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SEXUAL HARASSMENT

Introduction

In Fiscal Year 2009, the Equal Employment Opportunity Commission (EEOC) received 12,696 charges of sexual harassment. 16% of those charges were filed by males. The EEOC resolved 11,948 sexual harassment charges in 2009 and recovered \$56.5 million in monetary benefits for charging parties and other aggrieved individuals (not including monetary benefits obtained through litigation).

I. What is Sexual Harassment?

Sexual harassment is a form of sex discrimination that violates Title VII of the Civil Rights Act of 1964, as amended. Sexual harassment is also outlawed by the Nebraska Fair Employment Practices Act. Sexual harassment is defined by the EEOC as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when submission to or rejection of this conduct:

- (1) explicitly or implicitly affects an individual's employment,
- (2) unreasonably interferes with an individual's work performance, or
- (3) creates an intimidating, hostile, or offensive work environment.

There are two general types of sexual harassment.

- (1) *quid pro quo* is Latin for "this for that," implying a trade involving sex, and
- (2) hostile environment: occurs when an employee is placed in an uncomfortable or threatening environment due to unwelcome sexual behavior in the workplace.

A. Nebraska Law



The Nebraska Fair Employment Practices Act (NFEPA) is found at NEB. REV. STAT. §§ 48-1101-48-1126. NFEPA prohibits discrimination in employment on the basis of race, color, national origin, religion, sex (including pregnancy), disability, or marital status.

Nebraska law regarding sexual harassment largely mirrors Title VII federal law. Plaintiffs must file an NFEPA charge with the Nebraska Equal Opportunity Commission (NEOC) within 300 days from the date of any alleged harm. This deadline is separate from federal filing rules.

B. Federal Law

1. Included Employers

Under NFEPA and Title VII covered entities include most private and non-profit employers with 15 or more employees, state and local government subdivisions of any size, employment agencies and labor organizations. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006) (numerosity requirement is an element of plaintiff's claim, is not jurisdictional, and is conceded by defendant if not raised prior to trial on the merits).

2. Prohibited Conduct

The federal statutory scheme, Title VII, prohibits an employer from discriminating "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" 42 U.S.C. § 2000e-2 (a)(1) (1982).

The United States Supreme Court unanimously decided in *Meritor Savings Bank v. Vinson*, 477 U. S. 57 (1986), that Title VII outlaws sexual harassment.

The *Meritor* case:

- Meritor confirmed that Title VII outlawed sexual harassment.
- It defined *quid pro quo* harassment.
- It also added the concept of hostile environmental abuse.
- The ruling also cautioned that employers have a responsibility for guarding against harassment.
- *Meritor* was significant in that this was the first time the Court recognized a cause of action for sexual harassment based on creation of the "hostile work environment," in contrast to earlier *quid pro quo* cases in which the demand for sexual favors was at issue.

Harris v. Forklift Systems, Inc., 114 S. Ct. 267 (1993), was another landmark case in the establishing the law of sexual harassment.

The *Harris* case:

- The Supreme Court adopted a “reasonable person” standard evaluating whether or not a particular conduct is unlawful harassment.
- The Supreme Court ruled unanimously that while psychological harm may be taken into account in evaluating whether sexual harassment occurred, it is not a requirement in a claim.
- Conversely, the decision also held that the mere utterance of an offensive statement would not normally constitute a violation of the law.

3. Important Dates for Plaintiffs

For Title VII claims, a plaintiff must pre-file a charge with the EEOC within **180 days** after the alleged unlawful practice occurred unless he or she has first filed a charge with an appropriate state agency, in which case the complainant has the earlier of 300 days from the date of the alleged violation or 30 days "after receiving notice that the State or local agency has terminated the proceedings under the State or local law."

Notwithstanding the above, the EEOC regulations allow 300 days for filing a complaint in a State where the State or local fair employment practices agency has subject matter jurisdiction over the claims, regardless of whether the claimant has first filed a claim with the State agency.

Unless excused by the court, an action must be filed within 90 days after receipt of a right-to-sue letter from the EEOC.

4. Potential Damages Under Title VII

Prior to the enactment of the Civil Rights Act of 1991, Title VII allowed a plaintiff to recover damages in the form of back pay and attorney’s fees. The Civil Rights Act of 1991 provides that a plaintiff may also recover compensatory and punitive damages. 42 U.S.C. 1981 A(b).

Back Pay: Is the most common form of relief. Back pay consists of wages, salary and fringe benefits the employee would have earned during the period of discrimination from the date of termination or failure to promote, to the date of trial.

Compensatory Damages: Include “future pecuniary loss,” as well as emotional distress, pain and suffering, mental anguish, and loss of enjoyment of life. Caps are placed on compensatory damages according to the size of the employer.

The limits on damages are as follows:

- Up to 100 employees: \$50,000
- 101-200 employees: \$100,000
- 201-500 employees: \$200,000
- 500+ employees: \$300,000

Punitive Damages: Are limited to cases where the "employer has engaged in intentional discrimination and has done so with malice or reckless indifference to the federally protected rights of an aggrieved individual." *Kolstad v. American Dental Association*, 527 U.S. 526 (1999).

Combined compensatory and punitive damages awards under Title VII are capped and range from \$50,000 for employers with fewer than 101 employees to \$300,000 for employers with more than 500 employees.

These caps apply per employee. Therefore, in cases involving multiple plaintiffs or class actions, the employer's exposure for compensatory and punitive damage awards may be substantially higher.

The Civil Rights Act of 1991 provides that any party may demand a jury trial of Title VII claims when the plaintiff seeks either compensatory or punitive damages under the new damages provisions. 42 U.S.C § 1981 A (c)(1). Congress has provided that the court may not inform the jury of the caps placed on the award of compensatory and punitive damages. 42 U.S.C. § 1981 A(c)(2). Thus, the jury is unrestricted in this calculation of damages, but the amount actually awarded to the plaintiff may be reduced by the judge pursuant to the caps set by the Act.

Front Pay: Is designed to restore victims to their "rightful place." It compensates the victim for anticipated future losses due to discrimination.

Injunctive Relief: Is available when there is an intentional discriminatory employment practice. For instance, an employee can be reinstated and an employer can be ordered to prevent future discrimination.

