

United States Equal Employment Opportunity Commission (EEOC)



An Overview of the EEOC & Fair Pay for Women

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OUR VISION

**A Strong and Prosperous
Nation**

**Secured Through a Fair
and Inclusive Workplace**



OUR MISSION

**We Promote Equality of
Opportunity in the Workplace and
Enforce Federal Laws Prohibiting
Employment Discrimination**

THE COMMISSION



CHAIR
Jacqueline A. Berrien



Commissioner
Stuart Ishimaru



Commissioner
Constance Barker



Commissioner
Victoria Lipnic

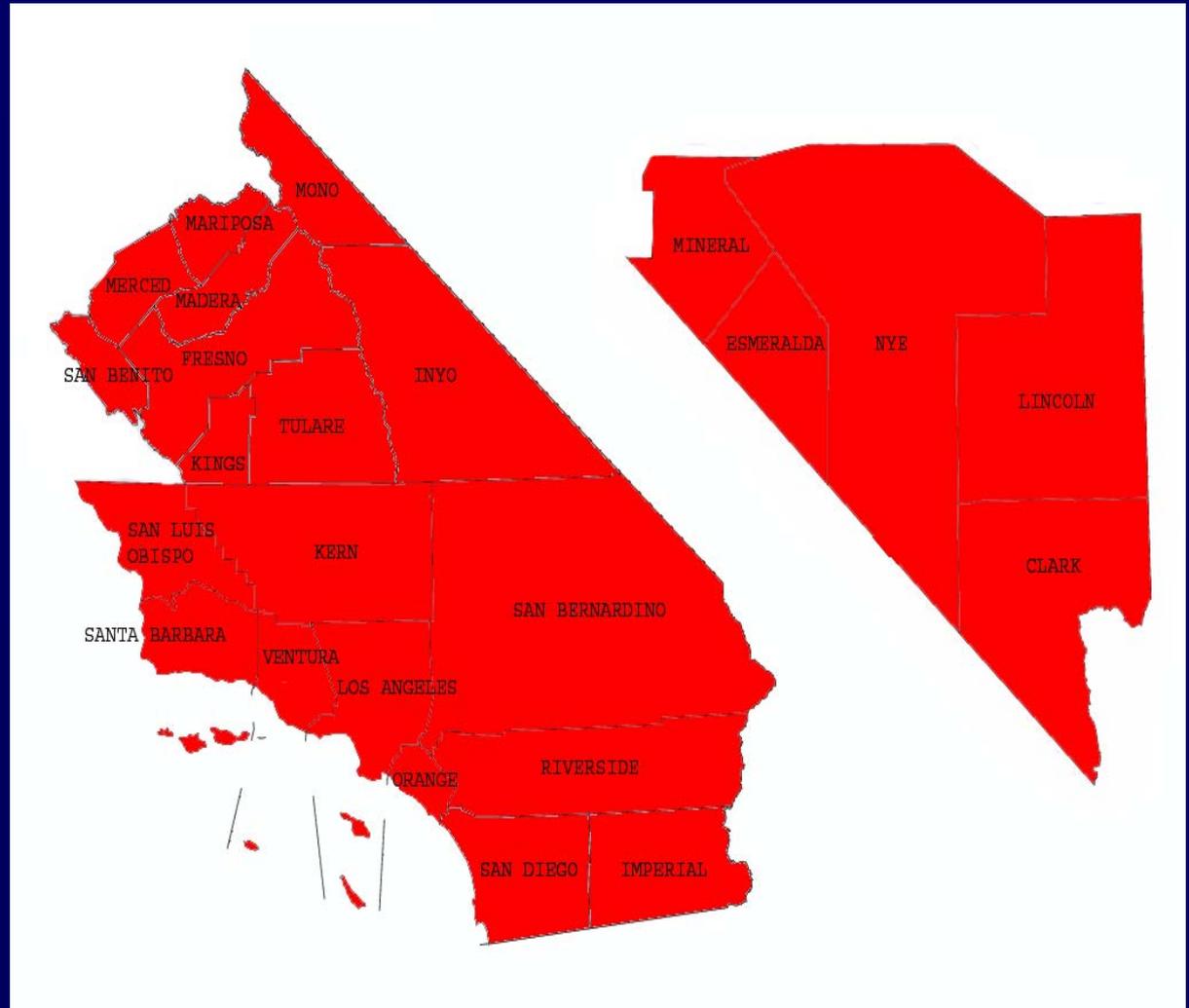
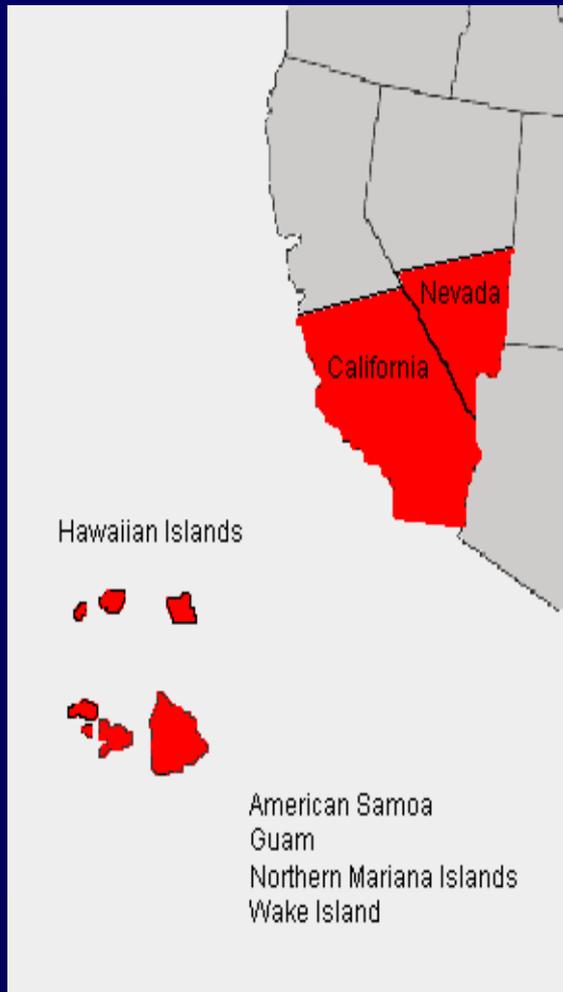


