist Robert K. Merton who is credited with coining the expression "self-fulfilling prophecy" and formalizing its structure and consequences. In his book Social Theory and Social Structure, Merton defines self-fulfilling prophecy in the following terms: e.g. when Roxanna falsely believes her marriage will fail, her fears of such failure actually cause the marriage to fail. (Merton, 1968)

The self-fulfilling prophecy is, in the beginning, a false definition of the situation evoking a new behavior which makes the original false conception come true'. This specious validity of the self-fulfilling prophecy perpetuates a reign of error. For the prophet will cite the actual course of events as proof that he was right from the very beginning. (Merton, 1968).

In other words, a prophecy declared as truth when it is actually false may sufficiently influence people, either through fear or logical confusion, so that their reactions ultimately fulfill the once-false prophecy (Merton, 1968).

With an unprecedented number of claims being filed with the Equal Employment Opportunity Commission (EEOC) for Title VII of the Civil Rights Act violations; it would appear that companies are more aggressively violating applicant and employee civil rights. If one were to first look at the statistical data one could easily believe that indeed that is the case.
However, by using systems thinking to keep the two parts separate and distinct a more dynamic begins to emerge.

Therefore the real issue becomes has businesses continued to practice bad management in relationship to their employees and their needs or is the government practicing Self Fulfilling Prophecies with their reporting?

**OBJECTIVES OF THE STUDY**

With an unprecedented number of claims being filed with the Equal Employment Opportunity Commission (EEOC) for Title VII of the Civil Rights Act violations; does that indicate that companies are more aggressively violating applicant and employee civil rights? If one were to first look at the statistical data they could easily believe that indeed that is the case. However, by using an analytical approach to keep the two parts separate and distinct a more dynamic understanding begins to emerge. Are businesses actually doing anything different than they have before to justify the increase in the number of EEOC claims? The objective of this study is to look at the claims by causal factor and then provide an analysis of what is actually causing the alleged increases in discrimination claims filed with the EEOC.

**SUMMARY OF THE CLAIMS REPORTED BY THE EOC**

The EEOC has reported record increases in the number of claims filed in 2008, 2009 and 2010. The average number of claims for 1997 to 2007 was 85,284 claims per year. In 2008 this took a dramatic jump to 95,402 claims or an 11.86% increase over the previous decade. The data shows a slight drop in the percentage of increase for 2008 but it is still a 9.37% increase over the 97 to 07 averages. In 2010 it raised again to the largest number of filings ever reported by the EEOC since its creation in 1965, with a staggering 99,922 claims, a 17.16% increase over 97-07 averages. The areas that have the highest percentage increase over the 97-07 averages are in Religion 40.21%, Retaliation 38.05%, and Disability 37.48%.

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<td>24.02</td>
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“Last year, for the first time ever, retaliation under all statutes (36,258) surpassed race (35,890) as the most frequently filed charge, while allegations based on religion (3,790), disability(25,165) and age (23,264) increased” (EEOC Reports Job Bias, 2011). The EEOC cleared 285 lawsuits and 104,999 private sector charges bringing in over $404 million dollars from employers; “the highest level of monetary relief ever obtained by the Commission through the administrative process” (EEOC Reports Job Bias, 2011).

METHODOLOGY USED IN THIS STUDY

The data for this study was collected from the EEOC governmental website. Each categorical factor was then analyzed as to what contributed to the number of claims and what caused the alleged increase in claims for the period studied in this research project. A look at responses from the EEOC via their website provided the responses found in this analysis.

ANALYSIS OF EEOC CLAIMS BY CATEGORY AND FINDINGS OF THIS STUDY

Religion

The largest percentage increase over the 97-07 average in 2010 is from religious filings at a rate of 40.21% over the average rates between 97-07 or 3,790 claims. “A disproportionate number of these cases
stem from EEOC discrimination charges filed by Muslims… The number of claims filed with the EEOC by Muslims has more than doubled…” (US Religious Discrimination, 2011). “Muslims make up merely 2 percent of the US population, although bias complaints by Muslims accounted for roughly 25% of the total” (Tanner, 2010).

The EEOC has imposed “reasonable accommodations” on businesses that allow for Muslims to have an extra break for prayer and meals which changes during the year to allow for the break to coordinate with sunset. It has also allowed Muslim flight attendants to wear their head scarf or “hijab” while performing their duties. It has even upheld that Muslims have been discriminated against if they are denied the use of the water fountains to wash their feet with prior to praying. The EEOC stands by the belief that a perceived customer fear is not an undue hardship under Title VII and the business must allow for the accommodations.

One of the reasons why this area of the discrimination claims is growing rapidly is that there is a lack of rules in place for businesses to follow. A business may be performing the way they have been for a number of years however, if they have a Muslim employee those normal methods will no longer be adequate. Business owners and managers must be very careful in how they process a religious accommodation request. The EEOC has proven that they expect businesses to make adjustments to accommodate the religious beliefs of their employees.