Damages Case Law

B. Pollard v E.I. de Pont de Neours & Co., 532 U. S. 843 (2001): The Supreme Court was asked to consider whether front pay damages awards were "compensatory" under Title VII, and thus subject to the statutory cap. The Court decided that where reinstatement is not possible and front pay is ordered as a remedy, the statutory cap on compensatory and punitive damages does not apply to front pay.

Kolstad v American Dental Ass'n, 527 U.S. 526, 539 (1999): The Supreme Court held punitive damages could be imposed in Title VII cases without a showing of egregious or outrageous discrimination. Severity of the conduct does not determine the availability of punitive damages, and egregiousness of the conduct serves as evidence of the mental state required to support an award of punitive damages. The Court also explored whether an employer could be held liable for punitive damages based on the conduct of managerial agents.

Using agency principles, the Court held that an employer could be held vicariously liable for punitive damages if the agent was acting in a managerial capacity, within the scope of his employment, or where the employer ratified or approved of the act. *Id.* at 542-43. However, an employer may not be vicariously liable for the discriminatory employment decisions of managerial agents where the decisions are contrary to an employer's "good faith efforts to comply with Title VII." *Id.* at 545-46. A corporation thus may avoid punitive damages by showing that it made good faith efforts to comply with Title VII after the discriminatory conduct.

MacGregor v. Mallinckrodt, 373 F.3d 923, 921 (8 Cir. 2004): After the employee complained of a manager's behavior in accordance with the policy, human resources did not formally reprimand the supervisor for his conduct, nor did it effectively communicate the results of the internal investigation to the employee. The Eighth Circuit held that these "lax anti-discrimination policies were insufficient to keep the issue of punitive damages from the jury," and that the employer's "behavior was sufficiently indifferent" towards the employee's rights to support the maximum punitive damages award of \$300,000. *Id.* at 932.

FYI: Tort Liability for Sexual Harassment

Plaintiffs often join tort claims along with statutory claims under Title VII and/or NFEPA. Despite the expanded compensatory and punitive damages made available under Title VII by the Civil Rights Act of 1991, a tort action may offer more comprehensive relief for a victim of sexual harassment. Tort damages are not subject to the statutory caps imposed by the Civil Rights Act of 1991. The behavior upon which a sexual harassment claim is based can support a variety of common law torts, including assault and battery (for actual or threatened offensive touching), intentional infliction of emotional distress, and negligent retention or supervision of the harassing employee.

C. Who is Protected from Sexual Harassment?

Males and Females: Title VII protects both males and females from sexual harassment. *See, e.g., White v McConnell Douglas Corp.*, 985 F.2d 434, 435 (8th Cir. 1993). Although claims by men are somewhat unusual, they have become

more frequent as women gain greater access to management positions. See the EEOC Fact Sheet in your materials showing that 16% of sexual harassment charges filed in 2009 were by men.

Sexual Orientation: Courts **do not** recognize a cause of action under Title VII for harassment on the basis of sexual orientation. *See, e.g., Higgins v New Balance Athletic Shoe, Inc.*, 194 F.3d 252 (1st Cir. 1999); *Simonton v Runyon*, 232 F.3d 33 (2d Cir. 2000).

Gender Stereotypes: Some courts have recognized Title VII sex stereotyping claims for harassment on the basis of a failure to meet gender stereotypes. In *Nicols v. Azteca Restaurant Enterprises*, an employee alleged he was harassed by co-employees because he was effeminate and did not meet their view of the male stereotype. 256 F.3d 864 (9th Cir. 2001). *See also Barnes v. Cincinnati*, 401 F.3d 720 (6th Cir.), *cert. denied*, 126 S. Ct. 624 (2005) (affirming jury verdict in favor of transsexual police officer who alleged sex discrimination on the basis that he failed to conform to sex stereotypes).

Same-Sex Harassment: The Supreme Court determined that Title VII does encompass same-sex harassment claims in *Oncale v Sundowner Offshore Services, Inc.*, 523 U. S. 75 (1998). The Court reasoned that because Title VII encompasses harassment against both men and women, and that it was possible for a member of one race to discriminate against another member of the same race, same-sex harassment was also possible. *Id.* at 78.

The Eighth Circuit has interpreted *Oncale* as establishing three evidentiary routes to set forth a same-sex harassment claim. A plaintiff can show either that:

- (1) the conduct was motivated by sexual desire; or
- (2) the harasser was motivated by a general hostility to the presence of the same gender in the workplace; or
- (3) there is direct comparative evidence about how the harasser treated both males and females in a mixed-sex workplace.

Elmahdi v. Marriott Hotel Servs., 339 F.3d 645, 655 (8th Cir. 2003); *McCown v. St. John's Health System*, 349 F.3d 540, 543 (8th Cir. 2003) *cert. denied*, 541 U.S. 974 (2004). In *McCown*, where plaintiff worked in an all-male workshop and was subject to same-sex harassment from his supervisor, the Court granted summary judgment for the employer because the employee could not offer any evidence under any of the three *Oncale* categories. *Id.* at 544.

Third Party Claims: Both the EEOC and the courts have recognized that actions may be maintained by persons other than the direct target *quid pro quo* harassment. The EEOC Guidelines provide:

Where employment opportunities or benefits are granted because of an individual's submission to the employer's sexual advances or requests for sexual favors, the employer may be liable for unlawful sex discrimination against other persons who were qualified for or denied that employment opportunity or benefit. 29 C.F.R. § 1604.11(g).

II. Types of Sexual Harassment

A. *Quid Pro Quo* Sexual Harassment

Quid pro quo sexual harassment occurs when submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting the individual. The conduct might involve the promise of a benefit (e.g., participate in sexual activity and you will receive a raise, be promoted, be transferred, be provided more responsibility), the threat of postponing a benefit (e.g., participate in sexual activity or you will not receive a raise, be promoted, etc. until 2012), or the threat of removing a current benefit or changing the job conditions in some other fashion (e.g., participate in sexual activity or your salary will be reduced, you will be terminated, demoted, or transferred, or your job responsibilities will be diminished).

To make a *prima facie* case of *quid pro quo* harassment, a plaintiff must show that:

- victim was a member of a protected class;
- victim was subjected to unwelcome sexual harassment in the form of sexual advances or requests for sexual favors;
- the harassment was based on sex; and
- submission to the unwelcome advances was an express or implied condition for receiving job benefits or refusal to submit resulted in a tangible job detriment.

B. Hostile Work Environment Harassment

Conduct that has the purpose or effect of "creating an intimidating, hostile, or offensive working environment" is prohibited by state and federal antidiscrimination statutes.

