

WHAT YOU NEED TO KNOW ABOUT EPLI

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**EMPLOYMENT PRACTICES LIABILITY COVERAGE OFFERINGS**

*Comparison by Line of Business*

*Excess Liability vs. D&O*

	Excess Liability	D&O
Maximum Limit	\$50 million*	\$50 million combined \$15 million separate
Average Limit	\$33.6 million	\$11.4 million
Minimum Attachment	\$200,000 per claimant \$1 million per occurrence	\$50,000 per loss
Average Attachment	\$3 million per claimant and occurrence	\$140,000 per loss

\* Available as of January 2018; previously up to \$35 million maximum limit

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**EMPLOYMENT PRACTICES LIABILITY COVERAGE OFFERINGS**

*Comparison by Line of Business*

*Excess Liability vs. D&O*

	Excess Liability	D&O
Claim Trigger	Claim first made during Policy Period resulting from <b><u>“PERSONAL INJURY”</u></b> committed during Coverage Period	Claim first made during Policy Period resulting from <b><u>“WRONGFULACT”</u></b> committed during Coverage Period
Violations Covered		
Discrimination	Covered	Covered
Harassment	Covered	Covered
Wrongful Termination	Covered	Covered
Other EPL Torts	Covered	Covered

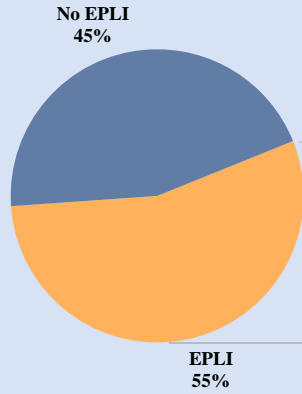
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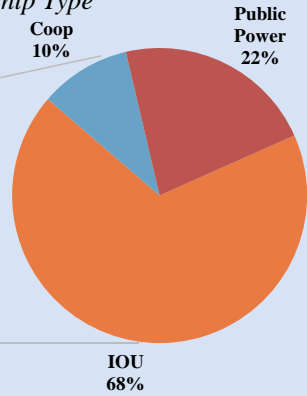
### EPLI PURCHASED

Excess Liability

*Purchased vs. Not Purchased  
By Policy*



*Purchased  
By Ownership Type*



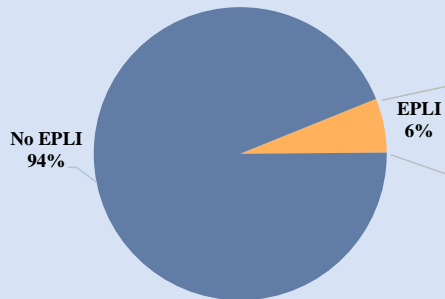
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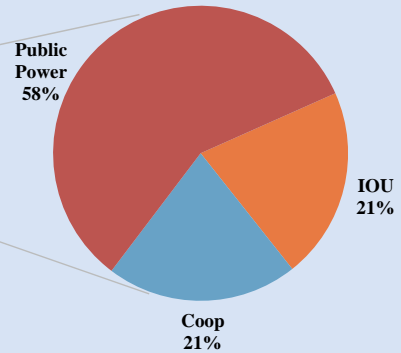
### EPLI PURCHASED

