

# Defending NY Employment Discrimination Claims

*What to Expect from an Employee's Agency Filing*

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Presented by

**HORTON**  
Management Law



# Government Agencies

# U.S. Equal Employment Opportunity Commission (EEOC)

- Title VII (Race, Color, Religion, Sex, National Origin)
- ADEA (Age)
- ADA (Disability)
- GINA (Genetic Information)
- Equal Pay Act
- Pregnant Workers Fairness Act

# EEOC Overview

- 300-day filing deadline (in NY)
- 180-day deadline in some states
- Dismissal → Right to Sue
- Conciliation
- Litigation

# EEOC Process

- Charge filed
- Respondent Position Statement
- Request for Information
- Conciliation/Determination
- Possible Litigation

# New York State Division of Human Rights (DHR)

- Age
- Race
- Creed/Religion
- Color
- National origin
- Citizenship or immigration status
- Sexual orientation
- Gender identity or expression
- Pregnancy-Related Condition
- Military status
- Sex
- Disability
- Predisposing genetic characteristics
- Familial status
- Marital status
- Status as a victim of domestic violence
- Arrest/Conviction Record\*

# DHR Overview



3-year filing  
deadline  
(effective  
2/15/24)



Can go  
directly to  
court instead



Full  
adjudicatory  
process

# DHR Process

- Complaint filed
- Respondent Position Statement
- Complainant Rebuttal
- Investigation
- Probable Cause Determination
- Settlement Conference
- Respondent Answer & Pre-Hearing Conference
- Public Hearing & Decision
- Appeals



# New York City Commission on Human Rights (CHR)

- Age
- Race
- Creed/Religion
- Color
- National origin
- Citizenship or immigration status
- Sexual orientation
- Gender identity
- Pregnancy
- Unemployment status
- Height & Weight
- Credit history
- Gender
- Disability
- Sexual and Reproductive health decisions
- Caregiver status
- Marital/Partnership status
- Military service
- Status as a victim of domestic violence, stalking, and sex offenses
- Arrest/Conviction Record\*
- Salary history

# CHR Overview



1-year filing deadline  
(3 years for gender-  
based harassment)



Can go directly  
to court instead



Full adjudicatory  
process\*

# CHR Process

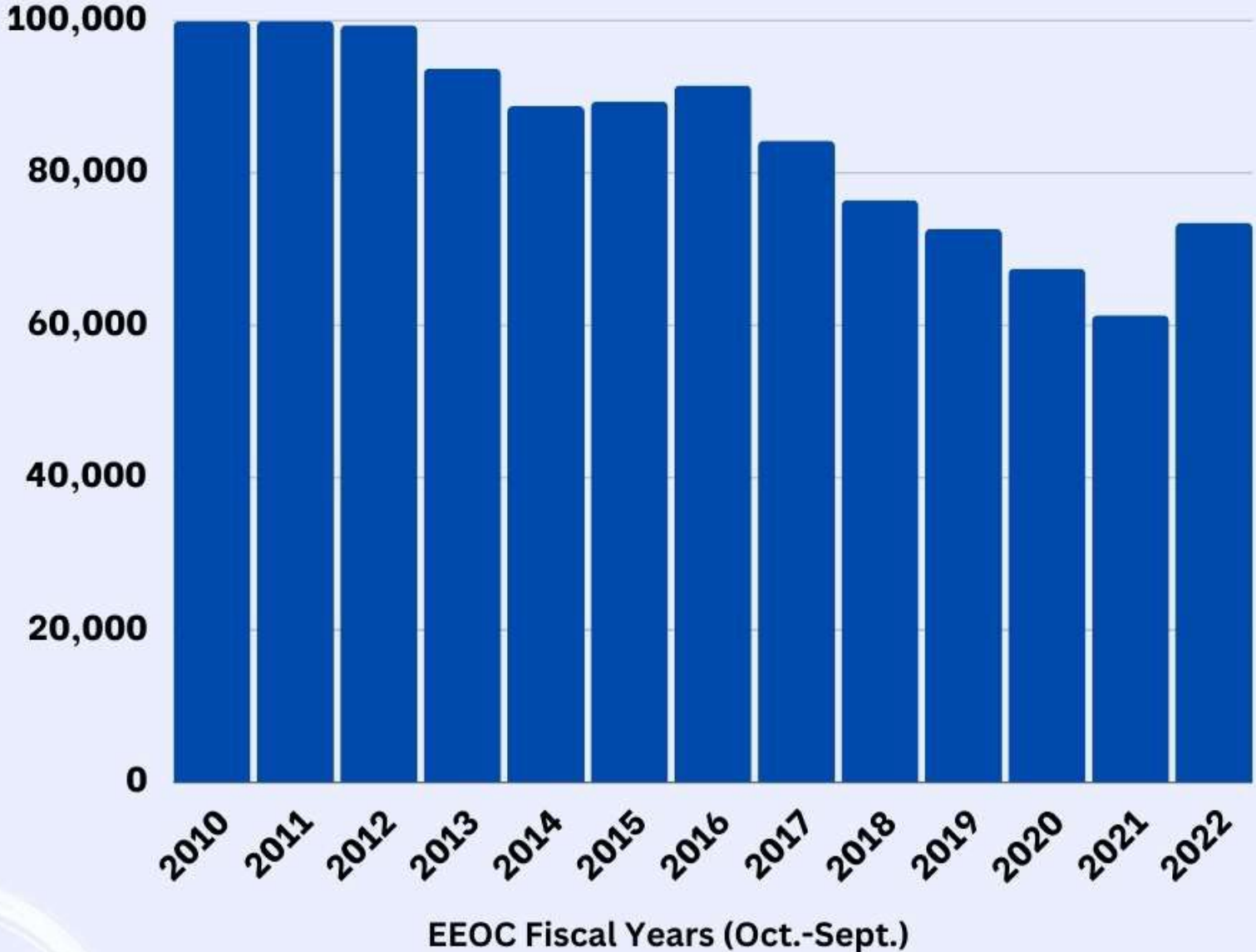
- Complaint filed
- Respondent Answer/Position Statement
- Complainant Rebuttal
- Investigation
- Probable Cause Determination
- Mediation/Conciliation
- Trial - Office of Administrative Trials and Hearings (OATH)
- Final Decision
- Appeals