In *Meritor Savings Bank v. Meritor*, 477 U.S. 57 (1986), the Supreme Court held that an employee could ground a Title VII claim on a hostile work environment theory.

“Since the [EEOC] guidelines were issued, courts have uniformly held, and we agree, that a plaintiff may establish a violation of Title VII by proving that discrimination based on sex has created a hostile work environment.” *Id* at 66.

The Supreme Court stated that “[f]or sexual harassment to be actionable, it must be sufficiently severe or pervasive to alter the conditions of [the victim’s] employment and create an abusive working environment.” *Id.* at 67. While *Meritor* provides the general framework for analyzing hostile environment claims, the Supreme Court did not specifically address what constitutes “unwelcome” conduct (pertinent to both *quid pro quo* and hostile environment claims), the factors to be considered in assessing the severity and pervasiveness of the conduct at issue (as well as the perspective from which such conduct is to be judged), or the scope of the employer’s liability for conduct constituting a hostile environment.

In *Harris v. Forklift Systems, Inc.*, 510 U. S. 17 (1993) the Supreme Court expressly reaffirmed and expounded upon the standard for assessing hostile environment claims established in *Meritor*. The Court concluded that the conduct underlying such a claim must be assessed from both a “reasonable person” and subjective standpoint to determine whether it is sufficient to create a hostile or abusive work environment. The Court also delineated various factors to be considered in assessing whether conduct creates a hostile work environment such as the frequency of the discriminatory conduct, its severity, whether it is physically threatening or humiliating, or a mere offensive utterance; and whether it unreasonably interferes with an employee’s work performance.

To establish a *prima facie* case of hostile environment sexual harassment, a plaintiff must prove that:

- victim belongs to a protected group;
- victim was subjected to unwelcome sexual harassment;
- the harassment was based on sex;
- the harassment affected a term, condition, or privilege of employment; and
- the employer knew or should have known of the harassment and failed to take proper remedial action.

See Powell v. Yellow Book USA, 445 F.3d 1074, 1077 (8th Cir. 2006).

1. Unwelcome Sexual Harassment

The threshold for determining that conduct is unwelcome is that the employee did not solicit or incite it, and the employee regarded the conduct as undesirable or offensive. *See Beach v. Yellow Freight Sys.*, 213 F.3d 391, 396 (8th Cir. 2002). “Unwelcome” is not the same as “involuntary.” The Supreme Court has stated “the fact that the sex-related conduct was ‘voluntary’ in the sense that the complainant was not forced to participate against her will, is not a defense to a sexual harassment suit brought under Title VII.” *Meritor*, 477 U.S. at 68.

2. Harassment Based on Sex

Courts recognize that intimidating physical conduct or nonsexual verbal abuse that would not have occurred but for the sex of the victim also may provide the basis for a hostile environment claim.

3. Harassment Affecting a Term, Condition, or Privilege of Employment

A plaintiff must show that the harassment was “sufficiently severe or pervasive as to alter the conditions of [her] employment and create an abusive working environment.” *Meritor*, 477 U. S. at 67.

An isolated event does not a hostile work environment make, however, a series of seemingly isolated and sporadic incidents when considered collectively may establish a hostile work environment. Courts have held that the existence of a hostile work environment must be determined from the totality of the circumstances; incidents giving rise to the claim should not be assessed individually to ascertain whether they rise to the level of harassment. *See Harris*, 510 U.S. at 21.

4. Failure to Take Remedial Action

Where a coworker is the perpetrator of the harassing conduct, an employer can shield itself from liability by taking prompt remedial action. *Moisant v. Air Midwest Inc.*, 291 F.3d 1028, 1031 (8th Cir. 2002). The court will consider several factors in assessing the reasonableness of the remedial action, including the temporal proximity between the notice and the remedial action, the disciplinary or preventive measures taken, and whether the measures ended the harassment. *Stuart v. Gen. Motors Corp.*, 217 F.3d 621, 633 (8th Cir. 2000).

Objective Test – Reasonable Person or Reasonable Woman?

In *Harris*, the Supreme Court adopted a reasonable person test for assessing hostile work environment claims, but it did not define this fictional reasonable person. An increasing number of courts nationwide have evaluated improper conduct in the

workplace from the perspective of the "reasonable woman." This represents a marked departure from the "reasonable person" standard traditionally used in tort law and applied by many courts in the sexual harassment context.

In adopting a reasonable woman standard, the Ninth Circuit Court reasoned that a sex-blind reasonable person standard tends to be male-biased and tends to systematically ignore the experiences of women and that conduct many men consider unobjectionable may offend many women. *Ellison v. Brady*, 924 F.2d 872 (9th Cir. 1991).

In *Burns v. McGregor Elec. Indus., Inc.*, 989 F.2d 962 (8th Cir. 1993), the Eighth Circuit agreed that "in hostile environment litigation under Title VII, the appropriate standard is that of a reasonable woman under similar circumstances."

The Faragher/Ellerth Affirmative Defense

In 1998, two landmark U.S. Supreme Court cases changed the face of employer liability for sexual harassment in the workplace. In *Faragher* and *Ellerth*, decided on the same day, the Supreme Court made two important findings relating to employer liability in sexual harassment claims. The Supreme Court held that "[a]n employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee." If the conduct results in a tangible employment action, such as discharge or demotion, the employer has no affirmative defense to liability. *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998) and *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998).

The Supreme Court, in *Faragher*, recognized that certain individuals, because of their position, "may be treated as the organization's proxy." 524 U.S. at 789. With those individuals, such as the president or owner of a company, an employer arguably has no *Faragher/Ellerth* affirmative defense to liability.

Prior to *Faragher* and *Ellerth*, federal courts disagreed as to the standard of liability for an employer in a sexual harassment claim against a supervisor. Some courts held that an employer was not liable for sexual harassment by a supervisor unless the employer "knew or should have known" of the harassment. Courts focused on the plaintiff's burden of proving the harassment, rather than the employer's burden of proving an affirmative defense that it acted reasonably.

To establish the affirmative defense under *Faragher* and *Ellerth*, the employer must prove:

1. That the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior; and

2. That the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

The employer must establish both elements to avoid liability through this affirmative defense.