Commissioner
Chai Feldblum



General Counsel
P. David Lopez

EEOC Los Angeles District Geographical Jurisdiction



Laws Enforced by EEOC



Title VII of the Civil Rights Act of 1964 (Title VII)

- ▶ Prohibits employment discrimination based on race, color, religion, sex or national origin.



race



(C) Jazirika Thomas

color



religion



sex



national origin

The Age Discrimination in Employment Act of 1967 (ADEA)

- ▶ Protects individuals who are 40 years of age or older from discrimination based on age



age (≥ 40)

The Rehabilitation Act of 1973

(Federal Sector Only)

- ▶ Prohibits employment discrimination against a **qualified person with a disability** in the federal government



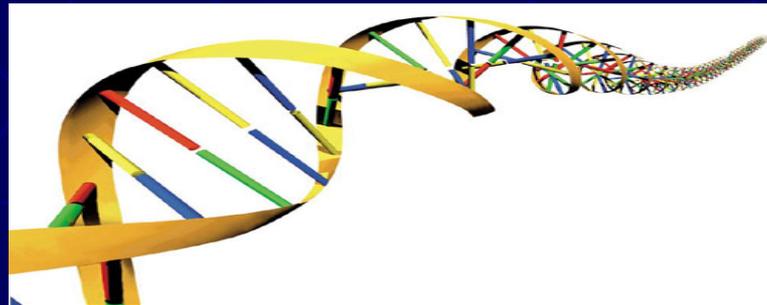
disability

The Civil Rights Act of 1991

- ▶ This act authorizes compensatory and punitive damages in case of intentional discrimination, and provides for obtaining attorneys' fees and the possibility of jury trials.
- ▶ Also directs EEOC to expand its technical assistance and outreach activities.

Genetic Information Nondiscrimination Act (GINA) of 2008

- ▶ GINA prohibits discrimination based on genetic information and not on the basis of a manifested condition.



The Americans with Disabilities Act of 1990 (ADA)

- ▶ Prohibits employment discrimination against **“qualified individuals”** with **disabilities**

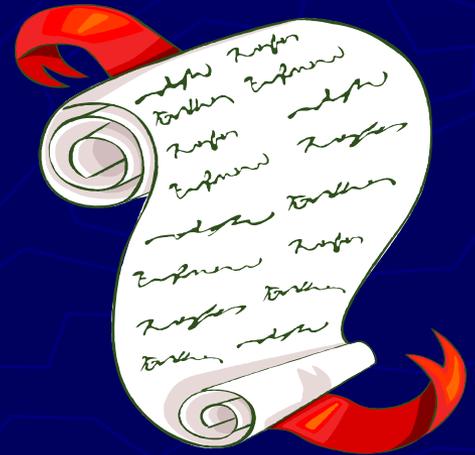


The ADA Amendments Act of 2008

- ▶ Original ADA was intended to cover individuals with most disabilities
- ▶ Since passage, courts construed the definition of disability narrowly, making only more severe disabilities covered by the ADA.
- ▶ With the ADA Amendments Act, Congress made it much easier for persons with a wide range of impairments to establish disability without much analysis

Employment Practices Which May Result in Prohibited Discrimination

- ▶ Hiring
- ▶ Firing, layoff, or not recalled to work
- ▶ Your Pay (wages, salary, compensation)
- ▶ Assignment or classification
- ▶ Transfer
- ▶ Promotion denied
- ▶ Job testing is unfair
- ▶ Recruitment and job ads
- ▶ Use of company facilities (segregation)



