

Navigating the Harassment Storm



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Is There a Storm?

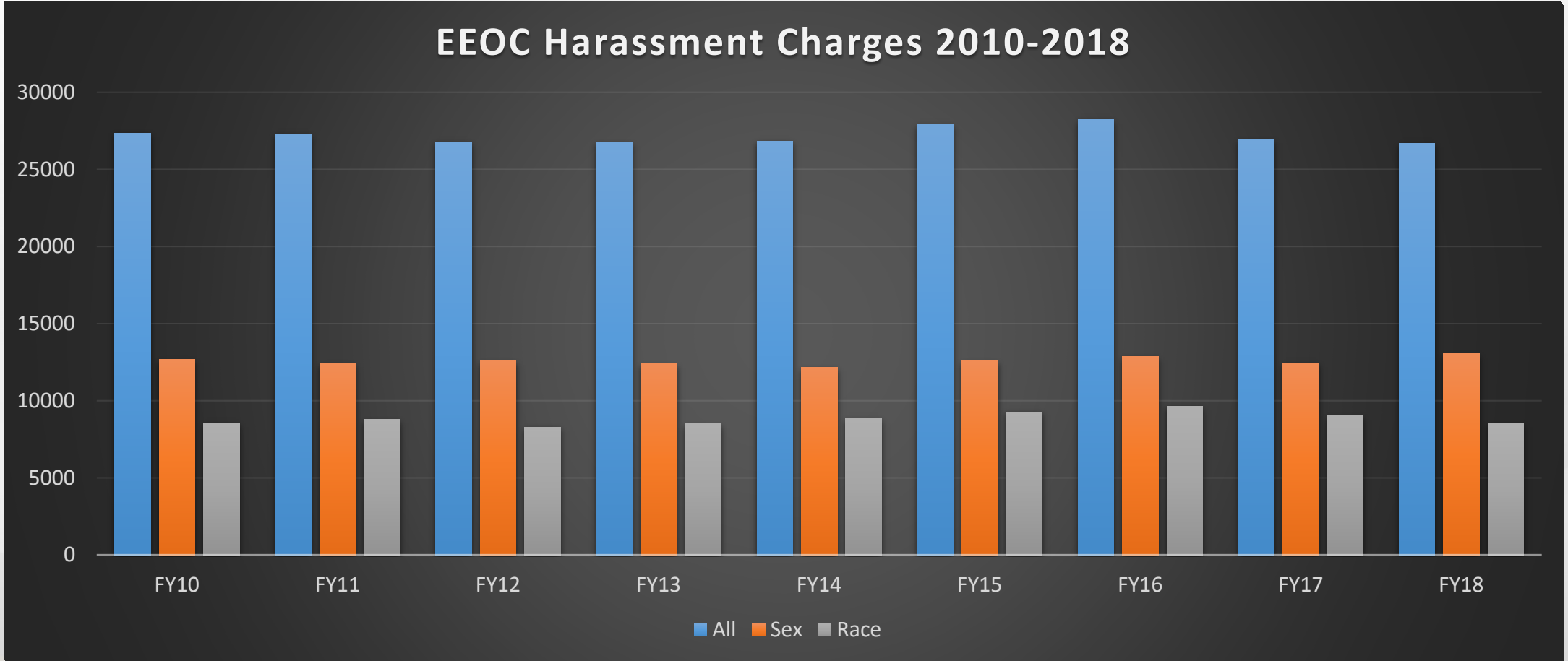


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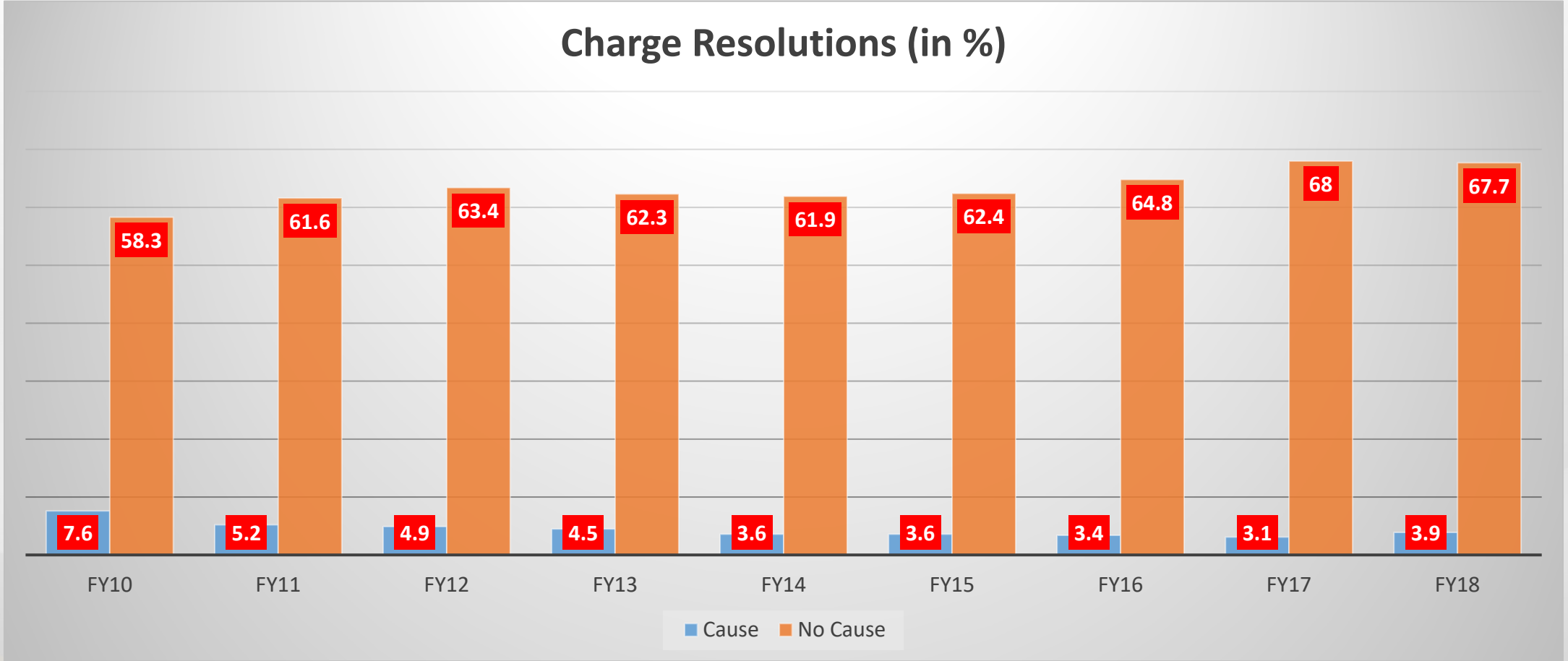


What Do the Statistics Show?





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How do you interpret the high percentage of no cause findings?

- Frivolous filings by bad employees?
- Great HR/legal work to defend claims?
- Lazy commission investigator?
- Perception?

Perception is Reality

Why do employees perceive harassment/discrimination/retaliation?

- Policies
- Practices
- Management
- Training

5 TIPS TO PROTECT AGAINST* HARASSMENT

* “Protect against?” Don’t you mean “prevent”?

1. Build Your Base

- When was the last time you reviewed/revised harassment policy?
 - Limited to “sex harassment”?
 - Complaint reporting process?
 - Include outdated contact info?
 - Where is the policy located in the handbook?
 - Should it be a stand alone document?
- When was the last time you updated postings?
 - Do you have them?
 - Has workspace changed?

