

# Employment Discrimination: Maybe the 37th Time is the Charm

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Much of my legal practice involves defending companies against employment discrimination charges. In so doing, I sometimes come across the "professional plaintiff" – an individual whose sole "job" appears to be suing potential, current or former employers in the hopes of extracting a monetary settlement.

Recently I discovered that a plaintiff who filed a discrimination charge against one of my clients had previously filed 36 discrimination charges against other companies. In fact, over the last 10 years this individual has claimed that employers discriminatorily failed to hire him or fired him because of either his: (1) age; (2) race; (3) disability; (4) color; (5) sex; (6) arrest record; and/or (7) retaliation. It reminds me of that old joke: "I'm not paranoid – everybody's just out to get me."

We will, of course, use plaintiff's prior litigation history to show his claims are frivolous and an abuse of the legal system. Unfortunately, however, the company will still be burdened with the time and expense of defending itself.

What can we learn from this litigation nightmare?

## **(1) Hiring decisions are critical.**

An employer can't ask an applicant whether he or she has sued other employers for discrimination in the past. But if an employment application lists numerous short-term employment stints, or in response to the "reason for leaving" question the applicant cites "dispute with supervisor" or "forced to quit," do not hire the person.

## **(2) People sue for anything, and often.**

Given how easy it is to file a discrimination charge, often with no "downside" to the applicant or former employee, litigation is not seen as a "last resort" anymore. Rather, it has become the go to strategy for many individuals facing a workplace issue. [According to the EEOC there were over 99,000 discrimination charges filed against employers in 2012.](#) If your company hasn't been sued for discrimination yet, it's likely only a matter of time.

**(3) Don't assume the government cares or will help.**

People get their day in court. Agencies like the EEOC will accept a discrimination charge even if the plaintiff is a "serial filer." The agency may be more skeptical of the merits of the charge, but the company will still have to expend significant resources challenging those merits.

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