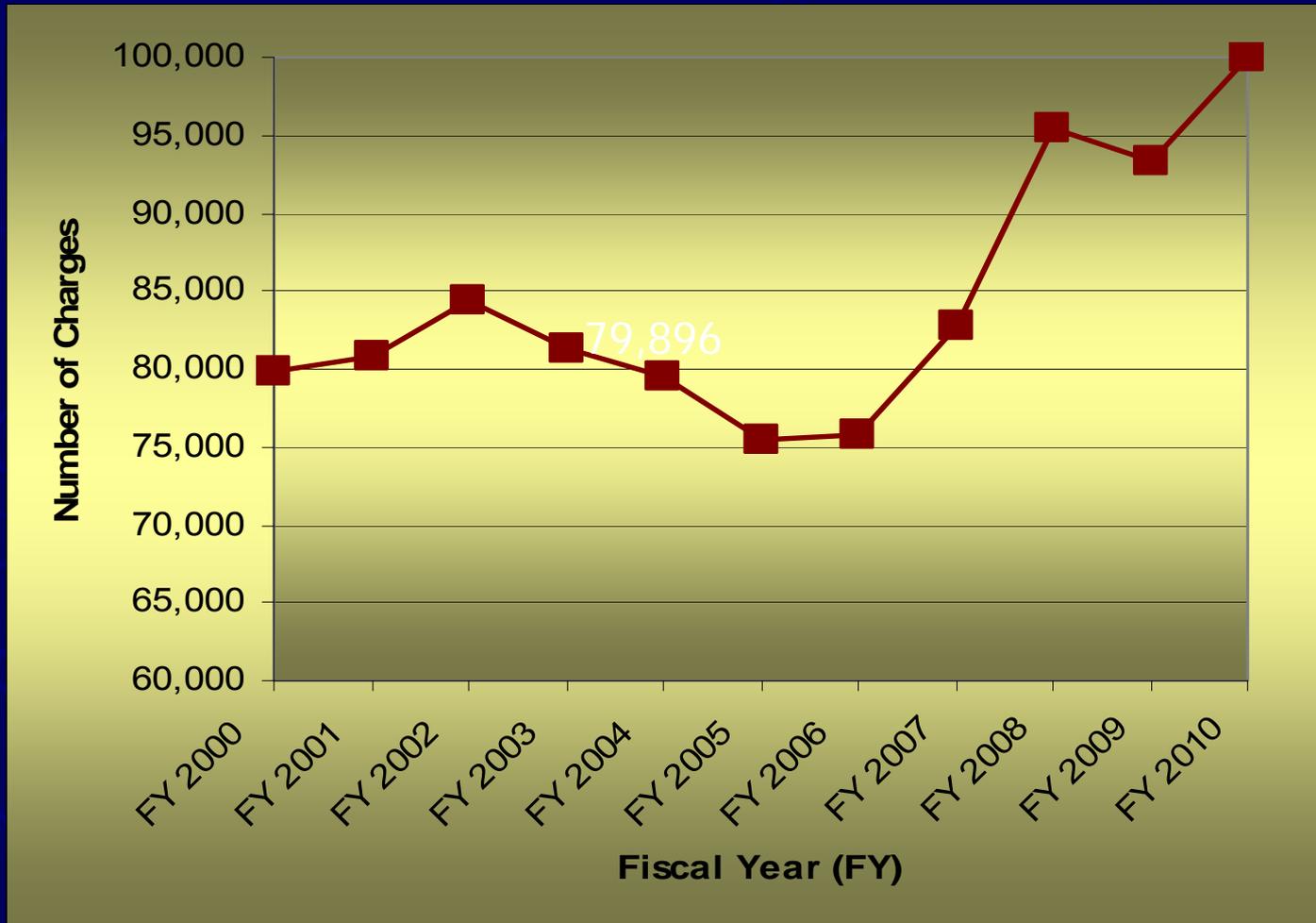
- ▶ Training and apprenticeship programs
- ▶ Benefits (fringe, retirement)
- ▶ Disability leave
- ▶ Other terms, conditions and privileges of employment
- ▶ No hire or mistreatment because of your association with someone from a certain race, religion, national origin, disabled, etc.
- ▶ No hire or mistreatment because of stereotypes or assumptions of your protected category
- ▶ **Harassment (all protected categories)**



