

IN THE WORKPLACE

# Discrimination complaints rise in 2010

The bad economy is blamed for large increase locally

By Philip Walzer  
*The Virginian-Pilot*

## NORFOLK

More people are claiming they lost their jobs because of discrimination.

The U.S. Equal Employment Opportunity Commission received nearly 100,000 discrimination complaints – a record high – last year.

The agency's Norfolk office reported 1,041 complaints, a 10.7 percent increase from 2009.

The EEOC recently reported the data, which cover the federal fiscal year from Oct. 1, 2009, to Sept. 30.

Lawyers for both employers and workers say the primary impetus is the gimpy economy.

"They might not have filed if they

**THE NORFOLK OFFICE** of the U.S. Equal Employment Opportunity Commission reported a 10.7 percent increase in discrimination complaints last year. That was higher than the 7.1 percent increase nationally.

TYPE OF DISCRIMINATION	2004	2005	2006	2007	2008	2009	2010	PERCENTAGE INCREASE FROM 2009 TO 2010
Race	312	376	330	370	398	401	435	8.5%
Sex	207	195	207	249	277	254	296	16.5%
Retaliation	199	200	192	244	274	273	286	4.8%
Disability	120	142	126	177	160	167	172	3.0%
Age	108	111	106	118	133	154	165	7.1%
National origin	36	33	22	35	46	40	58	45.0%
Religion	17	20	17	27	36	28	29	3.6%
Equal Pay Act	7	7	3	10	5	5	5	No change
<b>TOTAL</b>	<b>764</b>	<b>778</b>	<b>734</b>	<b>818</b>	<b>879</b>	<b>940</b>	<b>1,041</b>	<b>10.7%</b>

NOTES: 2010 covered the period from Oct. 1, 2009, to Sept. 30. A complaint could list multiple categories.

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*Lisa Bertini, who often represents workers and is the principal attorney with Bertini O'Donnell & Hammer*

## DISCRIMINATION

# RETALIATION CITED IN MOST COMPLAINTS

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had been able to pop into another job right away,” said William E. Rachels Jr., a lawyer with Willcox & Savage in Norfolk who represents employers. “They have time on their hands, and it doesn't cost a nickel to go to the EEOC.”

Locally, the discrimination category that experienced the largest percentage increase in complaints last year was “national origin,” up 45 percent. But the total number of complaints in that category – 58 – was still among the lowest.

Across the country, “retaliation” dislodged “race” as the category with the most complaints. In a retaliation complaint, a worker alleges that participation in a “protected activity,” such as an internal human resources complaint or testimony in a lawsuit, led to the firing.

In Hampton Roads, race remained the category with the most complaints in 2010, with 435, followed by sex (296) and retaliation (286).

Even so, Rachels and Lisa

Bertini, a Norfolk attorney who represents workers, said they've seen a spike in retaliation complaints.

Both said that's partly due to the lower standard of proof required in such cases. Plaintiffs must prove that their initial action was one of the causes of their firing but not necessarily the main reason.

Countering such claims can be tough, Rachels said.

“It's like they came in on a white horse,” he said. “They did something to carry out the law and protect humanity, and the big, bad employer took action against that activity.”

Bertini, principal attorney with Bertini O'Donnell & Hammer, said most people who approach her with potential EEOC complaints don't have a strong case.

“I don't think they're intentionally looking to wrongfully sue their employer,” she said. “They're desperate to say, ‘What do I have here?’”

She tells them “to move on with their lives. I don't think they need to clog up the system and waste their time.”

They don't always listen.

Rachels said he has seen more “pro se” cases, in which litigants represent themselves, without a lawyer. Those claims, he said, tend to be weaker – but not necessarily easier for him.

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“It's typically much more difficult for defense counsel to deal with pro se plaintiffs,” he said. “Attorneys know what's going on and have a certain code they live by. It can be a risky business to engage in conversation with a pro se plaintiff.”

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