D&O

*Purchased vs. Not Purchased  
By Policy*



*Purchased  
By Ownership Type*

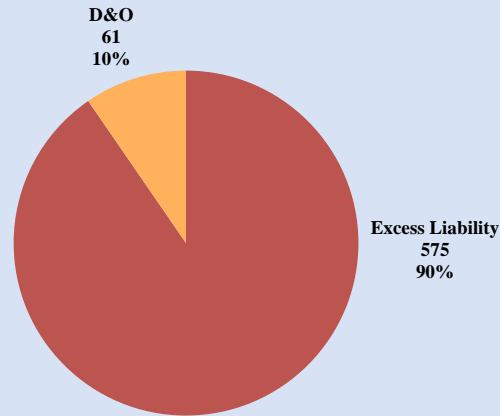


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**REPORTED EPL CLAIMS**

*By Line of Business, 2008 – 2017*

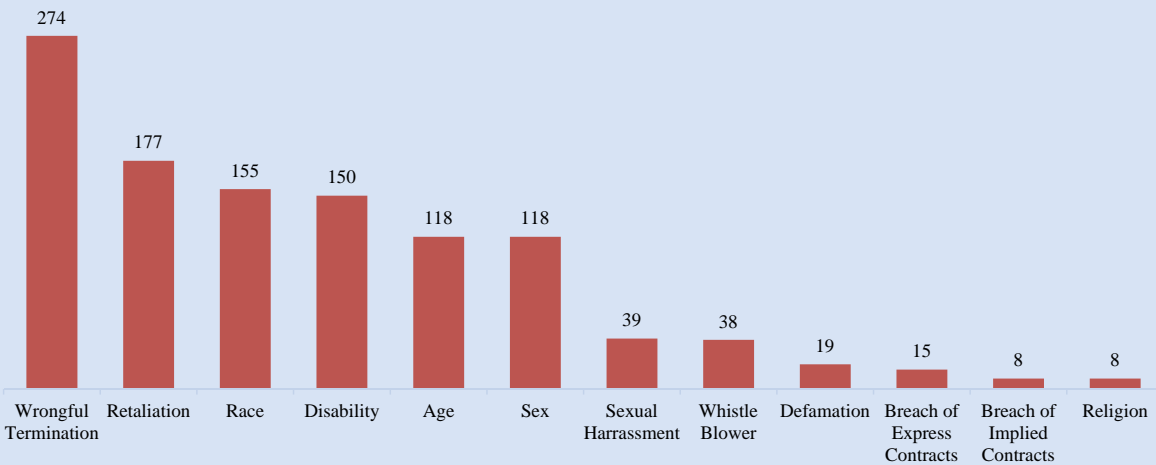


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**TYPES OF ALLEGATIONS CONTAINED WITHIN WRONGFUL EPL CLAIMS**

*2008 – 2017*



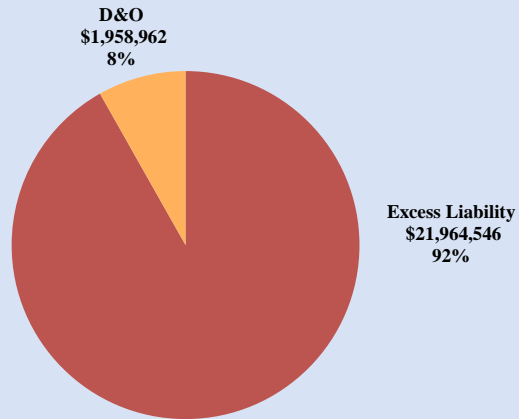
\* Multiple allegations can be contained within a single claim

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**EPL CLAIMS – ULTIMATE NET LOSS PAID**

2007 – 2018



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**EPL LOSS STATISTICS**

2008 – 2017

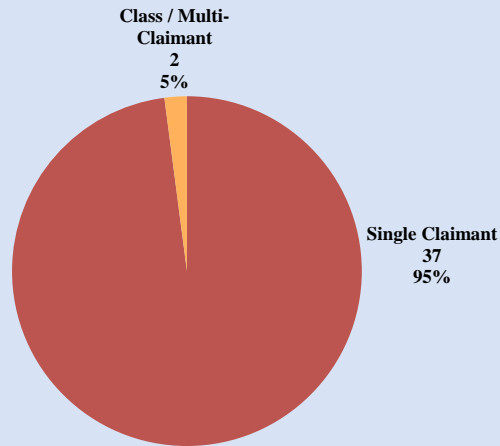
Line of Business	Number of Reported Claims	Number of Claims with Ultimate Net Loss Paid	Ultimate Net Loss Paid Amount	Average Claim Payment
Excess GL	575	33	\$21,964,546	\$578,014
D&O	61	6	\$1,958,962	\$326,493

