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Founding Partner Mathew B. Tully, Esq. speaks about the Spike in Monetary Benefit Awards from EEO Complaints with FedSmith

Settlements Drive Spike in Monetary Benefit Awards from EEO Complaints

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Even though the Equal Employment Opportunity Commission (EEOC) found discrimination in a below-average number of federal sector cases in fiscal year 2012, agencies ended up paying more to resolve employees' formal and informal discrimination complaints in that year than in any other year in at least the past decade, according to a Tully Rinckey PLLC analysis of data in the EEOC's recently released Annual Report on the Federal Work Force, Fiscal Year 2012 and earlier reports. The amount of monetary benefits awarded at the pre-complaint and formal complaint stages of the Equal Employment Opportunity (EEO) process totaled \$54.9 million in fiscal year 2012, surpassing the previous high of \$53.4 million in fiscal year 2005. Even before the implementation of sequestration cuts in fiscal year 2013, agencies appear to have tried harder to avoid costly and time consuming EEOC hearings and adverse decisions in fiscal year 2012, primarily by incorporating monetary benefits into settlements for select cases. For example, at the pre-complaint, or "informal," stage, the overall settlement rate dropped to 15.5 percent – its lowest rate in at least 10 years. But the pre-complaint rate of settlements with monetary benefits climbed to 13.8 percent – its highest rate in at least a decade. In fiscal year 2012, pre-complaint settlements with monetary

benefits totaled \$3.4 million and future pecuniary payments from settlements at the formal complaint stage totaled \$25.6 million. The EEOC defines a "lump sum payment" as "[a] single payment made in a settlement which does not identify the portion of the amount paid for back pay, compensatory damages, attorney fees, etc." Combined, the settlement-related awards total came to \$29 million in fiscal year 2012, up 18.8 percent from \$24.4 million the previous fiscal year. In some regards, federal agencies' settlement strategies appear to have paid off. EEOC findings of discrimination totaled 214 in fiscal year 2012, only two more than the previous fiscal year and well below the 10-year average of 243. Agencies likely saved themselves more findings of discrimination by using timely settlements with monetary benefits to eliminate cases brought by complainants with credible complaints. However, there probably were some cases agencies would have been better off settling, because the amount of compensatory damages awarded at the formal EEO complaint stage totaled \$8.8 million, up 21.5 percent from the previous fiscal year. Awards for attorneys' fees and costs were also up 17.8 percent to \$14.2 million. When agencies are found to have engaged in willful discrimination, the EEOC can award compensatory damages to complainants for their "future pecuniary losses, emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of life, and for other non-pecuniary losses." Federal employees should not interpret the increase in monetary benefits from settlements as an indication that the agencies that settle are just giving money away to complainants. It is quite the contrary. Federal employees need to provide compelling evidence to convince agencies that they are better off settling than risking a costly and time-consuming adverse decision by the EEOC. Employees who believe they have been subjected to unlawful discrimination should consult with an experienced federal employment law attorney, who can help them build the strongest case possible. © 2014 Tully Rinckey PLLC. All rights reserved. This article may not be reproduced without express written consent from Tully Rinckey PLLC.