# Other Agencies

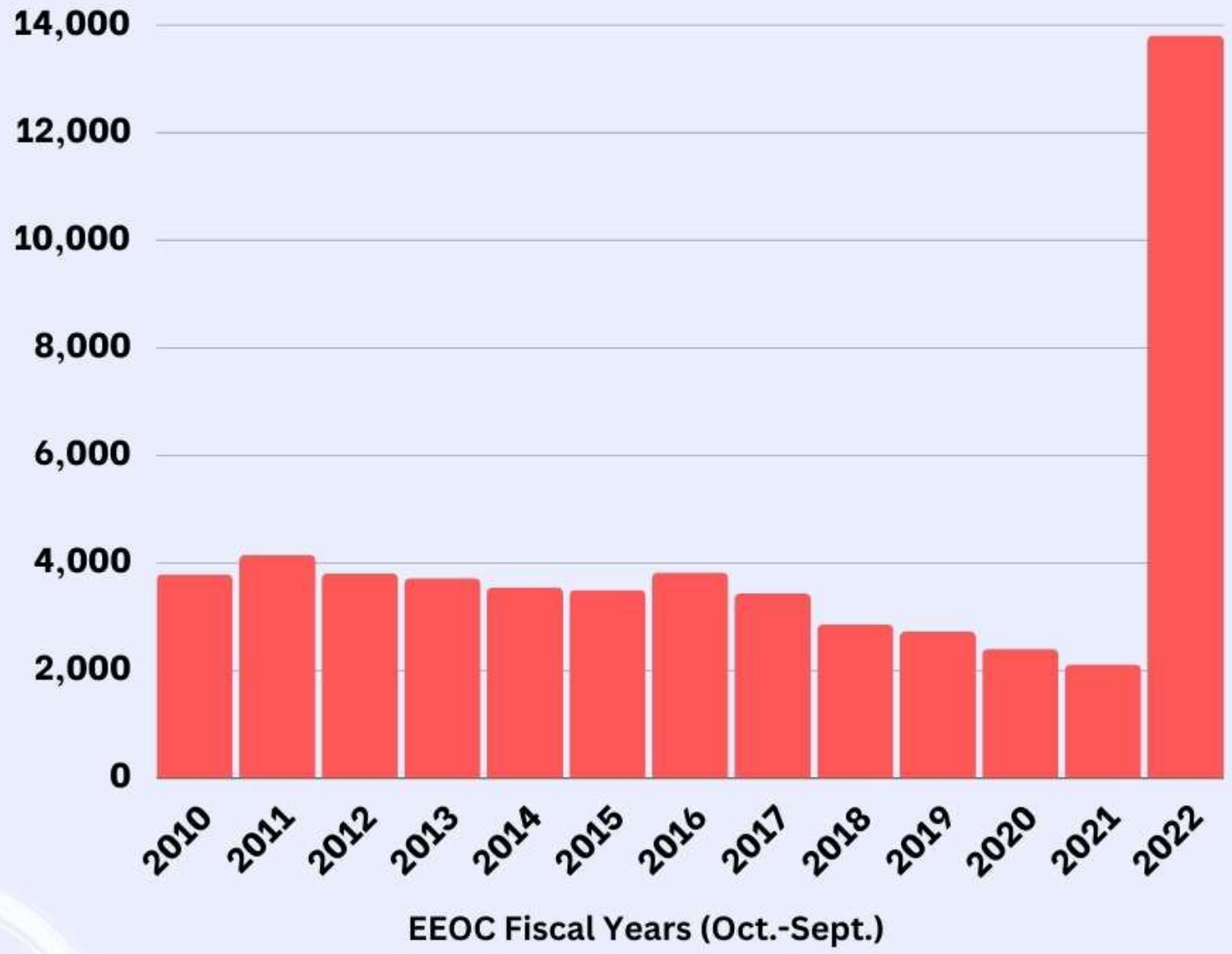
- U.S. Department of Labor
- National Labor Relations Board
- Occupational Safety & Health Administration
- New York Department of Labor
- Local Human Rights Commissions