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**EPL CLAIMS – CLASS / MULTI-CLAIMANT VS. SINGLE CLAIMANT**

2008 – 2017



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## LITIGATION TRENDS: WHAT EMPLOYERS CAN EXPECT FOR 2018-2019

- Attorney and founder of The McCalmon Group, Inc.
- A frequent commentator and speaker on employment practice issues and editor-in-chief of several online journals focused on the workplace – in particular, best practice methods for preventing employment practice litigation
- Featured in USA Today, The New York Times, and other national publications on workplace litigation trends

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## The Economy



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## SIGNS

- Unemployment rate at 3.8% through May, 2018<sup>1</sup>
- More job openings than workers to fill them<sup>2</sup>
- 71% of employees looking for a new job<sup>3</sup>



<sup>1</sup> <http://www.ncsl.org/research/labor-and-employment/national-employment-monthly-update.aspx>

<sup>2</sup> <http://money.cnn.com/2018/06/05/news/economy/job-openings-unemployed-workers/index.html>

<sup>3</sup> [https://www.washingtonpost.com/news/on-small-business/wp/2017/10/19/study-71-percent-of-employees-are-looking-for-new-jobs/?hpid=hp\\_hp-top-table-main-business-news%3Astudy-71-percent-of-employees-are-looking-for-new-jobs%3Ahomepage%2Fstory&hpid=hp\\_hp-top-table-main-business-news%3Astudy-71-percent-of-employees-are-looking-for-new-jobs%3Ahomepage%2Fstory&utm\\_term=.800499047272](https://www.washingtonpost.com/news/on-small-business/wp/2017/10/19/study-71-percent-of-employees-are-looking-for-new-jobs/?hpid=hp_hp-top-table-main-business-news%3Astudy-71-percent-of-employees-are-looking-for-new-jobs%3Ahomepage%2Fstory&hpid=hp_hp-top-table-main-business-news%3Astudy-71-percent-of-employees-are-looking-for-new-jobs%3Ahomepage%2Fstory&utm_term=.800499047272)

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## OPINION

- Full employment means
  - Labor force participation rate is low (62.7%)<sup>1</sup>
    - Harder to find qualified employees
      - Boomers will be enticed to continue working
      - Wages will increase
        - Up over 2.5% in 2018<sup>2</sup>
  - Employers that cannot retain employees will be forced to hire unqualified employees, people who dropped out of the workforce and foreign labor

<sup>1</sup> <https://data.bls.gov/timeseries/LNS11300000>

<sup>2</sup> <https://www.bloomberg.com/news/articles/2018-02-02/u-s-added-200-000-jobs-in-january-wages-rise-most-since-2009>

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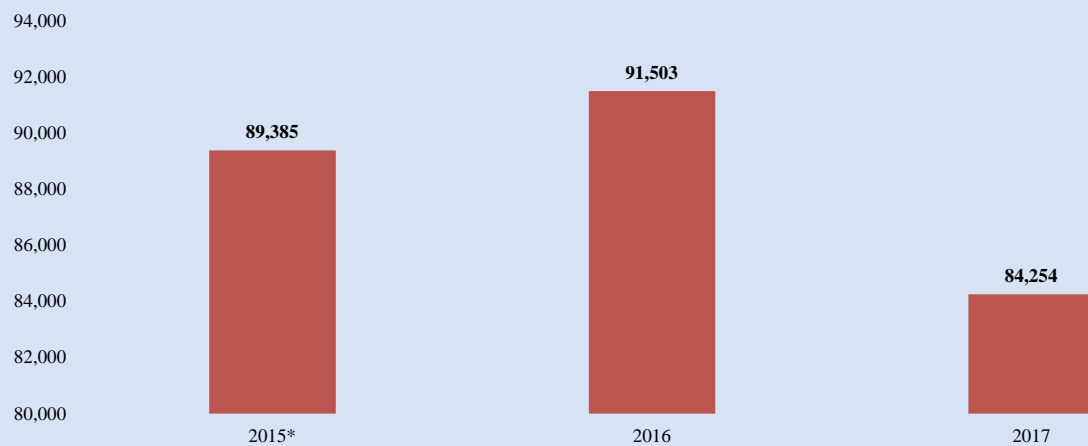
## Employee Litigation