**Retaliation**

Retaliation is the second largest percentage of growth category for 2010 with 36,258 claims, a 38.05% increase over the averages of 97-07. Retaliation claims for just Title VII claims were listed at 28,948 or 33.75% over the 97-07 averages. Retaliation claims are considered individual claims although they are directly related to a claim already entered. The retaliation claims are generally considered easier to prove then the actual discrimination claim. Retaliation claims can also carry a larger penalty and should not be taken lightly. Businesses must be cautious as they move forward after an employee has issued an EEOC claim due to the possibility of having retaliation claims added on at a later date.

Retaliation claims may be brought against a company for performing adverse actions onto the employee or close family member or associate. In the case of Thompson v. North American Stainless LP, (NAS) the US Supreme Court found that the act of firing Thompson’s fiancée three weeks after Thompson filed her EEOC claim of sexual discrimination was indeed retaliatory. “Justice Scalia, writing the opinion, found that “Title VII’s anti-retaliation provision is simply not reducible to a comprehensive set of clear rules” (Burnick, 2011).

In another case Thomas v. Chemical Lime Co. the company was cleared of all 8 charges of racial discrimination but lost the retaliation claim because Thomas, with 25 years of service, was fired after filing his EEOC claims. The company had to pay an award of $314,000 to Thomas (Burnick, 2011).

Retaliation claims can be made by the plaintiff, a friend or family member of the plaintiff, or an employee that spoke up during the investigation. Companies must move cautiously to avoid retaliation claims since there is no comprehensive set of clear rules.

**Disability**

Disability is the third highest area of growth with 25,165 claims, a 37.48% increase over the 97-07 averages. “The increasing number of disability claims is presumably due to the recent amendments to the ADA, which among other changes, have broadened the definition of “disability,” thereby making it easier for claimants to bring a disability discrimination charge” (Higuera, & Pixler, 2011). In addition to the
definition change of disability, the act also expands the definition of major life activities, defines that a disability is impairment even if it is episodic or in remission if it would limit major life activities while it is active. The act also has instructed the EEOC to revise the definition of substantially limits in its regulations. “The Act makes important changes to the definition of the term “disability” by rejecting the holdings in several Supreme Court decisions and portions of EEOC’s ADA regulations. The effect of these changes is to make it easier for an individual seeking protection under the ADA to establish that he or she has a disability within the meaning of the ADA” (EEOC Notice Concerning the Americans, 2008).

With the number of new Americans that are now considered disabled under the ADA and the returning disabled veterans from Iraq and Afghanistan, it is expected that the number of new claims under the ADA will continue to rise over the next few years.

Political

The rest of the filings that fall under race, sex, national origin and religion have increased for a couple of reasons, mainly, political and economic. Politically, President Obama is a major supporter of Title VII reform. His first presidential act was to sign into law the Lilly Ledbetter Paycheck Fairness Act. This act treats each paycheck that is issued to a male employee and a female employee that are not being compensated equally as an individual offense. It removes the time restrictions that a claim may be filed and allows for the accrual of liability and the award of back pay (S. 181-111th Congress: Lilly Ledbetter, 2009).

In addition to the Ledbetter Act Obama has also made sweeping changes to a number of federal employment laws which fall under Title VII, ADA, the Fair Labor Standards Act (FLSA), the Equal Pay Act (EPA), and the Federal Arbitration Act (FAA). These changes remove the reward caps that could be awarded to a plaintiff, allows for damages to be awarded in addition to back pay, allows the plaintiff to recover expenses even if they do not win, allows the awarding of back pay to illegal aliens, and a number of other changes, some of which are a reversal of U.S. Supreme Court decisions (Kirsanow, 2009). President Obama has also “dedicated significant resources in 2011 to expanding the Agency’s [EEOC] outreach efforts to potential claimants” (Higuera, & Pixler, 2011). In essence President Obama wants the agency to be proactive in finding claimants. On February 1, 2010 the Obama Administration announced that is has requested a budget of $385 million for the EEOC for 2011. It has also requested $162 million dollar budget for the Civil Rights Division of the Department of Justice. That is an increase of $18 million dollars for the EEOC and $17 million dollars for the Civil Rights Division of the DOJ (Hunton & Williams, 2010). The increase in funding allows the EEOC to bring the overwhelming power of the government down upon the companies of the United States of America. With the reduced revenue that most companies are facing due to the poor economy facing an EEOC claim can be a very expensive and detrimental to the sustainability of the company. According to a law firm located in Georgia the cost associated to defend against one EEOC claim is $10,000 if the claim is settled at the filing of the lawsuit. The cost elevates to $100,000 if the case is resolved by summary judgment. If the company waits until the start of the trial to settle the case the cost is $175,000. It costs $250,000 if the trial is won by the Plaintiff. These amounts are only the stated attorney fees they do not cover the plaintiff’s attorney fees or any damages that may be awarded to the plaintiff (Moore, Clark, DuVall & Rogers, N.A.).