2. Start at the Top

- Do you train management on harassment?
 - ALL Management (including executive/C-suite)?
- How often are you training management?
 - What is turn over in “front line” management?
- How are you tracking management training?
- Management’s actions/views impact perception
- The employer is liable as soon as a manager is aware of (or should be aware of) an issue

3. Improve Your Training

- Who conducts training?
- When was it last reviewed/revised?
- 2016 EEOC task force report:
 - Training is “too focused on simply avoiding legal liability”
 - Employers need to:
 - Teach workers what isn’t harassment
 - Tailor training to the particular workplace
 - Make sure managers know what they are doing

4. Encourage Complaints

- EEOC task force reports that as many as 75% of harassment victims stay silent despite employers having reporting systems in place
- Why do employees fail/refuse to report harassment?
- Remember: an increase in reports may indicate trust in the system

5. Improve Investigation Procedures

A bad or inadequate investigation will undermine the quality of your procedures, policies, training and managers

Investigations

- Employees (and juries) expect employers to act responsibly and reasonably when addressing employee complaints of improper or harassing conduct
- Getting the facts is crucial
- Documenting your actions is imperative

10 TIPS ON IMPROVING INVESTIGATIONS

1. Be Prompt

- If your policy says “immediately” then you’d better act immediately
- If your policy does not say “immediately” – you’d better act immediately
- The longer the delay the less trust an employee has in the process and the outcome

2. Pick the Right Person to Investigate

- Just because someone is a manager does not mean they are a good investigator
- Just because someone is in HR does not mean they are a good investigator
- Consider the issue and the dynamics of workplace
- Perceived friendship/allegiance between harasser and person selected?

3. Don't Jump to Judgment

- Avoid pre-conceived conclusions
- Continue to modify hypothesis based on new information
- Don't let your knowledge of complainant/accuser/witness job performance or reputation cloud your judgment

4. Ask Questions; Don't Interrogate

- Simple
- Avoid leading or conclusory questions until appropriate
- Open-ended vs. closed-ended
- Who, what, where, when, why, and how ?
- Who else ?
- What else ?
- Follow-up

5. LISTEN

- Do not interrupt the flow of the narrative. Encourage people to keep talking, as this is how critical details will emerge.
- Ask “What else?” more than once during the interview, and finish with “What else would you want me to know?”
- Permit witnesses to take breaks.
- Ask each person the number of others to whom he/she has given this information.
- Invite witnesses to get back in touch with further information.

6. Don't Skip Witnesses/Evidence

- Ask the complainant who he/she recommends you to speak with and what documents they may have
- Ask the accused harasser if he/she has witnesses they may have
- Speak with each witness
 - No speaking with witnesses leads to perception that employer didn't take complaint seriously
- Don't let perception of witness as employee cloud your judgment
- Don't underestimate what a witness may know

7. Look Beyond the Issue

- Has the employee or a witness disclosed an unrelated issue during the investigation?
- Have others been affected by the same conduct/actor?
- Don't ignore things that happen outside of the workplace
- Don't be afraid to ask the Complainant "What would you like to see happen with this investigation?"

8. Follow Up

- Meet with complainant
 - Summarize tentative findings
 - Any additional information to consider?
 - Any additional witnesses to consider?
 - Explain next steps
- Remind managers at beginning and conclusion not to retaliate

9. Don't Make Promises You Can't Keep

- Don't promise outcomes you cannot/will not back up
 - Termination/discipline of harasser
 - Transfers/schedule changes
 - Reassignment of job duties
- Don't promise confidentiality
 - Explain need to discuss with witnesses
 - Keep some details out of the discussion
- Do promise that complainant/participant will not be retaliated against
 - Keep this promise and advise others to do the same

10. Keep to the Facts

- Closing report should be:
 - Confidential
 - Complete
 - Strictly factual
- Don't down play or overstate information/evidence
- Jumping to conclusions or injecting opinion may lead to defamation/bias claims
 - Engaged in improper conduct v. sexually harassed an employee

Final Questions



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Thank You



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