EEOC Trends

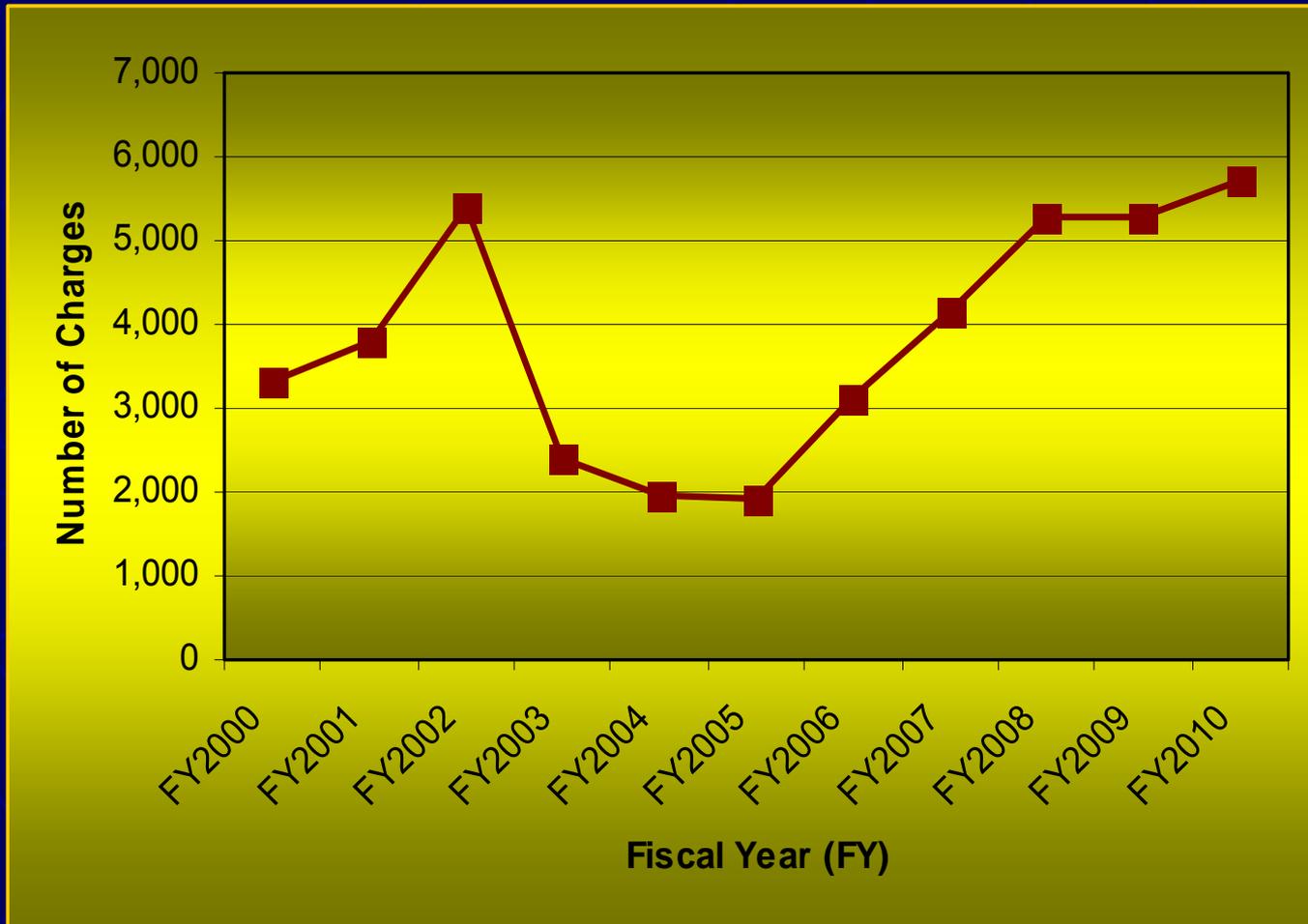
EEOC Charge Receipts

NATIONAL
FY 2000 – FY 2010

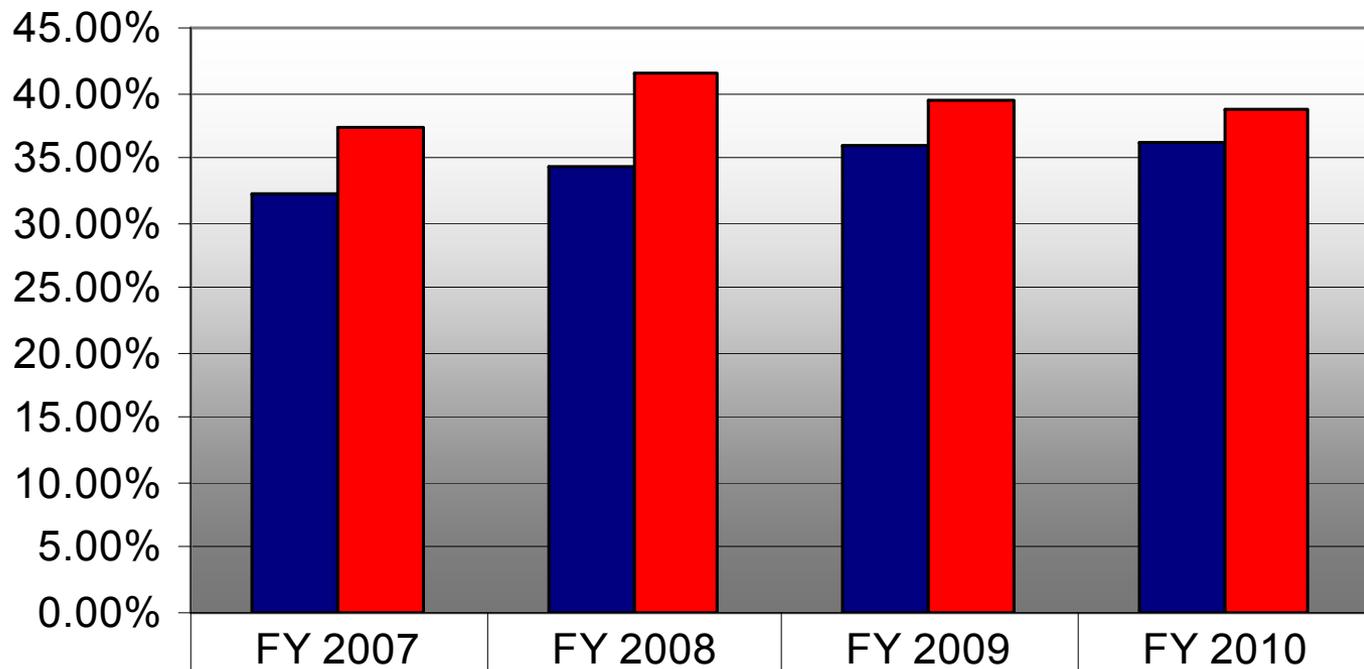


EEOC Charge Receipts

LOS ANGELES DISTRICT
FY 2000 – FY 2010



RETALIATION CHARGES (all statutes) #1 Charge in U.S.