III. Recent Sexual Harassment Case Law

Supreme Court Cases

- *Crawford v. Metropolitan Government of Nashville and Davidson County*, 129 S.Ct. 846 (2009). Addressing whether and to what extent Title VII's anti-retaliation provision protects employees from being fired for cooperating with an employer's internal sexual harassment investigation. Both federal and Nebraska law protect employees who oppose illegal harassment or discrimination, as well as employees who participate in an investigation. What exactly does it mean to "oppose" a practice?

Vicky Crawford didn't complain about sexual harassment, but she reported such conduct during a harassment investigation. Metropolitan Government of Nashville and Davidson County, Tennessee (Metro), began looking into rumors of sexual harassment by the Metro School District's employee relations director, Gene Hughes.

When Ms. Frazier, a Metro human resources officer, asked Ms. Crawford whether she had witnessed "inappropriate behavior" on the part of Hughes, Ms. Crawford described several instances of sexually harassing behavior: Once, Hughes had answered her greeting, "Hey Dr. Hughes, what's up?" by grabbing his crotch and saying "[Y]ou know what's up"; he had repeatedly "put his crotch up to [her] window"; and on one occasion he had entered her office and "grabbed her head and pulled it to his crotch." Two other employees also reported being sexually harassed by Hughes.

Although Metro took no action against Hughes, it did fire Ms. Crawford and the two other accusers soon after finishing the investigation, saying in Crawford's case that it was for embezzlement. Crawford claimed Metro was retaliating for her report of Hughes' behavior and filed a charge of a Title VII violation with the Equal Employment Opportunity Commission (EEOC).

Ms. Crawford filed suit under Title VII of the Civil Rights Act of 1964, claiming that Metro was retaliating for her report of Hughes' behavior, in violation of 42 U.S.C. §2000e-3(a). The Sixth Circuit granted summary

judgment to Metropolitan Government finding that plaintiff was not covered under the anti-retaliation statute because she had not “initiated” an investigation or complaint against the harasser, only answered questions about the harasser when asked as part of an internal investigation.

The Supreme Court reversed the Sixth Circuit's granting of summary judgment for the defendant and remanded. The Supreme Court stated the Sixth Circuit's finding, if upheld, could undermine the *Ellerth-Faragher* scheme, along with the Title VII's primary objective of avoiding harm to employees. *Faragher, supra*, at 806. If an employee reporting discrimination in answer to an employer's questions can be penalized with no remedy, prudent employees would have a good reason to keep quiet about Title VII offenses.

- *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006), abrogating *Armbruster v. Quinn*, 711 F.2d 1332. A female waitress sued an employer with fewer than 15 employees for sexual harassment in violation of Title VII and state tort law. The Fifth Circuit affirmed the district court's granting of summary judgment for the defendant and held that since the defendant corporation did not employ 15 or more employees, it was not an "employer" under Title VII. The Supreme Court reversed the Fifth Circuit's affirmance of the grant of summary judgment for the defendant and remanded. The Court held that the employee-numerosity requirement for establishing the restaurant's "employer" status was an element of the plaintiff's claim for relief, whose satisfaction was conceded where it was not challenged prior to the trial on the merits, rather than a jurisdictional requirement that could be questioned at any stage of litigation.
- *Burlington Northern & Santa Fe Railway Co. v. Sheila White*, 548 U.S. 53 (2006). Sheila White was hired as a laborer and forklift operator for the defendant, Burlington Northern & Santa Fe Railway Co. The plaintiff was the only female employee in the maintenance department. The plaintiff complained to her employer when her direct supervisor made comments that women should not be working in the maintenance department, and further insults in front of her male coworkers. An internal investigation was performed. As a result, the plaintiff's supervisor was suspended for ten days, and required to attend a sexual-harassment seminar. The plaintiff's employer then reassigned her from forklift operator to laborer after the incident occurred. According to the defendant, this was done because of complaints that a more senior employee should have the forklift operator position. The plaintiff filed a complaint with the Equal Employment Opportunity Commission (“EEOC”) for retaliation by her employer for changing her job position after she made the complaint about her supervisor and for increased monitoring of her work by her employer.

Soon after, the plaintiff and another direct supervisor disagreed about a transportation matter which resulted in a report of insubordination and suspension without pay for the plaintiff. The plaintiff complained to her employer who through a grievance procedure investigated the issue and found that she was not insubordinate and reinstated the plaintiff with backpay for 37 days. The plaintiff filed another discrimination complaint with the EEOC for retaliation by her employer. Subsequently, the plaintiff filed suit in federal court alleging a Title VII retaliation claim.

The jury awarded the plaintiff \$43,500 in compensatory damages and medical expenses. A divided three-judge panel for the United States Court of Appeals for the Sixth Circuit reversed the judgment and found in favor of the defendant on the retaliation claims. The full Court of Appeals for the Sixth Circuit vacated the panel's decision and affirmed the plaintiff's award on her retaliation claims. While upholding the plaintiff's award the Court of Appeals for the Sixth Circuit disagreed on how to apply the anti-retaliation standards of Title VII. The United States Supreme Court granted a writ of certiorari to clear up the misunderstanding concerning the Title VII retaliation provisions.

The Supreme Court indicated that "the anti-retaliation provisions protect an individual not from all retaliation, but from retaliation that produces an injury or harm." In the Court's opinion "a plaintiff must show that a reasonable employee would have found the challenged action materially adverse." The Court also stated that taken in context this means that the challenged action would have "dissuaded a reasonable worker from making or supporting a charge of discrimination." The term "reasonable" is used to avoid subjective employee emotions from making the harm or injury immeasurable. The Court supported its reasoning by stating:

We refer to reactions of a reasonable employee because we believe that the provision's standard for judging harm must be objective. An objective standard is judicially administrable. It avoids the uncertainties and unfair discrepancies that can plague a judicial effort to determine a plaintiff's unusual subjective feelings.

The Supreme Court also found that when determining the harm or injury of retaliation, "...the significance of any given act of retaliation will often depend upon the particular circumstances. Context matters." The standard developed by the Supreme Court is written purposely to be general and objective; but most importantly it focuses on the retaliatory act itself and not the discrimination that occurred. "By focusing on the materiality of a challenged action and the perspective of a reasonable person in the

plaintiff's position, we believe this standard will screen out trivial conduct while effectively capturing those acts that are likely to dissuade employees from complaining or assisting in complaints about discrimination.”

