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## Workplace complaints rose in '08

By Andrea Billups

The faces of five young, female bankers stare out resolutely from a recent cover of Forbes magazine. While all were on the Wall Street fast track, they made the cover not for their corporate prowess but because they have sued their former employer for workplace discrimination, claiming that factors such as their sex and even child-rearing issues led to their dismissal.

The women are not alone. The U.S. Equal Employment Opportunity Commission this week said workplace discrimination charge filings in 2008 had spiked by 15 percent over the previous year with an "unprecedented" 13,000 more cases reported.

Economic woes, increased diversity and demographic changes, and a rising awareness of the law may have contributed to the uptick, the agency said.

"The EEOC has not seen an increase of this magnitude in charges filed for many years," acting Chairman Stuart J. Ishimaru said in a statement. "While we do not know if it signifies a trend, it is clear that employment discrimination remains a persistent problem."

Age discrimination and workplace retaliation claims saw the biggest jump, with total for all charges rising from 82,792 in 2007 to 95,402 in fiscal 2008, the EEOC said. Claims based on race, sex and retaliation continued their trend as the most frequently filed charges. The EEOC filed 209 lawsuits based on the claims, resolved 339 cases and intervened in more than 81,000 other charges.

Federal employment discrimination lawyer Peter Mina said the economy is likely a key factor in the sharp rise in EEOC complaints along with a lot of poor communication among managers and workers as difficult decisions are made at downsizing companies.

"Managers are making decisions, and they are not communicating to employees exactly what the reason for the decision is. It leads employees to wonder why they are taking this action against me," said Mr. Mina, an associate in the law firm Tully Rinckey in Washington.

"I think many of these concerns could be affecting older workers," he said. "A lot of businesses are laying off more senior staff, people with more lucrative benefits. I think also part of it is even though some of these laws have been on the books for 45 years,

there needs to be a lot of education," including management collaborating with legal counsel to make sure they are following the laws.

The EEOC enforces various statutes including Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990, the Age Discrimination in Employment Act of 1967 and the Equal Pay Act of 1963.

Among the most publicized recent workplace discrimination cases include the Justice Department's February lawsuit filed against the Chicago school district, claiming mistreatment of a pregnant substitute teacher. The government said in its federal court filings that the full-time teacher was unlawfully relieved of her seniority, denied maternity leave and had her pay cut.

In December 2008, a former NASCAR inspector settled a \$225 million lawsuit over her claims that she was racially and sexually harassed by co-workers while on the job for three years. The woman, who was black, had been fired. Terms of her settlement with NASCAR were not disclosed.

Earlier this month, a construction company in Phoenix settled a lawsuit for \$325,000 filed on behalf of two construction workers who were of Mexican heritage and said they had been called racially derogatory names.

The Obama administration's signing of the Lilly Ledbetter Fair Pay Act in January signaled for some a renewed focus on making sure employment discrimination matters were taken more seriously. The law was named after an Alabama woman who had filed suit, claiming that over her career, she had earned far less than the men who worked at the same tire company. The equal pay legislation also increases the statute of limitations on the time that an employee has to file suit claiming pay inequality.

The Ledbetter law has sparked concern among some, including the Society of Human Resource Management.

Eric Peterson, the society's manager of diversity and inclusion, said the idea of unequal pay "is a moral failing of any organization."

In the wake of the passage of Ledbetter and the new EEOC findings, he has cautioned his membership to take preventive steps by paying greater attention to these rising complaint numbers and focusing on creating a more open environment where employees can feel safe in taking a concern about discrimination to someone who will listen thoughtfully and work to resolve it.

He suspects that the EEOC filings spike may be related to the economy but said more research is needed to determine why complaints have risen so drastically.

"These numbers are a red flag that if you don't have the kind of inclusive culture that we are speaking of, that claims are going to be filed," Mr. Peterson said. "There are a lot of

preventative measures that an organization can take to make sure that it doesn't rise to the level of an EEOC complaint."

Adds Mr. Mina, the lawyer: "Obviously the ideal is to have a harmonious workplace where people respect people's civil rights. But if people do believe that their rights are being violated, they should have the EEOC review those claims.

"In order for the number of claims to come down, I think there is a real onus on managers, typically in a tough economy, to communicate a belief in the principle of equal opportunity. They must recruit a diverse work force, but also remain aware of evolving laws."