

# New York Employment Discrimination Update

*Legal Changes and Practical Impact*

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# Topics

- ▶ New York Amendments
- ▶ Complaint Options
- ▶ Charge Statistics
- ▶ Requirements
- ▶ Additional Measures

# New York Amendments

- ▶ Government Entity Coverage
- ▶ Personnel Records Retaliation
- ▶ Attorney General Prosecutorial Authority
- ▶ Sexual Harassment Complaint Hotline



# Governmental Employers

- ▶ “[T]he state of New York shall be considered an employer of any employee or official, including any elected official, of the New York state executive, legislature, or judiciary, including persons serving in any judicial capacity, and persons serving on the staff of any elected official in New York state.”
- ▶ Companion provision for municipalities and other government entities

# Personnel Records Retaliation

- ▶ Employers may not retaliate by disclosing an employee's personnel files
- ▶ Limited exception for disclosure required in legal proceedings
- ▶ May limit employer's ability to rebut employee claims outside of court



# AG Prosecutorial Authority

- ▶ Gives NY Attorney General authority to sue employers for workplace retaliation
- ▶ In addition to existing right of employee to pursue their own claim
- ▶ Can AG file suit where employee has settled?

# Proposed Legislation

- ▶ Eliminate penalties for employee violating non-disclosure or non-disparagement clause of release agreement covering discrimination claims
- ▶ Ban no-rehire clauses
- ▶ Extend time to file discrimination claims

# Complainant Options

- ▶ Internal
- ▶ NYS Division of Human Rights
- ▶ Local agencies, if applicable (e.g., New York City Commission on Human Rights)
- ▶ U.S. EEOC
- ▶ Court
- ▶ Arbitration





# Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act of 2021

- ▶ Invalidates pre-dispute agreement to arbitrate sexual harassment claims
- ▶ Doesn't address other forms of employment discrimination
- ▶ May affect enforcement of New York anti-arbitration statute

# Sexual Harassment Complaint Assistance Hotline

- ▶ Designed to connect employees to pro bono attorneys experienced in sexual harassment matters
- ▶ Employers will need to include the hotline information in postings and policies
- ▶ Effective July 14, 2022
- ▶ What about other forms of discrimination?