Eighth Circuit Cases

- *Sutherland v. Missouri Dept. of Corr.*, 580 F.3d 748 (8th Cir. 2009). The Eighth Circuit rejected a retaliation claim brought by a woman corrections officer who complained that a captain had rubbed her arm and grabbed her breast on one occasion. She also claimed that she had been treated unfairly by coworkers. The Court found her allegations were insufficient to support a hostile work environment claim because the captain was disciplined for his behavior and the claimant had not shown severe or pervasive harassment. Petty slights and minor annoyances in the workplace, as well as personality conflicts and snubs by coworkers, were not actionable.
- *Anderson v. Family Dollar Stores of Arkansas, Inc.*, 579 F.3d 858 (8th Cir. 2009). Anderson was a new manager for Family Dollar. In her EEOC complaint, she stated that her supervisor called her “baby doll” on one occasion, would rub her shoulders and back at times during her training, and insinuated over the phone she should be in bed with him and one time accused her of not being “one of my girls.” The Eighth Circuit found that even assuming an inference that this behavior towards Anderson was based on her sex, it was not sufficiently severe or pervasive to create an abusive working environment. The Eighth Circuit affirmed summary judgment for plaintiff's former employer where: 1) plaintiff failed to make a prima facie case of sex discrimination as the conduct plaintiff relied on to support her claim was not sufficiently severe or pervasive to affect a term, condition, or privilege of her employment; and 2) there was no evidence to support plaintiff's claim that she suffered adverse employment action as a result of her refusal to submit to a supervisor's implied or inferred demand for sexual favors.
- *Sandoval v. American Bldg. Maintenance Industries, Inc.*, 578 F.3d 787 (8th Cir. 2009). The plaintiffs in *Sandoval* claimed that their coworkers created a hostile work environment by subjecting them to unwanted sexual conduct and then inflicting adverse job actions when they refused or disagreed with that sexual conduct. The plaintiffs conceded that the Company did not have actual knowledge of their harassment. So, the plaintiffs attempted to prove that their employer *should have known* about their harassment by producing evidence that during the timeframe in which they were harassed, at least 85 other employees reported similar treatment by their alleged harassers. The district court refused to consider

that evidence. The district court then dismissed the sexual harassment claim on the grounds that the plaintiffs did not produce sufficient evidence to prove their claims. The Eighth Circuit stated that it has long held that harassment directed towards other employees is relevant and must be considered when judging the severity and pervasiveness of workplace harassment. The Court explained that “[i]rrespective of whether a plaintiff was aware of the other incidents, the evidence is highly probative of the type of workplace environment she was subjected to, and whether a responsible employer should have discovered the [] harassment.” The Eighth Circuit Court of Appeals concluded that the district court was wrong in disregarding the plaintiffs’ evidence of widespread sexual harassment. *Sandoval* clearly holds that employees are allowed to offer evidence of other employees’ experiences in proving harassment. “Other harassment” evidence can create a fact question on the issue of pretext thereby helping employees survive summary judgment.

- *McCullough v. University of Arkansas for Medical Sciences*, 559 F.3d (8th Cir. 2009). A male employee who was accused of sexual harassment by two female coworkers responded to their complaints by making counter-accusations of harassment against them. The employer ultimately concluded that the man had engaged in harassment and made untruthful complaints, and decided to terminate him. He sued, claiming he’d been treated differently than the women. McCullough filed a complaint in federal district court, claiming retaliation and sex discrimination. Specifically, he claimed he was terminated for filing sexual harassment complaints. The district court found for UAMS and plaintiff appealed to the Eighth Circuit. The Eighth Circuit affirmed stating the “critical inquiry in discrimination cases like this one is not whether the employee actually engaged in the conduct for which he was terminated, but whether the employer in good faith believed that the employee was guilty of the conduct justifying discharge.”
- *Jenkins v. Winter*, 540 F.3d 742 (8th Cir. 2008). Jenkins worked as a statistician at a Navy recruiting office. She claimed that beginning in October 2003 she was sexually harassed by the Command Master Chief who made inappropriate sexual comments and lewd offers to her on a daily basis and became hostile to her when she rejected him. One time he fondled and touched Jenkins’ inner thigh. In mid-November 2003, Jenkins talked to the Naval EEO officer about the situation. Jenkins told the EEO officer she did not want to file a formal complaint, so the EEO officer encouraged her to handle the matter informally and tell the Master Chief to cease his behavior. Jenkins states she would immediately report to the EEO officer if the situation continued. Jenkins then discussed her discomfort with the Master Chief who did not respond.

Several superiors became aware of the harassment and in a December 4, 2003 meeting, Jenkins informed all superiors of each incident involving the Master Chief and the harassment immediately ended. After an investigation, the Master Chief was forced to retire six weeks later. The district court granted summary judgment in favor of the Navy. On appeal the Eighth Circuit reversed because there was an issue of fact as to whether the Navy had actual or constructive notice of the harassment and failed to take prompt remedial measures.

- *Adams v. O'Reilly Automotive, Inc.*, 538 F.3d 926 (8th Cir. 2008). Adams claimed she suffered sexual harassment at the hands of her supervisor for more than two and a half years. She admitted that she never reported his actions to company officials during that time, and that the employer fired the supervisor two days after she eventually made a complaint through the employer's sexual harassment hotline. The company said it should not be liable for the supervisor's actions because it exercised reasonable care to avoid harassment and to eliminate it when it might occur, and that the employee did not act with reasonable care to take advantage of the company's safeguards and otherwise prevent harm that could have been avoided. The Court reasoned that the employer had a stated policy of "zero tolerance," requiring investigation and documentation of every report of sexual harassment. The policy was widely disseminated through training videos and handbooks for all new employees as well as posters displayed in all stores. The Court also found that there was nothing objectionable in the employer requiring some kind of confirmation of sexual harassment before taking action against alleged harassers. Finally, the employer demonstrated the unreasonableness of the employee's failure to report the supervisor's harassment sooner.
- *Van Horn v. Best Buy Stores*, 526 F.3d 1144 (8th Cir. 2008). Van Horn began working for defendant-appellee Best Buy as a sales manager-in-training, then was hired by defendant Clark as inventory manager of a new Best Buy store. Van Horn reported two sales managers for sexual harassment, one during her training due to comments made directly to her, and the other at the new store based on complaints from employees. There was evidence that Clark and Van Horn did not get along well. About two months after the last complaint, Best Buy reorganized and her position was combined with another. Best Buy alleged that she was not qualified for the new position, and fired her. Van Horn sued Best Buy and Clark for retaliatory discharge under Title VII and the Iowa Civil Rights Act (ICRA, Iowa Code § 216.11.2). The district court granted the defendants summary judgment. Van Horn appealed. The Eighth Circuit affirmed and found plaintiff had a burden to prove that the reports of sexual harassment were

the determinative - not merely a motivating - factor in the employer's adverse employment decision. The Court stated that the *Price Waterhouse v. Hopkins*, 490 U.S. 228, 241-42 (1989) “mixed motive” standard does not apply to retaliation claims.

