



Cheri Cannon talks with Kellie Lunney of Government Executive about the rise in settling of discrimination cases.

Agencies Are Paying More to Avoid Costly Discrimination Adjudication

By Kellie Lunney

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** Federal agencies doled out more money to settle discrimination complaints in fiscal 2012 than in the previous year, according to an analysis of Equal Employment Opportunity Commission reports. Agencies paid out \$29 million in settlement-related monetary awards in fiscal 2012, up 18.8 percent from \$24.4 million in fiscal 2011. That total includes \$3.4 million in “pre-complaint” or informal complaint settlement money – at an average payout of \$4,652 – and a total of \$25.6 million in lump sum payments to settle cases in the formal complaint stage. While the average payout for settling cases before they reach the formal complaint process has decreased since fiscal 2008, the total amount is up slightly from \$3 million in fiscal 2011, according to the analysis from Tully Rinckey, a federal sector labor and employment law firm in Washington. The fiscal 2012 lump sum payment to settle discrimination cases in the formal complaint stage is up from \$21.4 million in fiscal 2011. 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.” The total amount of money paid out to resolve employees’ informal and formal EEO complaints reached \$54.9 million in fiscal 2012, an 18 percent increase from fiscal 2011, and slightly more than the \$53.4 million in total monetary awards and settlements in 2005. The \$54.9 million total includes informal and formal complaint settlements, as well as**

attorneys' fees, back and front pay, and compensatory damages. "Settlements are agencies' best tool to help them avoid lengthy and costly litigation as well as EEOC orders requiring them to pay large sums in monetary benefits for discriminatory conduct," said Cheri Cannon, a partner at Tully Rinckey. "Yes, it looks like agencies are more willing to use money to make credible discrimination complaints go away, but federal employees need to remember that they need to present an overwhelming amount of evidence in their favor to get agencies to seriously negotiate a settlement or to win a case." EEOC findings of discrimination totaled 214 in fiscal year 2012, just two more than in fiscal 2011. The amounts agencies paid out in back pay, compensatory damages and attorneys' fees also each increased between fiscal 2011 and fiscal 2012. So, there's a clear incentive for agencies to save money by settling. "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," said the analysis from Tully Rinckey. More than 15,000 federal employees filed discrimination complaints against their agencies in fiscal 2012, a 6.7 percent decrease from the previous year. [Click here](#) to see which agencies were most often accused of discrimination in fiscal 2012.