# Charge Filing Statistics

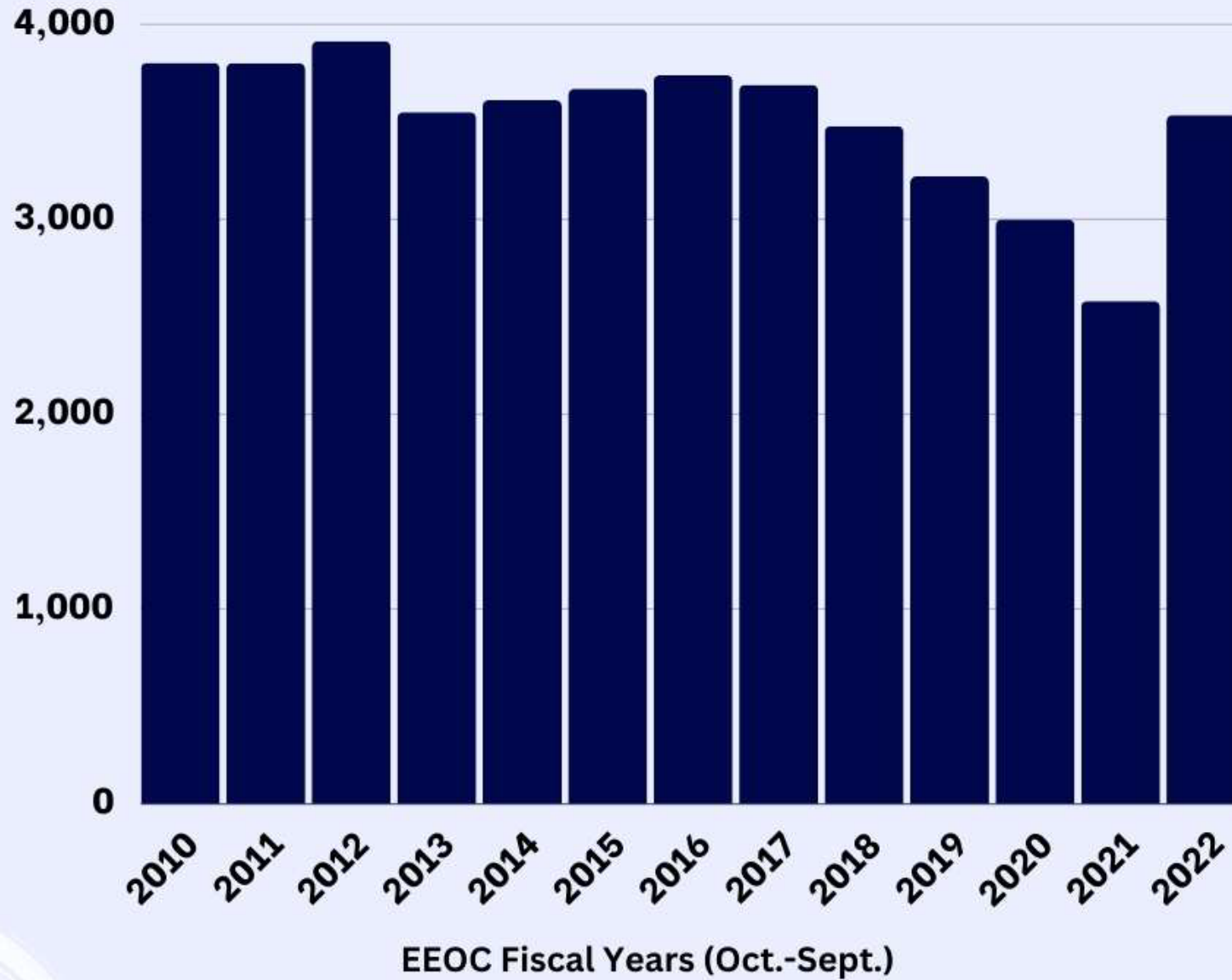
# ALL EEOC CHARGES



# EEOC RELIGION DISCRIMINATION CHARGES

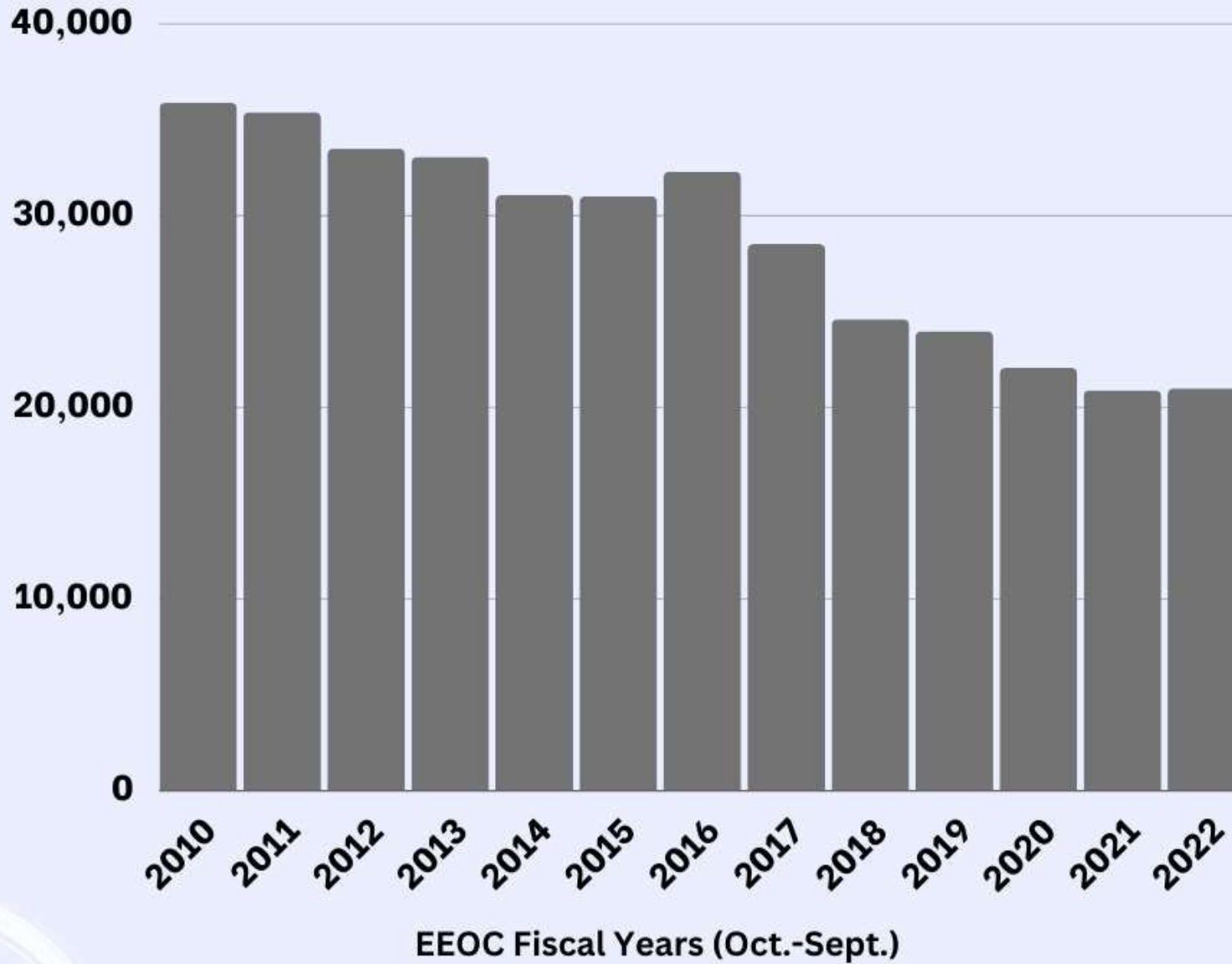