■ EEOC National

32.30%

34.30%

36.00%

36.30%

■ EEOC LA

37.4%

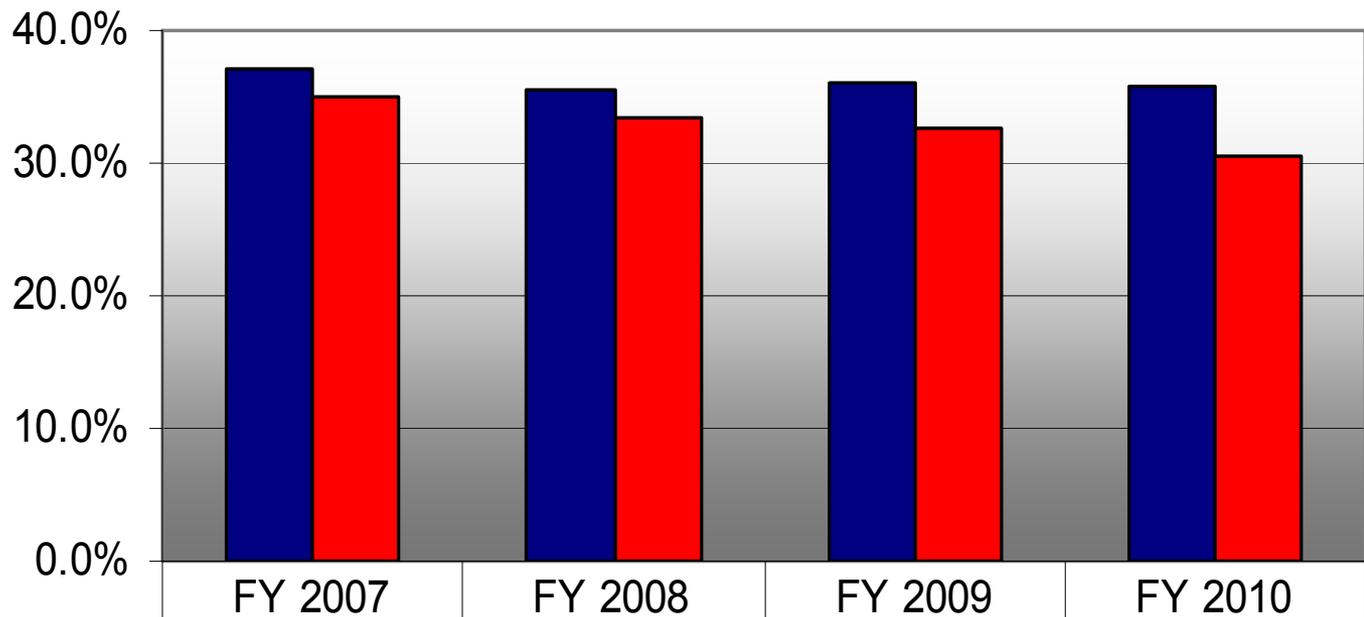
41.5%

39.5%

38.8%

RACE CHARGES

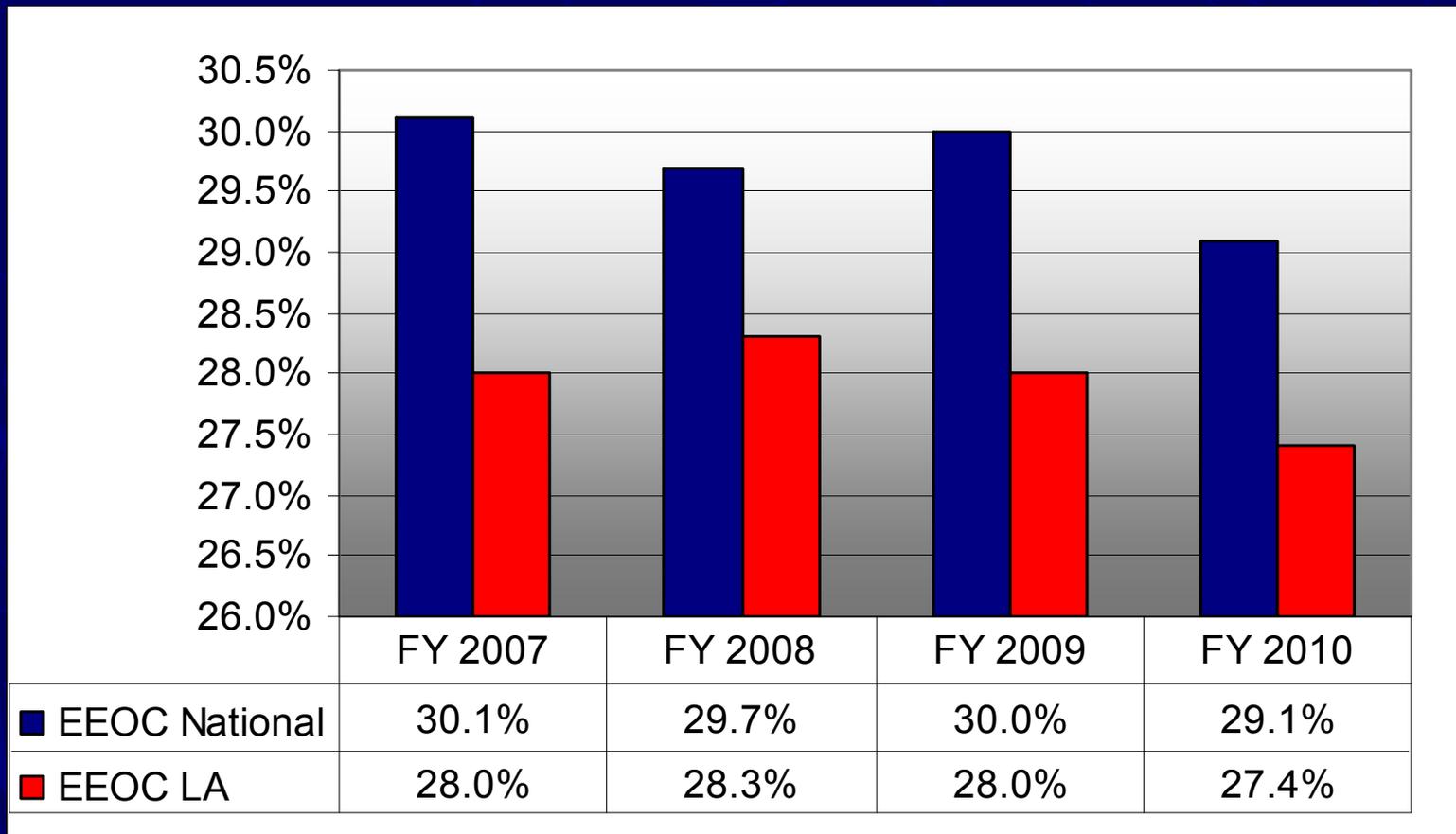
#2 Charge in U.S.



■ EEOC National	37.0%	35.6%	36.0%	35.9%
■ EEOC LA	34.9%	33.3%	32.6%	30.5%

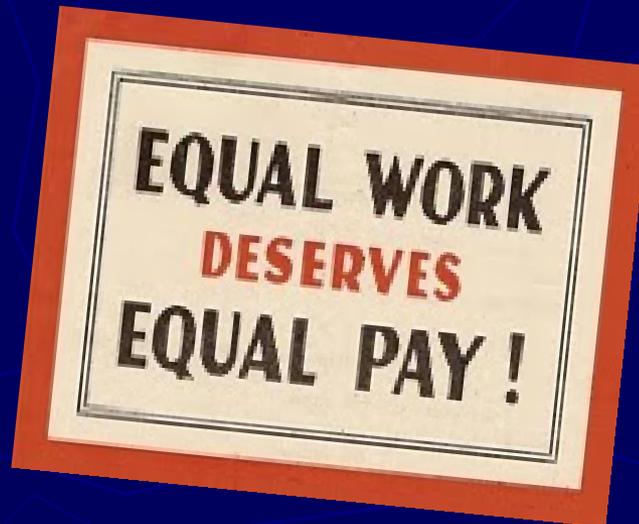
SEX-BASED CHARGES

#3 Charge in U.S.



Fair Pay for Women: **EQUAL PAY ACT of 1963 (EPA)**

- ▶ Prohibits discrimination in wages for men and women performing substantially equal work under similar conditions in the same establishment.





President Barack Obama signs the Lilly Ledbetter Fair Pay Act on Jan. 29, 2009



Lilly Ledbetter Fair Pay Act of 2009

- ▶ Lilly Ledbetter Fair Pay Act was signed by President Obama on January 29, 2009.
- ▶ Compensation discrimination claim is timely as long as at least one discriminatory paycheck was received within the filing period.
- ▶ Restores EEOC's position prior to Supreme Court's Ledbetter decision.