Lawsuits that the EEOC files can cost a company millions of dollars to defend against. Companies will rarely be able to recoup the cost of their fight with the EEOC. In cases such as EEOC v. CRST Van Expedited, Inc an Iowa federal judge found for the defendant and ordered the EEOC to pay the company...
$4.56 million dollars in legal fees (Neil, 2010). Most companies however, do not have the millions of dollars needed to defend themselves against an EEOC lawsuit.

Economical

In addition to the anti-business climate of the White House, the economy has also been a major contributor to the surge of Title VII claims. As the economy struggles employees that are laid off are finding it difficult to find new employment especially with a national unemployment rate over 9%. As businesses close their doors and others tighten their workforce and issue hiring freezes, the number of new positions available is dwindling. It can take weeks, months, even years to find work in their profession. Within this type of economic climate employees that are laid off and individuals that are interviewing for a position may believe they were either “let go” or denied the position based on discriminatory reasons. Filing a claim with the EEOC becomes an attractive option when the financial alternatives are so few (Higuera, & Pixler, 2011). It also becomes a burden upon the company when a claim has been filed. Even if the company was in the middle of downsizing prior to the claim being filed, after the filing is known the company must be very careful not to layoff anyone connected to the case. This includes the employee that filed the allegation, the employee’s family members, and even close working associates. In addition, any employees that may have given information about the case or are instrumental in the case are also possible retaliation claims and should be considered protected, even if they were scheduled for a layoff prior to the filing of the claim. It also takes a great deal of company resources to answer EEOC claims in a timely manner. EEOC claims cannot be taken lightly and must be answered appropriately. The company must meet the demands made by the EEOC which could include on-site investigations and interviewing of employees. Although management may have an attorney present during an EEOC interview there is no such luxury for an employee. Employees may even be interviewed away from the office and unknown to the company. The EEOC may also inquire about other things that they notice while on-site that are completely unrelated to the case they are currently investigating. In essence the EEOC is legally allowed to perform a witch hunt at the tax payer’s expense.

The EEOC has made it very easy for employees to file a claim with no real out of pocket expenses to speak of. If the EEOC feels that there is enough reason to pursue the case they can either file a lawsuit on behalf of the complainant or issue a “right to sue” notice. If the complainant decides to sue the company, win or lose, they may be entitled to attorney’s fees, witness fees, and court costs. The real financial burden falls squarely on the shoulders of the defending company. If the plaintiff wins the case the amount issued in punitive damages depends in part on the company’s financial standing and not the discriminatory act itself. “Rowlett v. Anheuser-Busch, 832 F.2d at 207 (“a rich defendant may well be required to pay more than a poor one who committed the same wrong”) (EEOC Enforcement guidance, 2000).

LIMITATIONS OF THIS STUDY

This study is based on data provided by the EEOC through their website. The analysis is limited to the reportings. A more robust study looking at all claims filed through all federal, state, and local agencies is needed to validate these findings. A cross referencing of court proceedings would also assist in aiding the research to validate what has been determined in this research project.

IMPLICATIONS FOR MANAGEMENT
Organizations must be aware the government is not their friend but more obvious their adversary. This began under the Franklin D. Roosevelt presidential regime that created multiple Acts that were employee friendly and this trend has continued, with some exceptions such as during the Regan Administration, since the 1930’s.

The government, especially agencies such as the EEOC, are self perpetuating and as such will continue to publish statistics that make themselves look important and needed by an un-protected employee population that are at the mercy of their employers.

CONCLUSION

With the combination of a depressed economy, a government that continues to change the discrimination laws, ample funding for the EEOC and Civil Rights Division of the DOJ, and a standing order to seek out new potential claimants, it creates a perfect storm for elevated filings. Businesses find themselves open to new claims for actions that could be years old. Since the award cap has been removed filing a claim is even more attractive to an ex-employee with nothing to lose. Businesses often settle out of court to prevent the bad publicity and the escalating costs that a Title VII case can create. It is evident that businesses are not doing anything different then they have in the past. Instead the changes in the laws have created an opportunity to seek damages for actions of the past that were not considered to be unlawful until now. Businesses are burdened with the cost of defending against EEOC claims with no recourse or hope of recouping their losses while defending their case. The bad publicity involved in a discrimination lawsuit is alone enough to cause further hardship for the company as they may lose clients just over the allegations. The political and economic atmosphere is not conducive to business. Discrimination in the workplace has been declining since the Civil Rights Movement in the 1960’s however, the new laws that disregard US Supreme Court decisions are being created to make it easier for individuals to raise the discrimination flag when they feel they have been mistreated. With the financial burden on the company to prove their innocence it removes another hurdle that may have prevented a claimant from filing. If the economy continues to struggle with unemployment around 9% in combination with the EEOC being directed to seek out new potential claimants, it is expected that 2011 and the foreseeable future will continue to have an elevated number of new Title VII claims.

THE SELF FULFILLING PROPHECY MODEL OF EEOC CLAIMS
REFERENCES


