

# Protections for Employees Who Report Workplace Discrimination

Article By:

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While thousands of employees each year submit complaints of discrimination against their employers, many more experience workplace discrimination and do not submit a formal complaint or even report it internally. A 2016 [study](#) by the Equal Employment Opportunity Commission (EEOC) noted that three out of four individuals who experienced harassment never spoke with a supervisor, manager, or union representative about the harassment. Other studies [estimate](#) that only one percent of people who experience workplace discrimination file a formal discrimination charge.

## Types of Discrimination Charges Filed

Even with a high level of underreporting of harassment and discrimination in the workplace, the EEOC [reported](#) that workers filed 67,448 charges of workplace discrimination in fiscal year 2020.[1] The EEOC breaks down the data by the characteristics of the individual who filed the complaint. The breakdown reflects the various bases for protection under federal anti-discrimination laws, specifically disability, race, sex, age, national origin, color, religion, and genetic information. In the EEOC data from fiscal year 2020, retaliation claims made up 55.8% of all charges filed, which was the most common claim asserted. Retaliation claims are often coupled with claims of discrimination because they generally require complaints about, or opposition to, discrimination in the workplace. Because of this overlap in claims and the reality that workers may have multiple characteristics or identities that entitle them to protections, the total of the percentages of the types of claims asserted is greater than 100%.

Following retaliation claims, discrimination claims based on disability were the most common in fiscal year 2020, making up 36.1% of all workplace discrimination claims. Fiscal year 2020 may have seen an even greater increase in disability-related charges due to the COVID-19 pandemic. The EEOC continues to update its [guidance](#) periodically on the impact of COVID-19 on workplace discrimination laws related to disability. Discrimination based on race made up 32.7% of claims, and discrimination based on sex made up 31.7%.

The breakdown by category is consistent with charge filing patterns in past years. One [study](#) conducted by the Center for Employment Equity of the University of Massachusetts Amherst analyzed all discrimination charges filed with the EEOC (or a comparable state agency) from 2012 to 2016. It determined that discrimination charges based on disability and race were the most

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common and that disability-related claims had become more frequent than charges based on other protected categories. In an article published by staff at the Center for Employment Equity, they determined that [63% of employees](#) who filed a complaint eventually lost their jobs.

## **Protections from Retaliation**

The data from the EEOC and Center for Employment Equity underscores an unfortunate reality for employees who come forward to report discrimination—they face the possibility of retaliation by their employer, which, at its most extreme, results in a loss of their job. Fortunately, there are legal protections in place for employees who face retaliation for complaining about workplace discrimination.

Employees who engage in protected activity, either by participating in an investigation of workplace discrimination, complaining of workplace discrimination, or opposing discrimination in the workplace, are protected from retaliation. This means that an employer cannot take any “materially adverse action” against these employees. Such actions include anything that would deter a reasonable worker from coming forward to complain about discrimination in the workplace. This includes actions short of termination, like demotions or salary reductions. The law protects not only current employees and applicants, but also former employees and third parties who have a close relationship with the employee who experienced discrimination. Employees who face retaliation for reporting discrimination in the workplace may be entitled to monetary compensation for the harm caused by the retaliation, including back wages, reinstatement to their former position if they were terminated, compensation for emotional distress caused by the employer’s actions, and reimbursement of their attorneys’ fees and costs.

While no employee should face retaliation for reporting workplace discrimination or harassment, the data demonstrates that it is an unfortunate reality in workplaces. If you believe you have faced discrimination, harassment, or retaliation, you should contact an employment attorney to determine your options and how to proceed.

## **Importance of Seeking Legal Counsel**

The Center for Employment Equity’s analysis highlighted another reality faced by employees who filed discrimination charges with the EEOC. Upon examining the outcome of each charge and excluding charges that were closed because of administrative reasons, it noted that monetary benefits and changes to workplace practices were relatively infrequent. In less than 20% of charges, employees received a monetary benefit. Less than 10% resulted in changes to employer practices. This data does not account for employees who made complaints of discrimination and were able to reach a resolution with their employer prior to filing a charge.

This data showing the poor outcomes from filing discrimination charges demonstrates the importance of seeking legal counsel if you believe that you have faced discrimination in the workplace. An attorney can advise you on the merits of your claim as well as the appropriate deadlines for filing a charge and lawsuit, and can advocate for you before the employer, both before and after submitting a discrimination charge. For current employees, such advocacy may help to shield you from retaliation or to exit from your employment on more favorable terms. In addition to seeking legal counsel, you can begin to take other steps to assist your case by doing the following:

- Document the mistreatment you experience.

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- Create a detailed timeline of instances of discrimination, which will assist an attorney who may assess your potential claims.
  - Retain employment-related documents, like employee manuals; employment offer letters and agreements; and information concerning commission, equity, and benefits plans.
  - Do not record conversations without the consent of the other party and without first seeking advice from legal counsel. Each state has different recording law statutes that require all parties or at least one party to consent to recording. It is important not to violate these laws, which can carry civil and sometimes criminal liability.

This list only identifies basic steps that you can take if you believe you have experienced discrimination or harassment in the workplace. If you have faced workplace discrimination, you should consult with an employment attorney for advice on your potential claims

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[1] The number of charges filed has decreased steadily in recent years, with 72,675 charges of workplace discrimination filed with the EEOC in fiscal year [2019](#) and 76,418 filed in [2018](#). There may be multiple explanations for this decrease, though this year's decline may be in part explained by the COVID-19 pandemic, which left many employees without work for much of 2020 and required others to work remotely.

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