## EEOC CHARGES (NEW YORK)

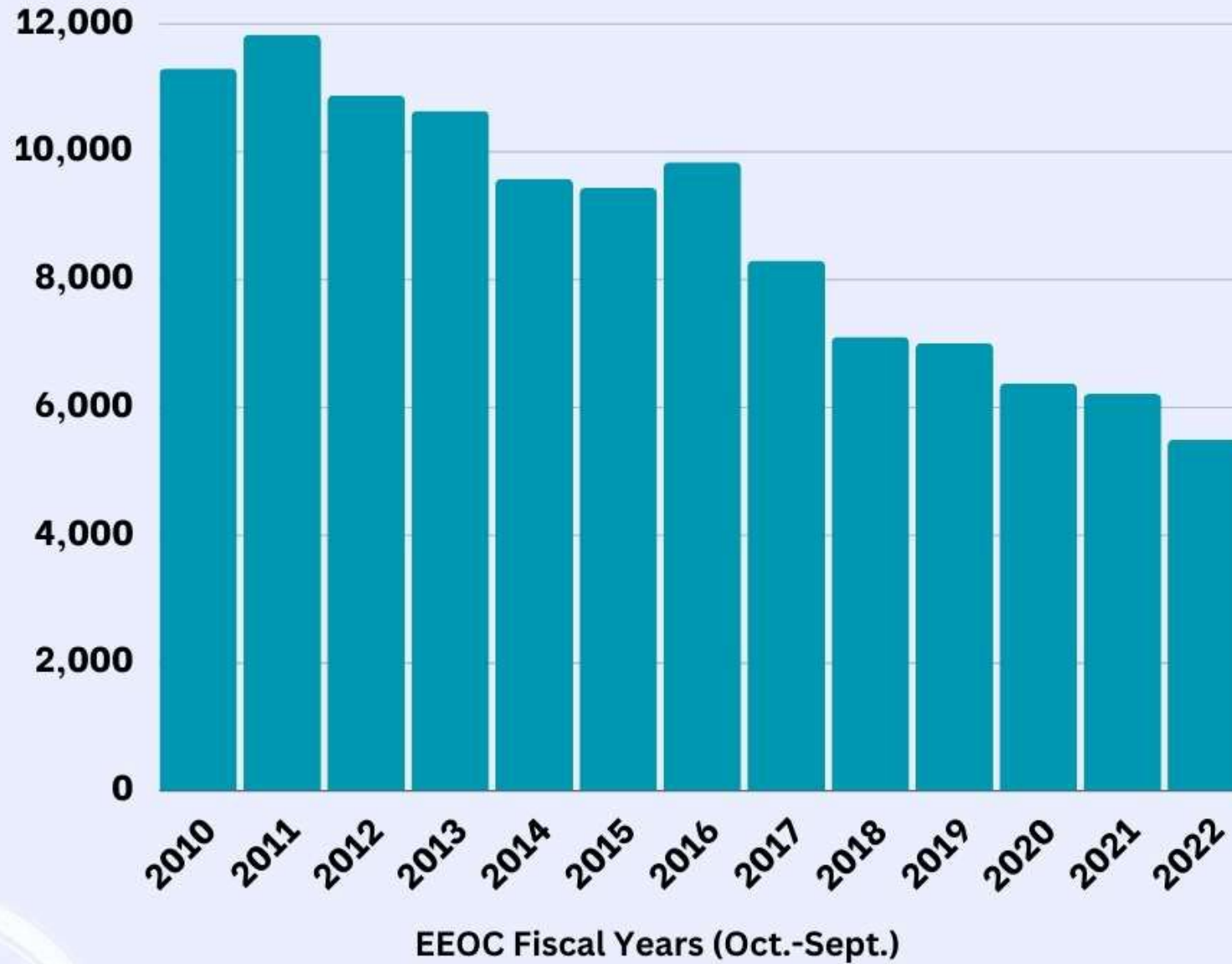




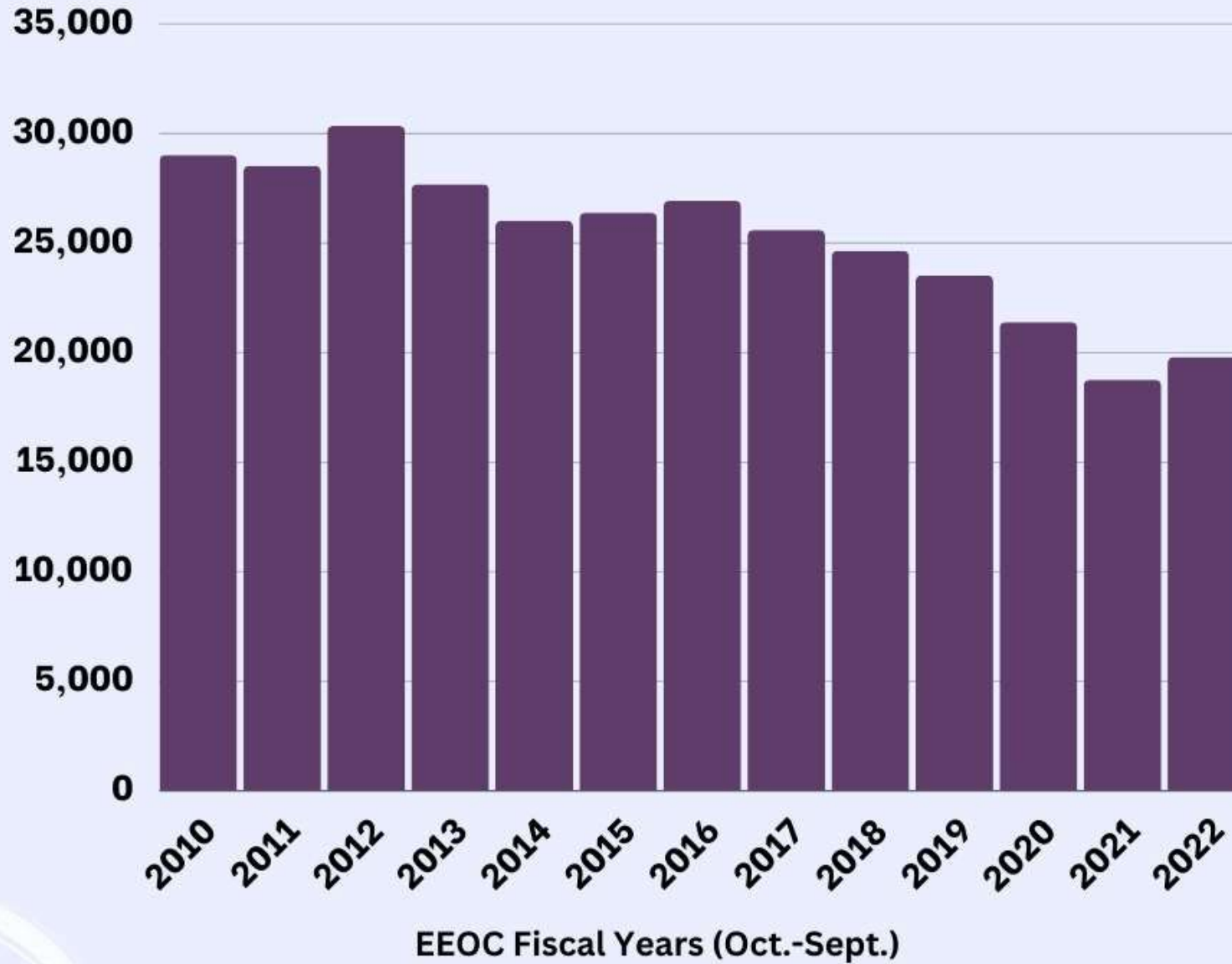
# EEOC RACE DISCRIMINATION CHARGES



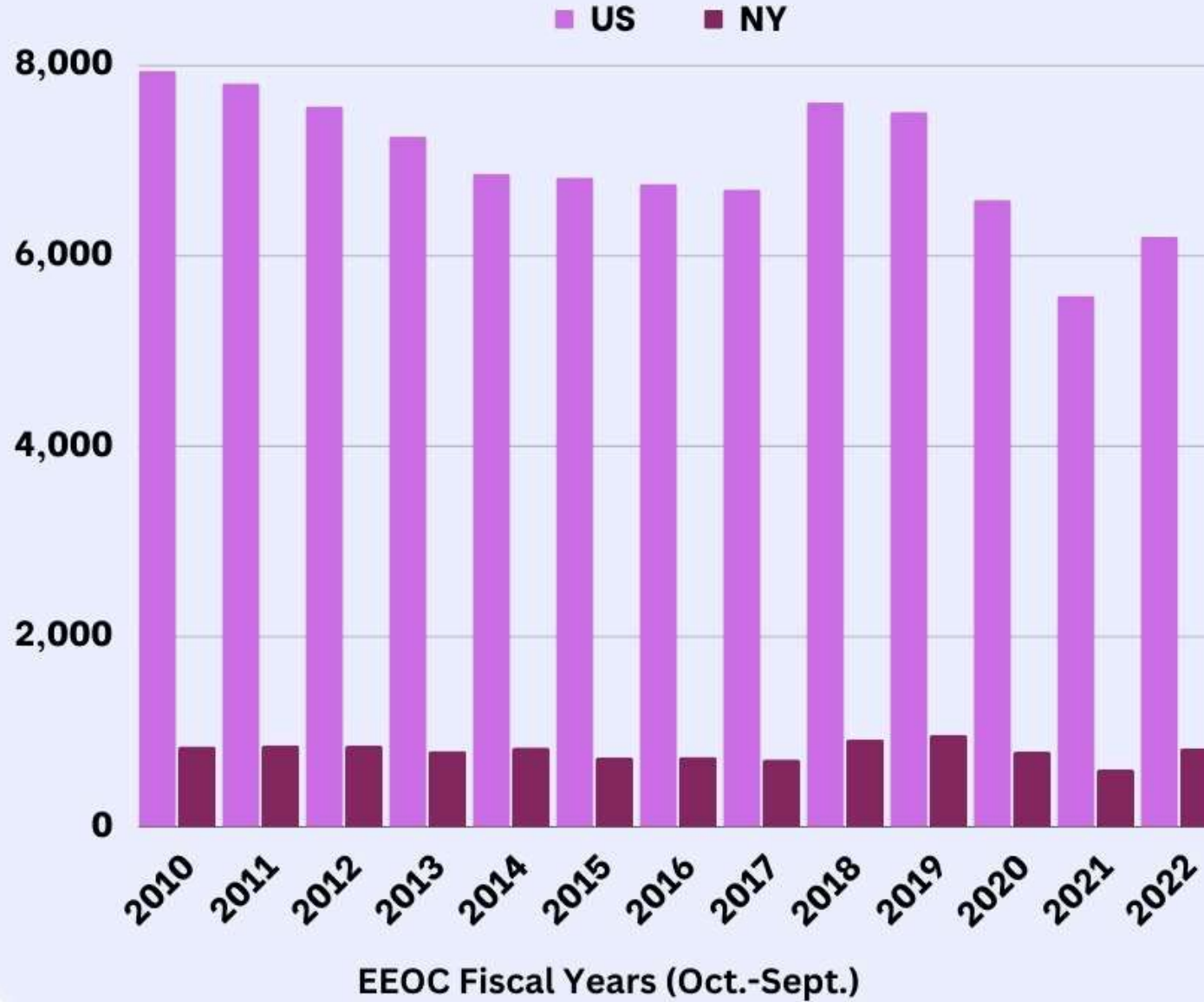