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### TOTAL EEOC CHARGES

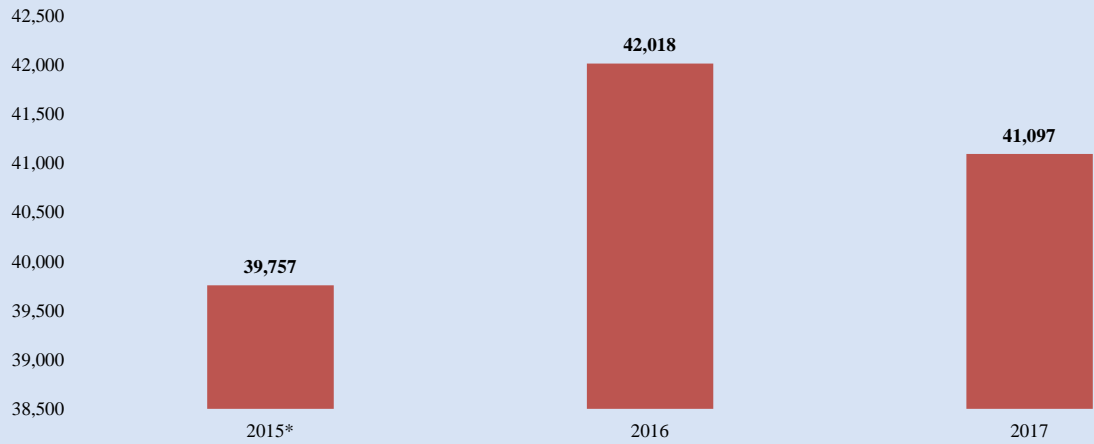


\* 12 Months effective September

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### RETALIATION CLAIMS

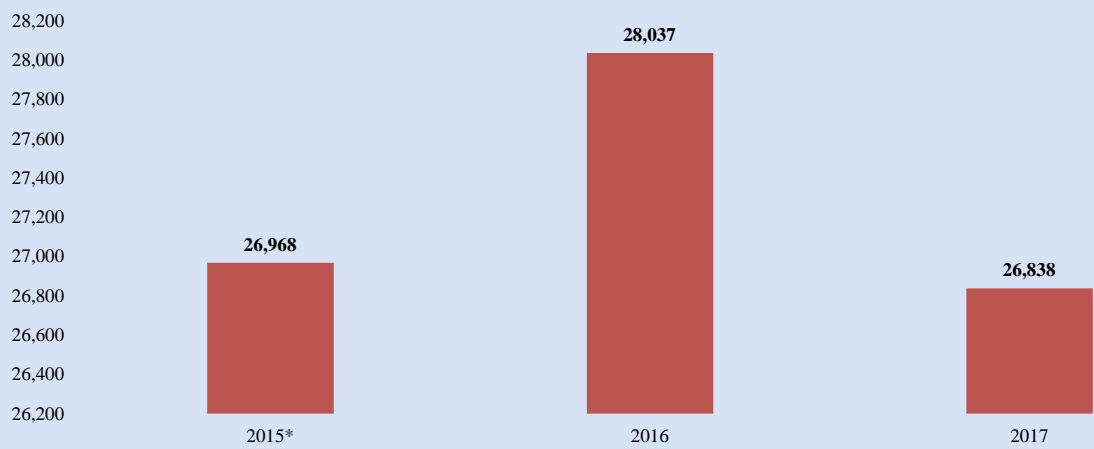


\* 12 Months effective September

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### ADA CLAIMS

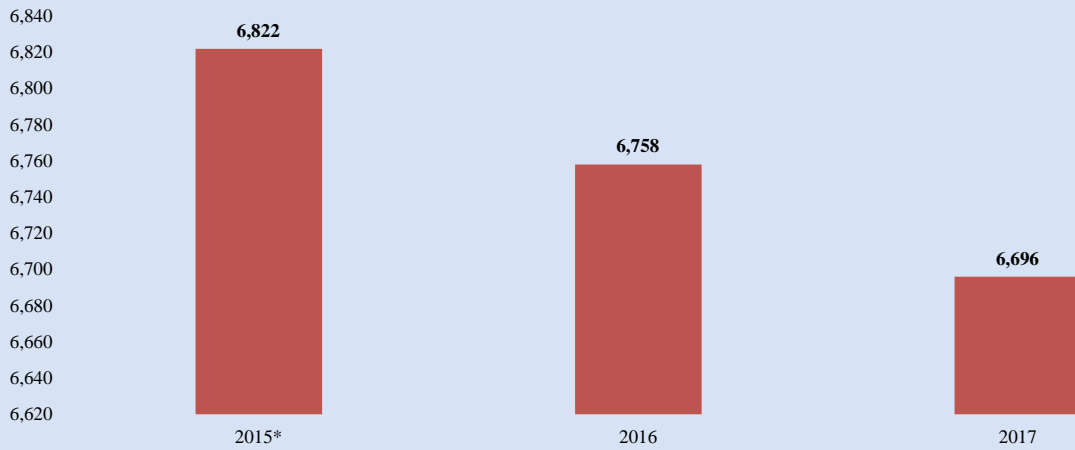


\* 12 Months effective September

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### SEXUAL HARASSMENT CHARGES

