

## Behind The Numbers: Employment Discrimination Cases At The Federal Level Decline, But Why?

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Readers who enjoy a little data may want to download (free) Professor Theodore Eisenberg's recent study of federal civil rights legislation data, including federal employment discrimination cases ([available here](#)). While certainly longer than a blog post, the article is quick and interesting reading. With respect to federal employment cases, Professor Eisenberg notes the following:

1. As a percent of the federal court docket, employment discrimination cases have steadily declined (though still a substantial portion).
2. There has been an increase in the settlement rate of employment cases.
3. Median jury awards when plaintiffs are successful before a jury (still a very small percentage of federal employment cases) have increased more than the rate of inflation.

The article considers as one possible explanation of fewer filings and more settlements the theory that plaintiffs' lawyers are getting the message – the win rate for employment cases is lower than that for most other kinds of lawsuits. I offer other factors warranting consideration. One is the increasing cost of litigation, in part due to the costs (to all litigants) of discovery of electronic data. Employers might be more likely to “throw a little money” at a case even if they do not believe it has merit because of the relative costs of litigation. Another possible factor, at least with respect to the gradual decline in complaints, is whether more plaintiffs are taking their cases to state courts.

[I have written here before](#) about an apparent trend towards more activity on the state and local legislative level in the employment law arena. Those observations have been more directed to recent legislation, but in my state of Ohio, for example, plaintiffs have been able to keep discrimination cases against out-of-state companies in state court because of a state Supreme Court ruling creating the possibility of individual liability. (This allows the plaintiff to sue an individual supervisor, therefore defeating diversity jurisdiction that would allow the employer to remove the case to federal court.) This factor would be quite difficult to study on a national basis, but strikes me as one possible additional consideration.

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