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RACE DISCRIMINATION

Lawsuits depict dysfunction in Phoenix District Office of EEOC

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Since mid July, two African Americans formerly employed as investigators in the Phoenix District Office (PXDO) of the Equal Employment Opportunity Commission (EEOC) have filed lawsuits claiming race discrimination and retaliation by their former employer, the federal agency charged with enforcing the nation's laws against employment discrimination.

Allegations only

It costs only \$400 to file a civil lawsuit in federal court, and if you meet certain financial indigence standards, even the filing fee can be waived, as it was for the first investigator to file a lawsuit, Quarracy Smith. Neither he nor the other suing investigator, Jae L. Richardson, has a lawyer. The allegations in their lawsuits are just that—allegations that have not been proven. Thus, it's important not to accept what they claim as automatically true. Nevertheless, the fact that two African-American investigators are claiming discrimination on the basis of their race clearly means that the PXDO has some internal issues.

From the outside view, PXDO just drew national attention in an online legal publication as being one of the “five most fearsome” regional EEOC offices. While not prolific, PXDO has a reputation for being aggressive in pursuing traditional cases under Title VII of the Civil Rights Act of 1964 and pursuing cutting-edge legal theories in the lawsuits it does bring.

The vast majority of Arizona employers who have to deal with the EEOC interact with the investigators, not the attorneys pursuing the agency's strategic enforcement plan to emphasize systemic classwide employment discrimination litigation. Thus, the allegations in the two recent lawsuits filed by former PXDO investigators are

worth considering for what they reveal about the folks you are most likely to encounter at the EEOC.

Veteran investigators, serial complainers

EEOC investigators are represented by a union and have a collective bargaining agreement in place. Richardson claims in her suit that she was hired as a clerk in 1992 with a veteran's preference and promoted to investigator in 1999. She claims that during her tenure with the EEOC, she filed three grievances that were settled in her favor. The first one involved her not being promoted to investigator and allegedly being told she was “All fluff and no stuff” after her interview. According to Richardson, her grievance resulted in her promotion to investigator, along with back pay, emotional distress damages, and an apology.

Smith, who was hired as an investigator in 2009, also claims in his lawsuit that he filed grievances and internal complaints. His retaliation allegations include claims that the EEOC did not comply with requests for documents during the proceedings.

Pro-Hispanic bias?

Richardson claims that the PXDO enforcement supervisor, Berta Echeveste, a non-Hispanic Caucasian woman, was involved in “the systematic elimination of Black American investigators from the PXDO.” She also claims that Elizabeth Cadle, the deputy district director of PXDO, openly enforced a practice of extending preferential treatment to Hispanic charging parties at the intake stage, which was enforced by Echeveste and her two direct reports, investigations unit supervisors Melinda Caraballo and Jeremy Yubeta, both Hispanic.

Smith alleges that when he complained about harassment and disparate treatment on the basis of race,



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the district director, Rayford O. Irvin, who himself is African-American, replied that he “cannot do too much for the Black employees.”

Improper quotas?

Both former EEOC investigators claim that they were held to unlawful numerical performance standards that weren’t imposed on other investigators who aren’t African-American. Smith claims that he was required to dismiss potentially meritorious charges without investigating them to meet his numbers. Richardson also claims that she was harassed for failing to meet unlawful numerical and technical standards, such as having “offsetting” resolutions for every charge generated.

Richardson’s claims include allegations that she had a high-priority potential class action taken away, even though the PXDO had a practice of designating the investigator who identifies a litigation-worthy charge as the lead who develops the case to the litigation stage. The case reassignment was another subject of her grievances. She claims she won, and the case was reassigned

to her. She also complains that she didn’t get credit on her reviews for the substantial “positive accomplishment” of obtaining \$974,000 in benefits for charging parties in fiscal year 2011.

Bottom line

Both lawsuits are in the very early stages, and the EEOC hasn’t filed any responses to the allegations in court. Irvin did not respond to requests for comment about the two lawsuits for this article.

The mere existence of the lawsuits demonstrates that any employer, even one charged with enforcing the nation’s laws against workplace discrimination and retaliation, can face EEOC charges and even lawsuits accusing it of violating those laws. We will monitor the cases and report on any developments that shed more light on the internal workings of the EEOC’s PXDO.

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