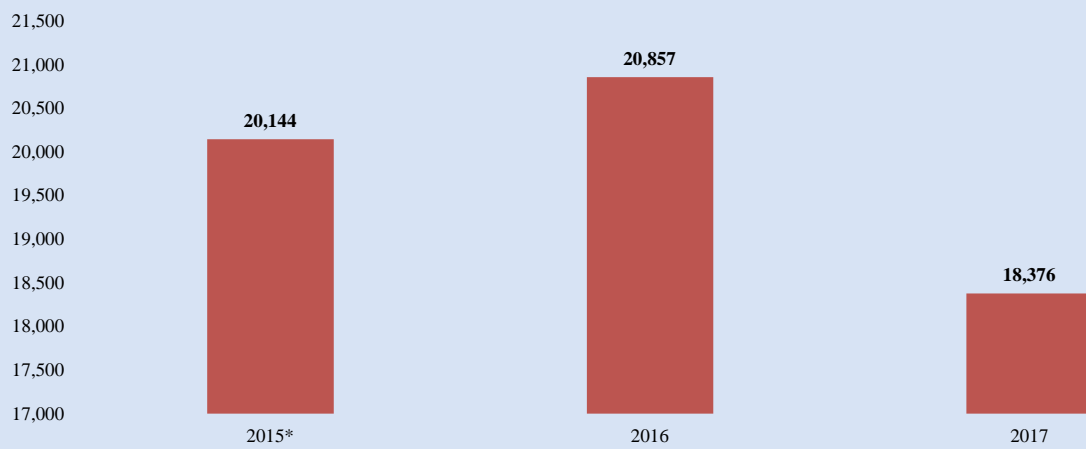


\* 12 Months effective September

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### ADEA CHARGES

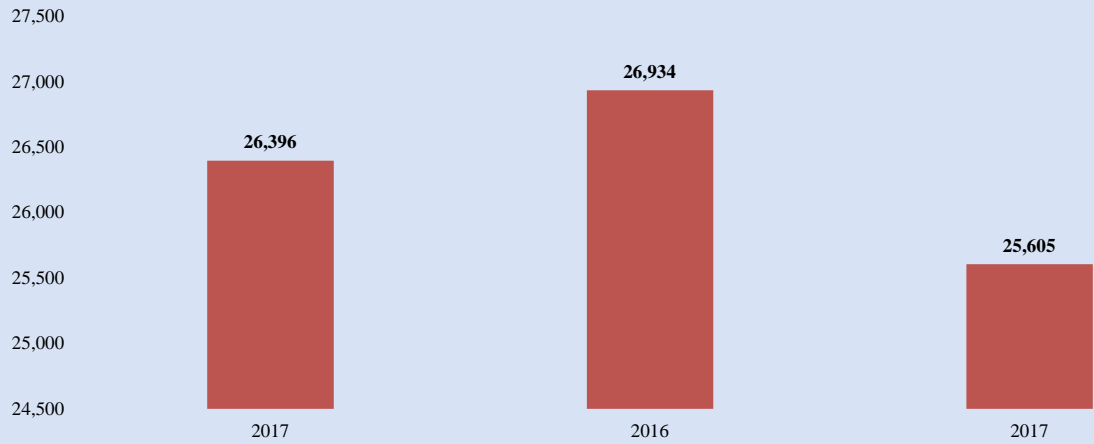


\* 12 Months effective September

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### SEX DISCRIMINATION

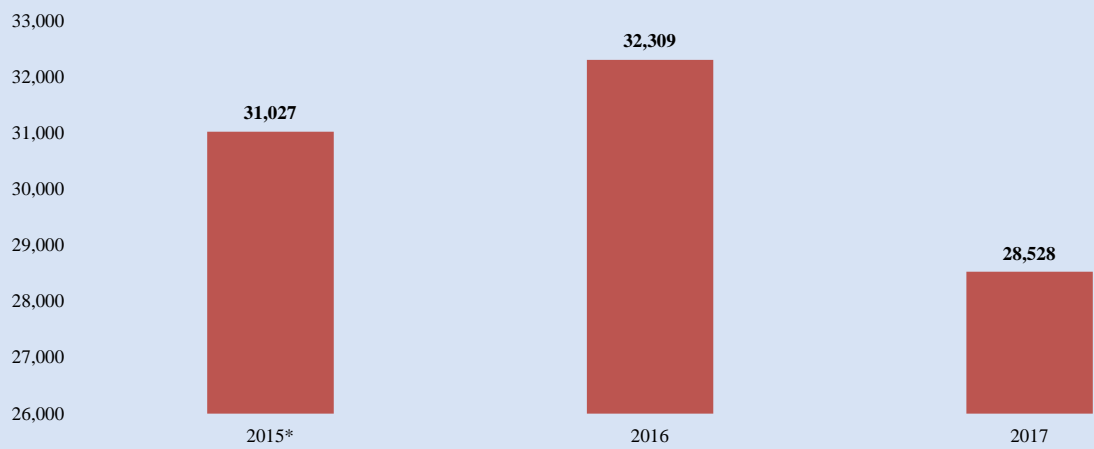


\* 12 Months effective September

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### RACE DISCRIMINATION CLAIMS



\* 12 Months effective September

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## Wage & Hour



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### WAGE AND HOUR

#### *Developments*

- Federal wage and hour complaints decreased by 3.47% in 2017<sup>1</sup>
- In fiscal year 2017, the Wage and Hour Division recovered more than \$270 million in back wages for more than 240,000 workers<sup>2</sup>

<sup>1</sup> <https://www.dol.gov/whd/data/datatables.htm#panel1>

<sup>2</sup> <https://www.dol.gov/whd/data/>

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## WAGE AND HOUR

### *Developments*

- Of Fair Labor Standards Act charges, 83% were overtime cases, and 16% were minimum wage cases<sup>1</sup>