# EEOC NATIONAL ORIGIN CHARGES



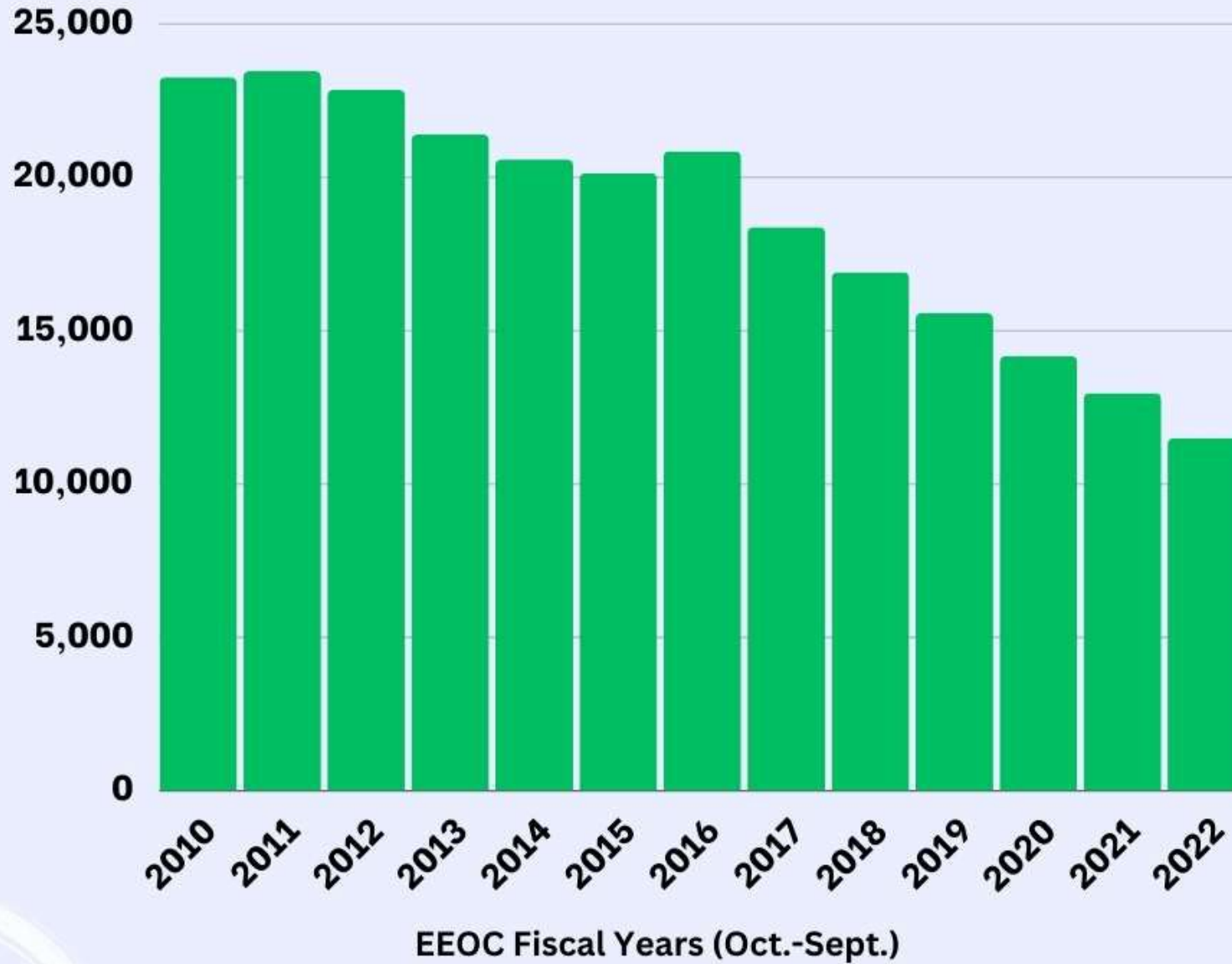
# EEOC SEX DISCRIMINATION CHARGES



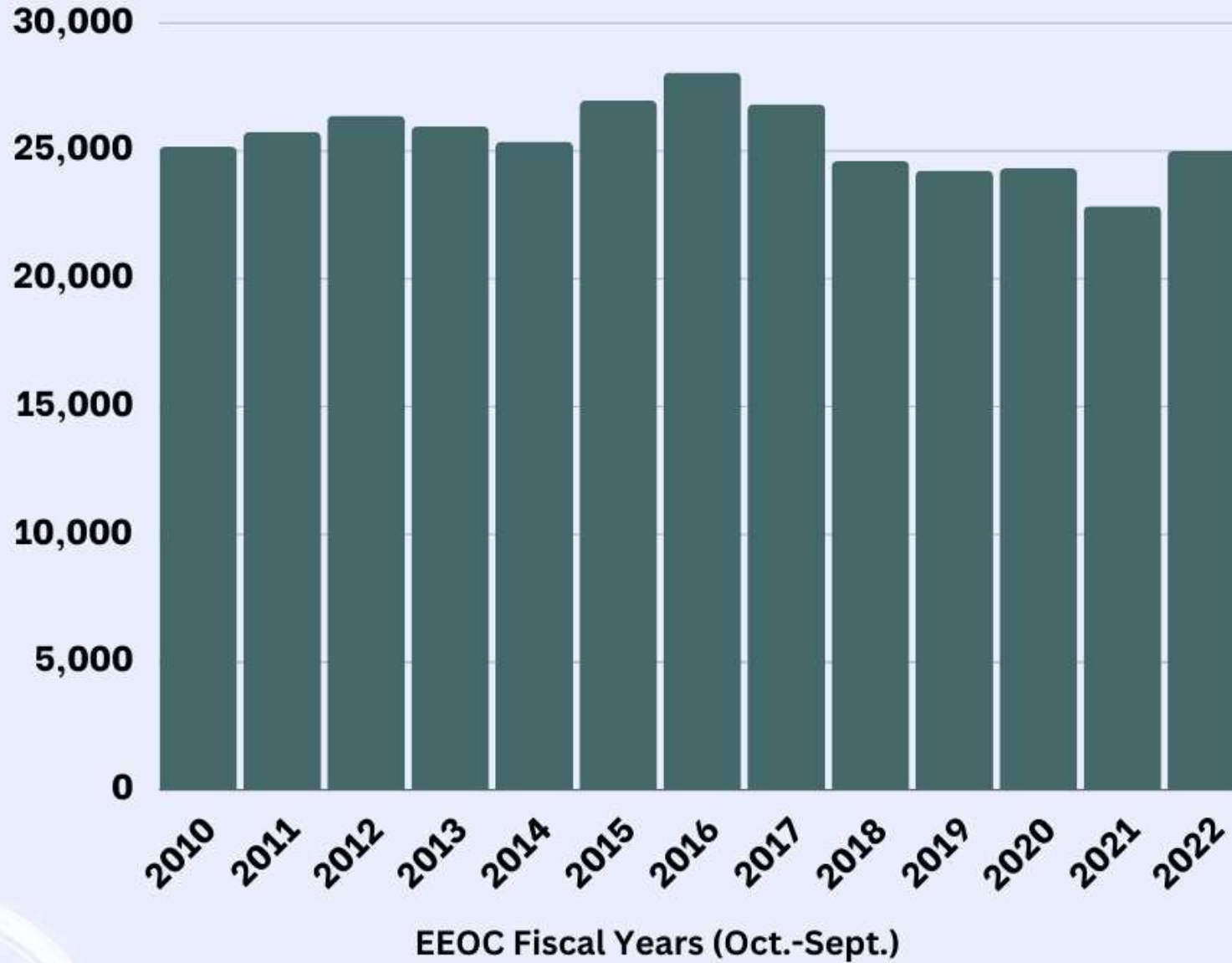