- *Recio v. Creighton University*, 521 F.3d 934 (8th Cir. 2008). The plaintiff was a professor who was placed on probation by the University after a fellow instructor filed a sexual harassment complaint against her. She subsequently filed an EEOC charge, alleging that the probation was the result of national origin discrimination by the University. The Court concluded that alleged slights by the University and coworkers did not rise to the level of a material adverse action under Title VII.

The plaintiff subsequently filed a second EEOC charge, this time alleging retaliation by Creighton. In her charge and following suit, the plaintiff claimed that the University had retaliated against her by delaying her probation while she was teaching in Spain, changing the hours of her classes, allowing “shunning” by fellow faculty members, keeping the temperature in her office too cold, denying her the opportunity to teach summer classes and additional study programs in Spain, and related issues.

The Eighth Circuit rejected these claims, affirming summary judgment for Creighton. The Court found the plaintiff’s complaints regarding changes in her work duties to be factually inaccurate, or explainable for reasons unrelated to her complaints. In terms of the remaining allegations, the Eighth Circuit concluded that these were trivial harms that do not rise to the level of retaliation, even under the relaxed *Burlington Northern* standard. Minor changes in working conditions or petty slights in the workplace do not have enough of a negative impact on an employee’s work to rise to the level of retaliation under Title VII.

- *Anda v. Wickes Furniture Co., Inc.*, 517 F.3d 526 (8th Cir. 2008). In this sexual harassment case, the Court found the plaintiff could not recover where she had not reported many of the incidents of sexual harassment by coworkers that she later tried to use to build her case. Furthermore, when the company learned about these incidents, it fired the perpetrator. The Court found the company took prompt remedial action and was not liable under Title VII.
- *Brenneman v. Famous Dave's of America, Inc.*, 507 F.3d 1139 (8th Cir. 2007). Christine Brenneman was hired as an assistant manager at Famous Dave's restaurant in West Des Moines, Iowa. Within two weeks of commencing employment, her immediate supervisor began making sexual advances toward her. Brenneman reported the supervisor's behavior to her

trainer, who provided her with Famous Dave's telephone hotline. She also spoke to a co-manager and human resources regarding her concerns about her supervisor. In an effort to resolve the situation, Famous Dave's investigated and then offered to move Brenneman to another restaurant in Des Moines. She did not respond to the company's offer, and resigned her position. The Court found that the fact that the company had a sexual harassment policy provided "compelling" proof of preventing sexual harassment. And the Court found that Famous Dave's had satisfied the correction prong by discussing a new schedule and agreeing to move Brenneman to a restaurant five miles away.

- *Weger v. City of Ladue*, 500 F.3d 710 (8th Cir. 2007). A police captain had the nickname of "Captain Tickles" and "Tickle Me Elmo" because of his widespread practice of touching female officers. Other supervisory personnel witnessed some of the harassment involved in this case, which took place on a daily basis.

The plaintiffs failed to promptly report their harassment and the Court found that the department did not have constructive notice of the harassment and was therefore not liable under the *Faragher/Ellerth* standard. The plaintiffs also did not present the kind of specific evidence that is necessary to establish a credible fear of retaliation that allows a party not to report and still recover.

This case drew a dissent from one judge. He noted that since supervisors observed the harassing behavior and had a duty by policy to report it, the City should have been found to have notice of the harassment. He said that the Court's ruling means that "a supervisor, charged with the responsibility of reporting harassment, is free to ignore it unless a complaint is filed." 500 F.3d at 732. He said he was unable to "divine any principled reason for holding that, in the context of Title VII claims, actual notice should be defined to exclude knowledge gained by experiencing or observing wrongful conduct first hand." 500 F.3d at 733.

- *Merritt v. Albermarle Corp.*, 496 F.3d 880 (8th Cir. 2007). Merritt alleged that she was sexually harassed by a team leader. She alleged that the team leader made unwelcome sexual advances toward her. When she resisted, he threatened to contact her supervisor and have her fired. She eventually consented to have sexual relations with him. He continued to threaten her job security and assigned her to work with an employee who was deemed unsafe. Although Merritt told a coworker of her situation, she never reported it to management. She eventually became distraught and walked off the job. She filed suit in Arkansas under state law. The case was

removed to federal court and dismissed on a motion for summary judgment.

The Eighth Circuit Court of Appeals held that in order to be considered a supervisor under Title VII, "the alleged harasser must have had the power to take tangible employment action against the victim, such as the authority to hire, fire, promote, or reassign to significantly different duties." In this case, the alleged harasser was a "team leader" with authority to assign employees to particular tasks. The team leader lacked the authority to take any tangible employment action and could not assign the individual to significantly different duties.

An employer is strictly liable in racial or sexual harassment cases when the harasser is a supervisor, and the employee has been subjected to a tangible employment action. Because the harasser was deemed not to be a supervisor in this case, the employer was not liable where it was not on notice of the harassment. *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998).

- *Dominic v. DeVilbiss Air Power Co.*, 493 F.3d 968 (8th Cir. 2007). After a jury trial, the male plaintiff was awarded \$250,000 in punitive damages. The Eighth Circuit reversed the award finding that "when an employer promptly and conscientiously responds to complaints of harassment or discrimination with good faith efforts, punitive damages are not warranted." 493 F.3d at 974. The plaintiff argued that the investigation of his complaint was cursory and biased, and the Court disagreed. The Court noted the company had a total of four investigations after the plaintiff made his complaint. The company also hired outside employment law specialists to examine whether its internal investigations had been proper and thorough. This same firm investigated the plaintiff's complaints further.

The plaintiff argued that he should have been moved out from under the perpetrator's supervision, but the Court found this was not practical due to the size of the company. While the plaintiff also claimed that the company did not properly respond to his complaints of subsequent retaliation, the Court again disagreed, noting that the company took quick action to limit contact between the two. Regarding the punitive damages award, the Court noted that an employer cannot be held liable for discriminatory acts of agents where their acts are contrary to the employer's good faith efforts to comply with Title VII.