<sup>1</sup> <https://www.dol.gov/whd/data/datatables.htm#panel1>

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## Legislation



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## **LEGISLATION**

*Expansion of the definition of sexual harassment*

- Rhode Island has pending legislation to include any individual as an “employee” for purposes of sexual harassment laws, who is under the direction and control of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, including volunteers and unpaid interns

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## **LEGISLATION**

*More states prohibiting or considering prohibiting non-disclosure agreements*

- On March 21, 2018, Washington’s governor signed bill into law, effective June 7, 2018, which prohibits employers from requiring, as a condition of employment, that employees sign a nondisclosure agreement preventing them from discussing workplace sexual harassment or sexual assault
- New York law will prohibit the use of confidential settlements, effective July 11, 2018
- Other states considering the issue include New Jersey, Arizona, California, and Pennsylvania

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## LEGISLATION

*States prohibiting mandatory arbitration agreements*

- Effective October 1, 2018, Maryland will prohibit all employers from including in an employment agreement, contract, or policy, any provision that waives any substantive or procedural right or remedy to a future claim of sexual harassment or retaliation for reporting sexual harassment
- New York's new law, effective July 11, 2018, will prohibit such agreements unless they are part of a collective bargaining agreement

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## LEGISLATION

*More states demanding reporting of incidents of sexual misconduct*

- Beginning in 2020, Maryland employers with 50 or more employees, whether inside or outside the state, must submit answers to bi-annual surveys conducted by the Maryland Commission on Civil Rights on
  1. the number of monetary settlements made by or on behalf of the employer after an employee's allegation of sexual harassment;
  2. the number of times the employer paid a settlement to resolve a sexual harassment allegation against the same employee over the past ten years of employment, and
  3. settlements made after an allegation of sexual harassment that included a confidentiality provision

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## LEGISLATION

*More states demanding sexual harassment training*

- California, Maine, and Connecticut already mandate sexual harassment training
- New York and New York City recently passed comprehensive sexual harassment laws requiring mandatory training
- States considering the issue include Delaware, Alaska, Colorado, Minnesota, Nevada, Ohio, and Pennsylvania

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## What Employers Can Expect for 2018-2019



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## WHAT EMPLOYERS CAN EXPECT FOR 2018-2019

### *Employment Litigation Trends*

- Growing economy means fewer layoffs and terminations
  - Fewer layoffs and terminations means less employment litigation
    - **Exception** – spike in defamation / slander / due process claims from people terminated for sexual misconduct
    - **Exception** – as the **job market tightens**, employers will hire fewer qualified people which may lead to more individual terminations in the long run
    - **Exception** – as the job market tightens, more employers may close their doors if the labor demand is not met

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## WHAT EMPLOYERS CAN EXPECT FOR 2018-2019

### *Equal Employment Trends*

- Overall quantity of equal employment charges may continue to decrease
  - Better economy
  - **Exceptions**
    - **#MeToo and other movements increase sexual harassment litigation**
    - **Expanding the definition of what is considered harassment**
      - **Abusive, bad and uncivil behavior**
    - **Expanding the definition of gender**
- Retaliation charges will continue to escalate in 2018-2019
  - May surpass over 50% of all charges
- Damage awards show signs of increasing a bad omen for employers

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## WHAT EMPLOYERS CAN EXPECT FOR 2018-2019

### *Wage and Hour Trends*

- Number of claims will remain constant or drop
- Damage awards will rise with the increase in wages



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## WHAT EMPLOYERS CAN EXPECT FOR 2018-2019

### *Wage and Hour Trends*

- Expect more regulation and aggressive enforcement of existing laws by both the Equal Employment Opportunity Commission and the Department of Labor
  - Tax collection a priority
- Expect more expansive regulations and laws regarding sexual misconduct



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