# EEOC SEXUAL HARASSMENT CHARGES



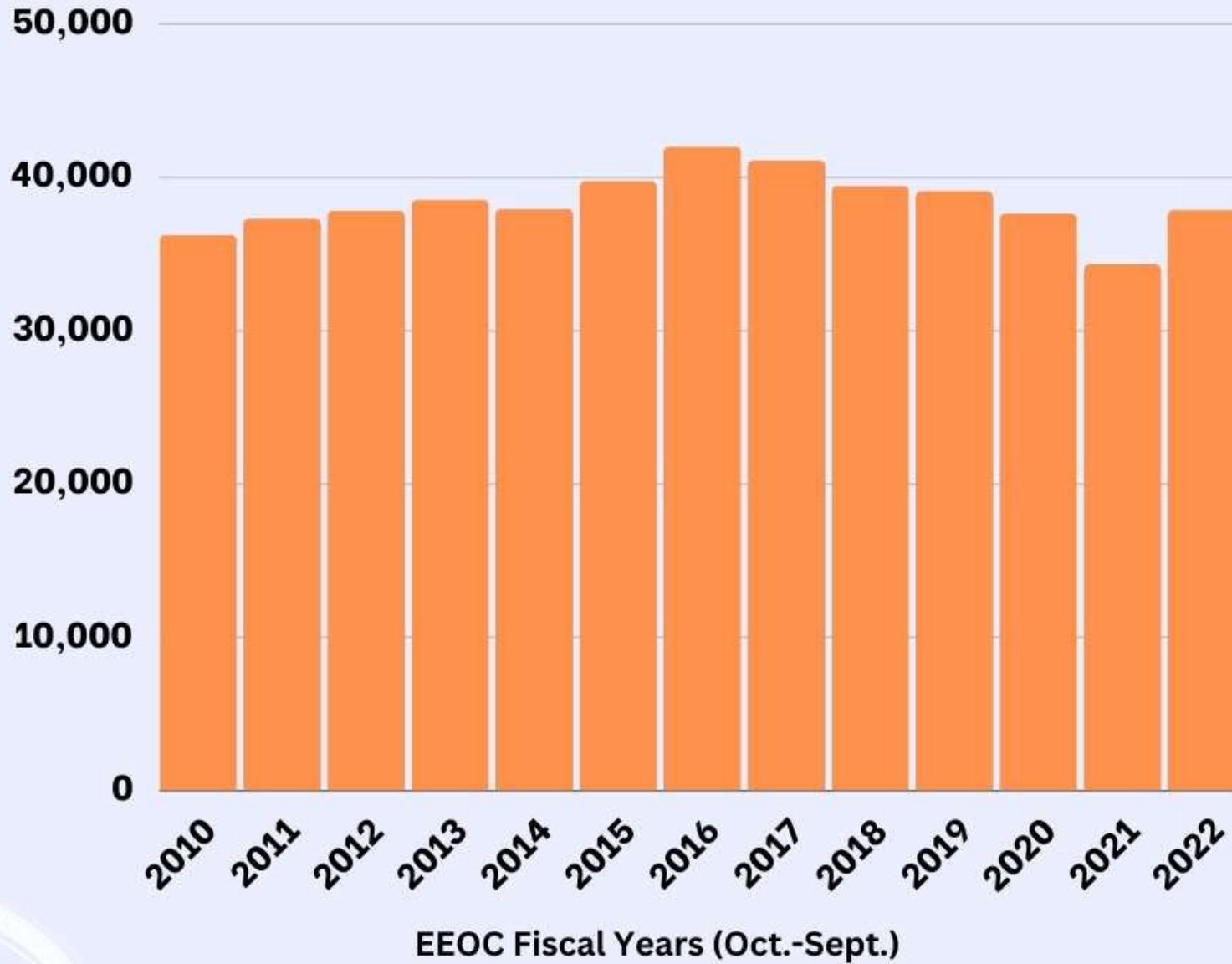
## EEOC AGE DISCRIMINATION CHARGES



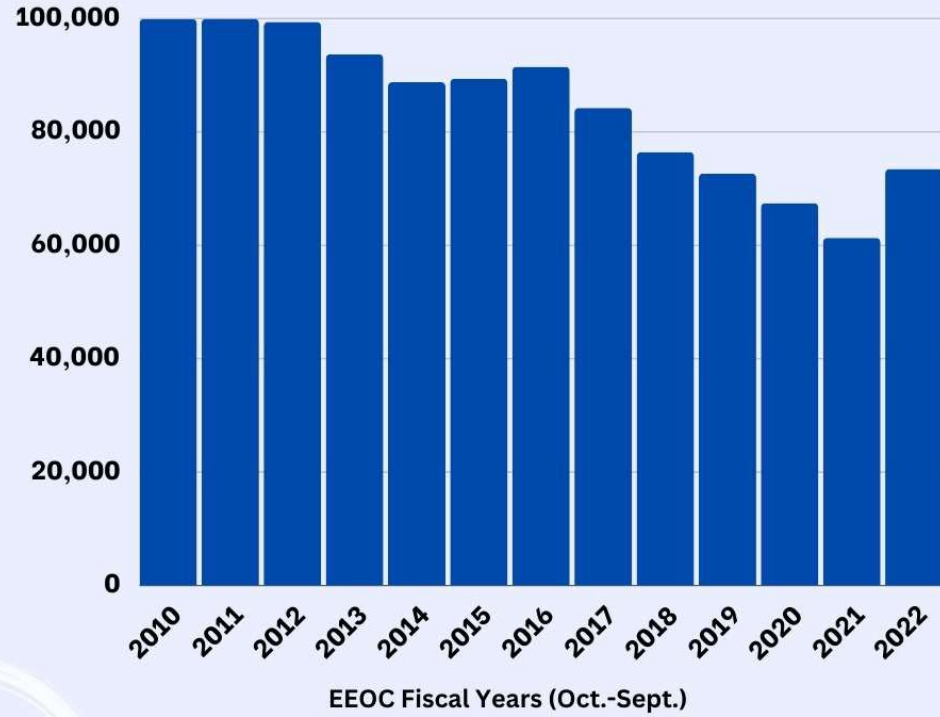
# EEOC DISABILITY DISCRIMINATION CHARGES