- *Pedroza v. Cintas Corp. No. 2*, 397 F.3d 1063 (8th Cir. 2005). The plaintiff sued her employer for violation of Title VII and state law,

alleging same-sex sexual harassment. The Eighth Circuit affirmed the district court's grant of summary judgment for the defendant. The case involved the first method for demonstrating that same-sex harassment is "based on sex" as described in *Oncale v. Sundowner Offshore Serv., Inc.*, 523 U.S. 75 (1998). Under this analysis, "the plaintiff can show that the conduct was motivated by sexual desire." *Pedroza*, 397 F.3d at 1068 (citation omitted). Actions including the "grabbing of Pedroza's face and attempting to kiss her on the mouth and cheek, attempting to hold Pedroza's hand, pointing to her own buttocks and telling Pedroza to 'kiss it,' saying to Pedroza 'kiss my ass' when Pedroza asked for help, blowing kisses at Pedroza, and saying that she didn't have a husband and that she wanted Pedroza[.]" *Id.* at 1069, were not enough to suggest motivation by homosexual desire sufficient to create a triable issue of fact. The Eighth Circuit reached this conclusion because the harasser had five children from a former marriage; was in a long-term, live-in, heterosexual relationship with her boyfriend; had a generally antagonistic relationship with Pedroza that preceded any allegedly harassing conduct; and, Pedroza was a 'concrete person' of limited intelligence who had difficulty understanding sarcasm and who tended to take statements literally. *Id.* The Court declined to adopt a "different standard in the context of female same-sex harassment as opposed to same-sex harassment between males to find the line that separated permissible albeit unpleasant and vulgar behavior from prohibited behavior that was based on sex. *Id.* at 1070. The Court stated that "we do not find it appropriate in the context of Title VII to establish dual standards for the 'based on sex' showing required in male and female same-sex harassment cases." *Id.*

- *Williams v. Mo. Dep't of Mental Health*, 407 F.3d 972 (8th Cir. 2005). Plaintiffs asserted a hostile environment sexual harassment claim under Title VII. The Eighth Circuit affirmed summary judgment for the employer. The plaintiffs claimed that a temporary supervisor asked inappropriate personal questions, exposed himself, and offensively touched them. The defendant did not deny these allegations, but avoided liability because the district court held that the employer established an affirmative defense under *Burlington Indus., Inc. v. Ellerth*, 524 U.S. 742 (1998) and *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998). The Eighth Circuit found that the defense was appropriate because the employer's zero tolerance anti-harassment policy, reporting procedure, and employee training constituted reasonable actions to prevent harassment. The employer took prompt action upon notification of the harasser's objectionable behavior and the plaintiffs unreasonably delayed using the employer's preventative or corrective processes, waiting over five months to report incidents of harassment. Once the plaintiffs reported the harassment, the supervisor was placed on administrative leave pending an

investigation and he subsequently resigned. Thus, summary judgment was appropriate.

- *Tatum v. Ark. Dep't of Health*, 411 F.3d 955 (8th Cir. 2005). A state employee brought an action against her employer alleging hostile work environment, sexual harassment and constructive discharge in violation of Title VII. The Eighth Circuit affirmed the district court's constructive discharge in violation of Title VII. The eighth Circuit affirmed the district court's dismissal of the constructive discharge claim and grant of judgment as a matter of law, after the jury found for the employee on the hostile work environment claim. The Court held that the employer took prompt remedial action once it learned of the alleged harassment, and thus had no liability on the hostile work environment claim. It was of no consequence that the prompt action, an investigation, did not begin until two weeks after the complaint and took two and a half months to complete. The Court additionally found that Tatum did not produce any evidence, other than that the investigation was proceeding slowly, that her employer intended to force her to quit, so dismissal of the constructive discharge claim was appropriate.
- *Wilson v. Brinker Intern., Inc.*, 382 F.3d 765 (8th Cir. 2004). Wilson claimed that the defendant created a sexually-hostile work environment in violation of state and federal law by failing to remedy and by tolerating the behavior of Wilson's coworker. The plaintiff alleged she was constructively discharged after having endured sexual harassment, gender discrimination, and retaliation. A jury returned a verdict for Wilson on her sexual harassment claim but against her on her other claims; the district court then granted judgment as a matter of law dismissing the harassment claim as untimely. The Eighth Circuit affirmed the district court's judgment in favor of the defendant because the jury found that no acts of harassment occurred during the statutory time period. On appeal, Wilson argued "that the court improperly placed the burden on her to prove her compliance with the statute of limitations when, as an affirmative defense, the burden should have been placed on the defendants to prove that her lawsuit was time-barred." *Id.* at 768.

The plaintiff's sexual harassment claim was based on the continuing violation theory of a hostile work environment, which the Supreme Court addressed in *Nat'l R.R. Passenger Corp. v. Morgan*, 536 U.S. 101 (2002). Prior to *Morgan*, the Eighth Circuit characterized the continuing violations doctrine as an equitable exception to Title VII's 300 day filing requirement, and thus the burden of proof fell on the plaintiff seeking to invoke the exception. No court of appeals has specifically addressed whether *Morgan* altered the landscape in this regard. However, the Fifth

Circuit, in *Pegram v. Honeywell, Inc.*, 361 F.3d 272 (5th Cir. 2004), has continued to characterize the continuing violations doctrine as equitable in nature and has stated that the plaintiff must demonstrate that an act occurred within the limitations period. The Court did not resolve this issue, stating only that even assuming the district court committed error by placing the burden of proving timeliness on Wilson, it could not say that the district court committed plain error. *Wilson*, 382. F.3d at 772.

Nebraska Cases

- *Lacey v. State ex rel. Nebraska Dept. of Correctional Services*, 278 Neb. 87 (2009). Lacey alleged sexual harassment, retaliatory discharge, and retaliatory failure to hire. A jury awarded Lacey \$60,000 in damages on her sexual harassment claim but found in favor of the State on the retaliation claims. The State appealed, and the Nebraska Supreme Court affirmed the award.