Why Focus on Equal Pay?

- ▶ Despite significant gains in labor force participation and educational attainment, women still are paid an average of only 77 cents for every dollar paid to men
- ▶ The gap is even greater for women of color and women with disabilities
- ▶ In 2009, there was an 11 cent wage gap between men and women in the federal sector workforce

Sex Based Wage Discrimination and the Wage Gap

- ▶ Forty-one percent of the wage gap cannot be explained by differences in experience, specific work performed, education, or other nondiscriminatory factors
- ▶ Since 1997, EEOC has received almost 33,000 charges alleging sex-based wage discrimination



WHITE HOUSE EQUAL PAY TASK FORCE

- ▶ President Obama pledged to crack down on violations of **equal pay laws**.
- ▶ White House Administration created the National Equal Pay Task Force to address the issue and promote work-family balance for families.
- ▶ The Task force calls for interagency coordination between **EEOC**, **DOJ**, **DOL**, and **OPM**
- ▶ Recommendations released in July 2010 to expand coordination, collect data, undertake a public education campaign & strategize on making the federal government a model employer.

What you need to know about federal compensation discrimination laws. . .



EPA General Provisions

- ▶ No payment of lower wages on the basis of sex to women and men who perform jobs that:
 - Share “common core” of tasks
 - Require substantially equal skill, effort and responsibility and are performed under similar working conditions
 - Are in the same establishment

Title VII of the Civil Rights Act of 1964

Title VII prohibits practices that result in lower compensation on a prohibited basis (race, color, national origin, sex, or religion) for similarly situated employees

- Disparate Treatment - Intentional differences in compensation between, for example, men and women because of their gender
- Disparate Impact - Practices that have an adverse impact on compensation paid to women, if the practices are not job-related and consistent with business necessity

Are Employees Similarly Situated?

- ▶ The jobs the employees hold should be similar enough that one would expect the jobs to pay the same.
- ▶ The key is what people actually do on the job, not job titles or departmental designations.
- ▶ Skill, effort, responsibility, and the general complexity of the work are guideposts in determining job similarity.

Title VII vs. EPA

- ▶ Title VII broadly prohibits discriminatory compensation practices
- ▶ The EPA is more narrow and prohibits sex-based pay differentials in substantially equal jobs in the same establishments
- ▶ Not all compensation practices that violate the Title VII will also violate the EPA
- ▶ Practices that violate the EPA will also violate Title VII

What is Compensation

- ▶ Compensation is any payment made to or on behalf of employees as remuneration for employment.
- ▶ All forms of compensation are covered, including:
 - Salary
 - Overtime pay
 - Bonuses
 - Stock options
 - Profit sharing and bonus plans
 - Life insurance
 - Vacation and holiday pay
 - Reimbursement for travel expenses
 - Benefits

Examples of Discriminatory Practices Affecting Compensation

- ▶ Paying employees less or giving them lesser benefits on a prohibited basis
- ▶ Steering or classifying employees or applicants into lower paid positions – e.g., by refusing to place people into higher compensated positions – on a prohibited basis;
- ▶ Discriminatorily denying networking, mentoring, or training opportunities that facilitate promotion or assignment to higher paid positions;
- ▶ Paying part-time employees less on an hourly basis than their full time counterparts, which could disproportionately impact people on statutorily prohibited bases.

Lawful Pay Differentials

- ▶ The Equal Pay Act permits pay differentials when they are based on:
 - A bona fide seniority system;
 - A merit system;
 - An incentive system (in terms of quality or quantity of production); or
 - Any other factor other than sex.
- ▶ These are known as "affirmative defenses" and it is the employer's burden to prove that they apply.

Factors Other Than Sex

► Factors Include

- Job-related Education
- Experience
- Training
- Ability
- Shift Differentials
- Job classifications
- Market Factors

“To ensure that all workers are treated fairly – nothing more and nothing less – is the heart of the Equal Pay Act.”

- Chair Jacqueline Berrien, April 20, 2010

THE EEOC PROCESS



Who can file an EEOC charge?

- ▶ Individuals (employee, applicant, former employee, undocumented worker)
- ▶ Individuals or organizations on behalf of others (third party charges)
- ▶ EEOC District Director (ADEA or EPA Directed Charge)
- ▶ EEOC Commissioner's Charge (systemic investigations)

A Charge May Be Filed Against:

- ▶ EMPLOYERS - both private & public sector
- ▶ EMPLOYMENT AGENCIES
- ▶ LABOR ORGANIZATIONS (i.e., unions)

NOTE: Independent contractors are NOT covered.