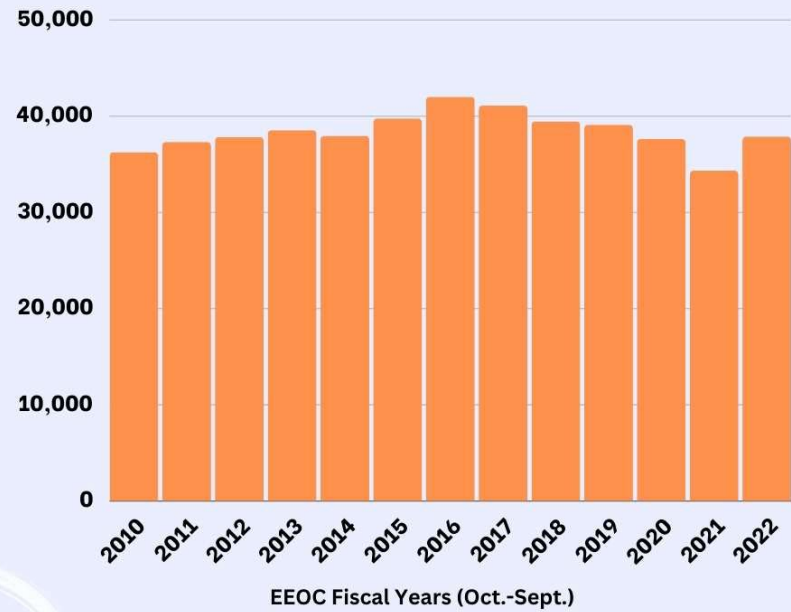
# EEOC RETALIATION CHARGES



## ALL EEOC CHARGES

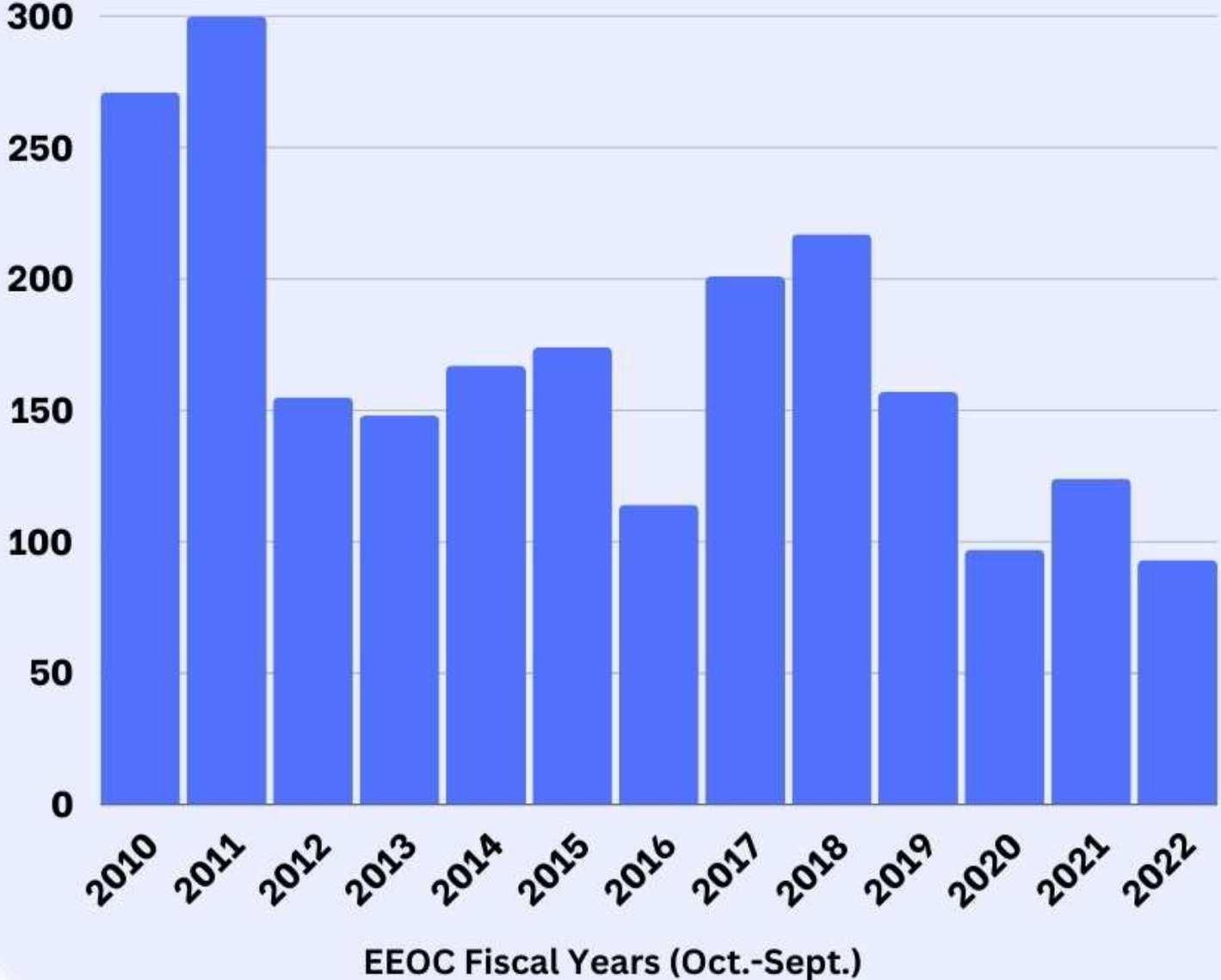


## EEOC RETALIATION CHARGES

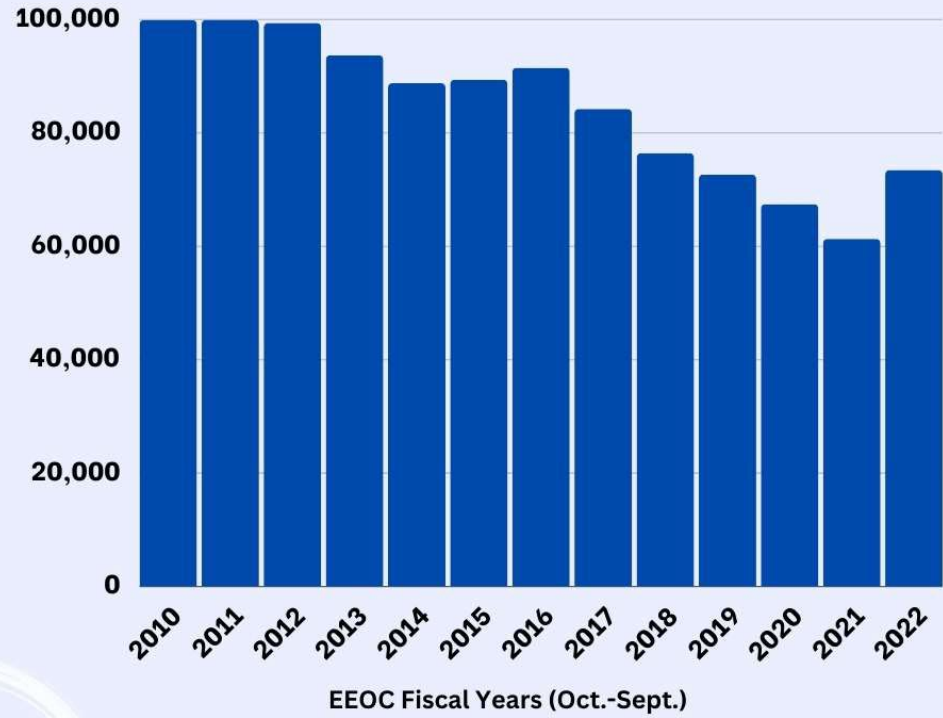




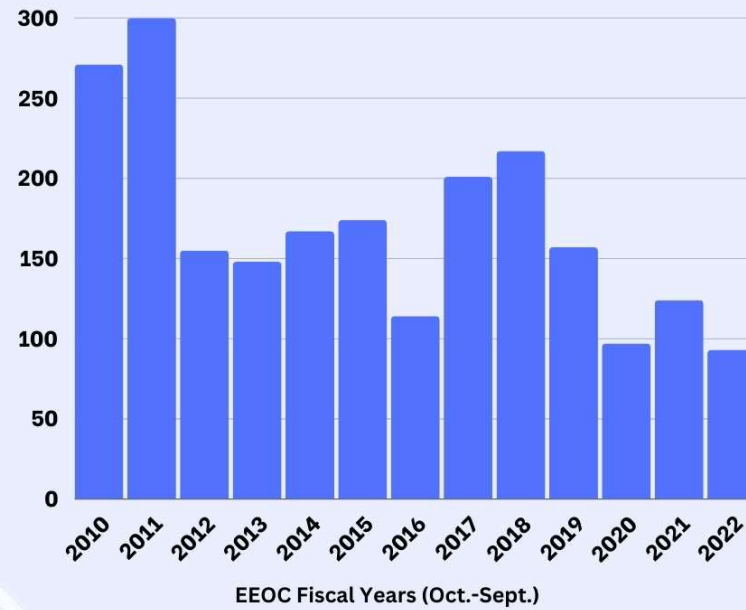
# EEOC LAWSUITS FILED



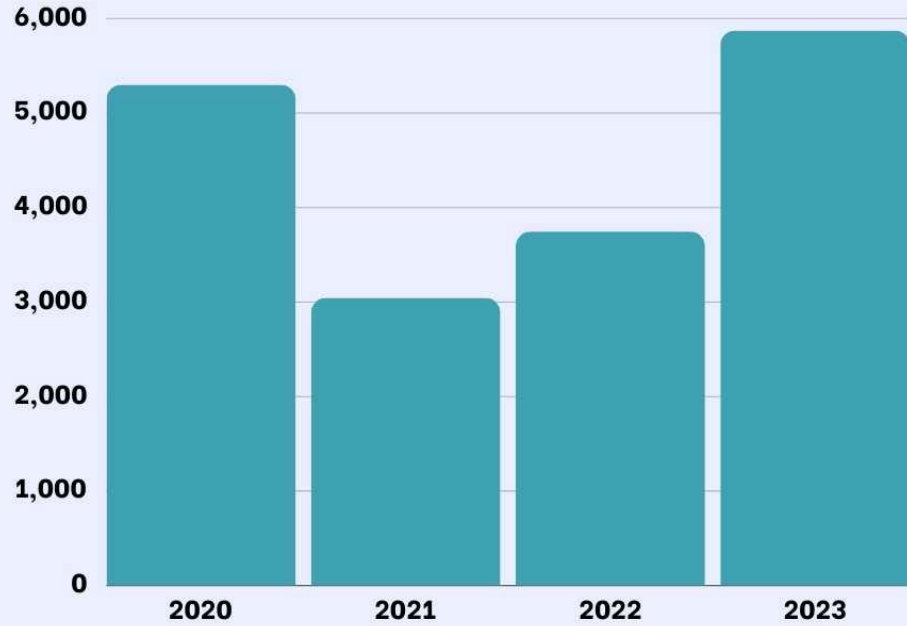
## ALL EEOC CHARGES



## EEOC LAWSUITS FILED

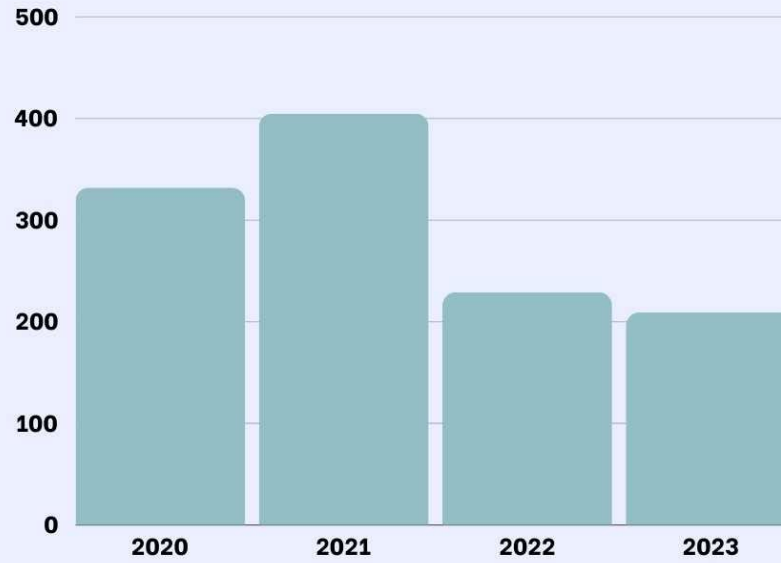


### ALL NYS DHR EMPLOYMENT COMPLAINTS



DHR Fiscal Years (Apr.-Mar.)

### ALL NYC CHR EMPLOYMENT COMPLAINTS



CHR Fiscal Years (Jul.-Jun.)

# Employer Response

# Position Statements

- Not one size fits all
- May differ by agency/nature of complaint
- Does employee have an attorney?
- Tell your story, don't just deny
- Usually, narrative letter is best

# Position Statement Outline



Introduction



Company Overview



Discrimination Prevention Efforts



Overview of Employee's Employment



Response to Allegations



Conclusion

A yellow diamond-shaped warning sign with a black border, mounted on a metal post. The sign is blank. In the background, there is a road, green grass, and trees.

# Settlement Options

- Can settle at any time
- May be more procedural obstacles down the road
- Settlement should be officially documented
- Limitations on confidentiality and other protective terms

# Settlement Factors

- Potential damages/remedies
- Merit of allegations
- Evidentiary issues
- Timing
- Publicity
- Employee's situation
- Attorneys' fees



# Litigation Preparation

- Some agency proceedings will end up in court
- Complaint/charge triggers litigation hold obligation
- Balance initial defense vs. long-term outcome
- Provide attorney with as much relevant documentation and information as possible up front

# Questions?



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