The Nebraska Supreme Court stated it could not conclude, as a matter of law, that the State exercised reasonable care to prevent and correct the sexual harassment in Lacey's case. Lacey's supervisor, Drager, often asked her sexual questions. Other employees overheard the comments Drager made and agreed that the comments crossed the line of what was appropriate. Drager subjected Lacey to uninvited touching by leaning his chest against her back and putting his face next to her face when he talked to her and by running his fingers through her hair. He also threw candy and shot rubberbands at her chest area and constantly followed her around the warehouse. When the State finally investigated Drager's actions, his behavior was found to be inappropriate.

Another supervisor, Ehlers was aware of Drager's inappropriate behavior toward Lacey, but he failed to stop the harassment. When Lacey complained to Ehlers and filed the formal report with Lehmkuhl, Ehlers verbally instructed Lacey to report to a different supervisor and told Drager to stay away from her. The Court stated that unlike the solution undertaken by the police department in *Weger v. City of Ladue*, 500 F.3d 710 (8th Cir.2007), the State's only solution was to tell the parties to stay away from each other and Drager resumed harassing Lacey as soon as Ehlers was absent from the warehouse for a few days.

Because reasonable minds could differ as to whether the actions of the State rose to the level of "reasonable care to prevent and correct promptly any sexually harassing behavior," as required by the first prong of the *Faragher* defense, the Supreme Court did not remand. See *Faragher v. Boca Raton*, 524 U.S. 775, 807, 118 S.Ct. 2275, 141 L.Ed.2d 662 (1998).

The Supreme Court also concluded that the State did not establish as a matter of law that it met the second prong of the *Faragher* defense because reasonable minds could differ regarding whether Lacey unreasonably failed to take advantage of any preventative or corrective opportunities provided by the employer or to avoid harm otherwise.

- *Gavin v. Rogers Technical Services, Inc.*, 276 Neb. 437 (Neb. 2008). On appeal from a summary judgment entered against appellant, Jamie Gavin, in a suit involving alleged sexual harassment by Gavin's supervisor. Gavin alleged that the harassment resulted in a hostile work environment and her constructive discharge. In granting the employer's motion for summary judgment, the district court determined that Gavin failed to make a prima facie case that her working conditions were so intolerable that a reasonable person would have felt compelled to resign. The Nebraska Supreme Court reversed the judgment of the district court, finding genuine issues of material fact as to both the hostile work environment and constructive discharge claims.

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U.S. Equal Employment Opportunity Commission

Sexual Harassment Charges EEOC & FEPAs Combined: FY 1997 - FY 2009

The following chart represents the total number of charge receipts filed and resolved under Title VII alleging sexual harassment discrimination as an issue.

The data in the sexual harassment table reflect charges filed with EEOC and the state and local Fair Employment Practices agencies around the country that have a work sharing agreement with the Commission.

The data are compiled by the Office of Research, Information and Planning from data compiled from EEOC's Charge Data System and, from FY 2004 forward, EEOC's Integrated Mission System.

	FY 1997	FY 1998	FY 1999	FY 2000	FY 2001	FY 2002	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
Receipts	15,889	15,618	15,222	15,836	15,475	14,396	13,566	13,136	12,679	12,025	12,510	13,867	12,696
% of Charges Filed by Males	11.60%	12.9%	12.1%	13.6%	13.7%	14.9%	14.7%	15.1%	14.3%	15.4%	16.0%	15.9%	16.0%
Resolutions	17,333	17,115	16,524	16,726	16,383	15,792	14,534	13,786	12,859	11,936	11,592	11,731	11,948
Resolutions By Type													
Settlements	1,178	1,218	1,361	1,676	1,568	1,692	1,783	1,646	1,471	1,458	1,571	1,525	1,382
	6.80%	7.1%	8.2%	10.0%	9.6%	10.7%	12.3%	11.9%	11.4%	12.2%	13.6%	13.0%	11.6%
Withdrawals w/Benefits	1,267	1,311	1,299	1,389	1,454	1,235	1,300	1,138	1,146	1,175	1,177	1,183	1,285
	7.30%	7.7%	7.9%	8.3%	8.9%	7.8%	8.9%	8.3%	8.9%	9.8%	10.2%	10.1%	10.8%
Administrative Closures	6,908	6,296	5,412	4,632	4,306	3,957	3,600	3,256	2,808	2,838	2,804	2,618	2,835
	39.90%	36.8%	32.8%	27.7%	26.3%	25.1%	24.8%	23.6%	21.8%	23.8%	24.2%	22.3%	23.7%
No Reasonable Cause	7,172	7,243	7,272	7,370	7,309	7,445	6,703	6,708	6,364	5,668	5,273	5,718	5,695
	41.40%	42.3%	44.0%	44.1%	44.6%	47.1%	46.1%	48.7%	49.5%	47.5%	45.5%	48.7%	47.7%
Reasonable Cause	808	1,047	1,180	1,659	1,746	1,463	1,148	1,037	1,070	797	767	687	751
	4.70%	6.1%	7.1%	9.9%	10.7%	9.3%	7.9%	7.5%	8.3%	6.7%	6.6%	5.9%	6.3%
Successful Conciliations	298	357	383	524	551	455	350	311	324	253	282	234	254
	1.70%	2.1%	2.3%	3.1%	3.4%	2.9%	2.4%	2.3%	2.5%	2.1%	2.4%	2.0%	2.1%
Unsuccessful Conciliations	510	690	797	1,135	1,195	1,008	798	726	746	544	485	453	497
	2.90%	4.0%	4.8%	6.8%	7.3%	6.4%	5.5%	5.3%	5.8%	4.6%	4.2%	3.9%	4.2%
Merit Resolutions	3,253	3,576	3,840	4,724	4,768	4,390	4,231	3,821	3,687	3,430	3,515	3,395	3,418
	18.80%	20.9%	23.2%	28.2%	29.1%	27.8%	29.1%	27.7%	28.7%	28.7%	30.3%	28.9%	28.6%
Monetary Benefits (Millions)*	\$49.50	\$34.3	\$50.3	\$54.6	\$53.0	\$50.3	\$50.0	\$37.1	\$47.9	\$48.8	\$49.9	\$47.4	\$51.5

** Does not include monetary benefits obtained through litigation.*

The total of individual percentages may not always sum to 100% due to rounding.

EEOC total workload includes charges carried over from previous fiscal years, new charge receipts and charges transferred to EEOC from Fair Employment Practice Agencies (FEPAs). Resolution of charges each year may therefore exceed receipts for that year because workload being resolved is drawn from a combination of pending, new receipts and FEPA transfer charges rather than from new charges only.

Definitions of Terms

Historical Data