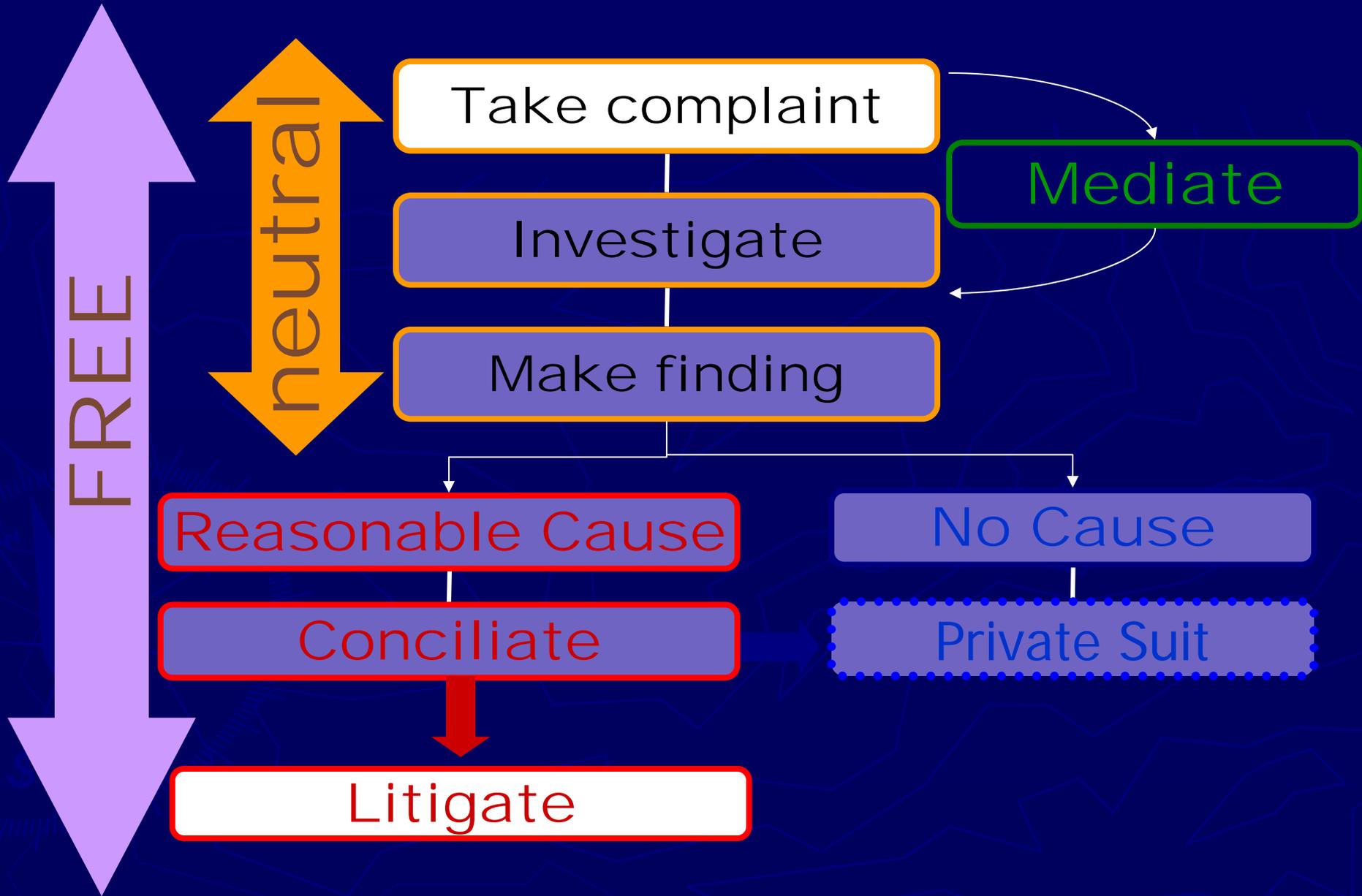
Employer Size Conditions

- ▶ EEOC has jurisdiction over employers with:
 - 15+ employees for most statutes
 - 20+ required for age discrimination
 - Only 1 employee required for equal pay

Charge Filing Time Limits

- ▶ A charge must be filed within 300 days of the last date of violation in California.
 - Note: The statute of limitation is 180 days in states that do not have a FEPA like the California Department of Fair Employment & Housing).
- ▶ EPA complainants do not need to file with the EEOC; they can go straight into court.
 - EPA statute of limitations is 2 years or 3 years if willful.

EEOC's Process



An investigation may include:

- Request for a position statement
- Request for Information (documentation)
- Settlement discussions/conference
- Fact finding conference
- Onsite interviews with management officials in the case
- Off-site witness interviews
- Issuance of a subpoena

What Remedies Are Available When Discrimination is Found?

- ▶ Back pay and or front pay
- ▶ Hiring
- ▶ Promotion
- ▶ Reinstatement
- ▶ Reasonable accommodation
- ▶ Other actions that will place the individual in the position they would be in had no discrimination occurred.
- ▶ Attorney's fees
- ▶ Expert witness fees
- ▶ Court costs

Remedies continued...

▶ The monetary cap (per person) for damages in federal court depends on the size of the employer:

- 15 – 100 employees: \$50,000
- 101 – 200 employees: \$100,000
- 201 – 500 employees: \$200,000
- Over 500 employees: \$300,000

QUESTIONS?



Contact Information & Resources

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