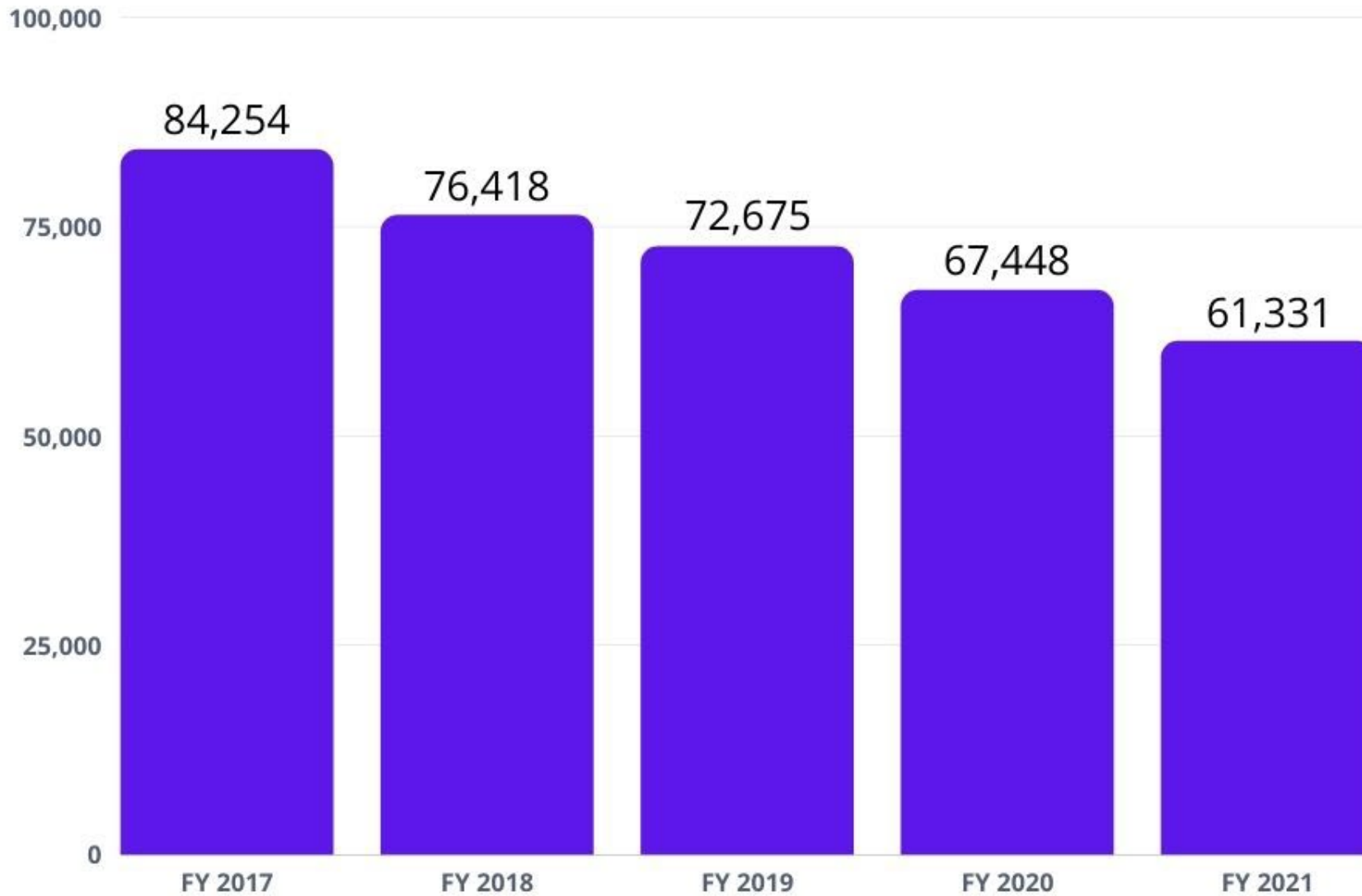
# EEOC Annual Performance Report

- ▶ Filled 450+ positions, bringing staff to 2100+
- ▶ Primarily “front-line” (investigators, mediators, attorneys)
- ▶ Filed 116 lawsuits (up from 93)
- ▶ Obtained \$485+ million for victims of discrimination (down from \$553+ million in FY ‘20)

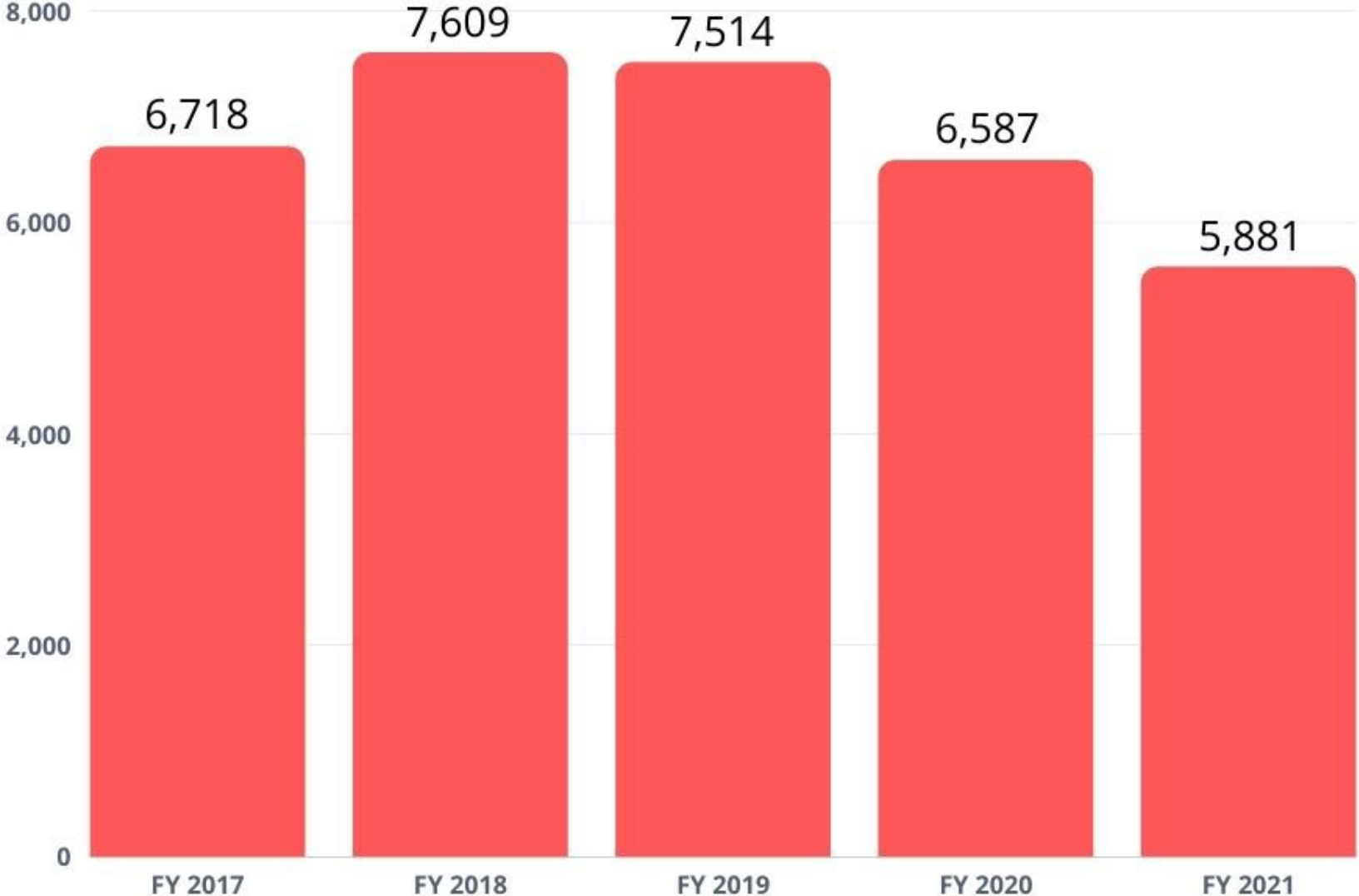
# EEOC Charges FY 2021

- ▶ 9% fewer charges filed than previous year
- ▶ 6% of charges alleged discrimination related to COVID-19
- ▶ Most categories affected equally by decline
- ▶ Sexual harassment charges at lowest level in 25+ years

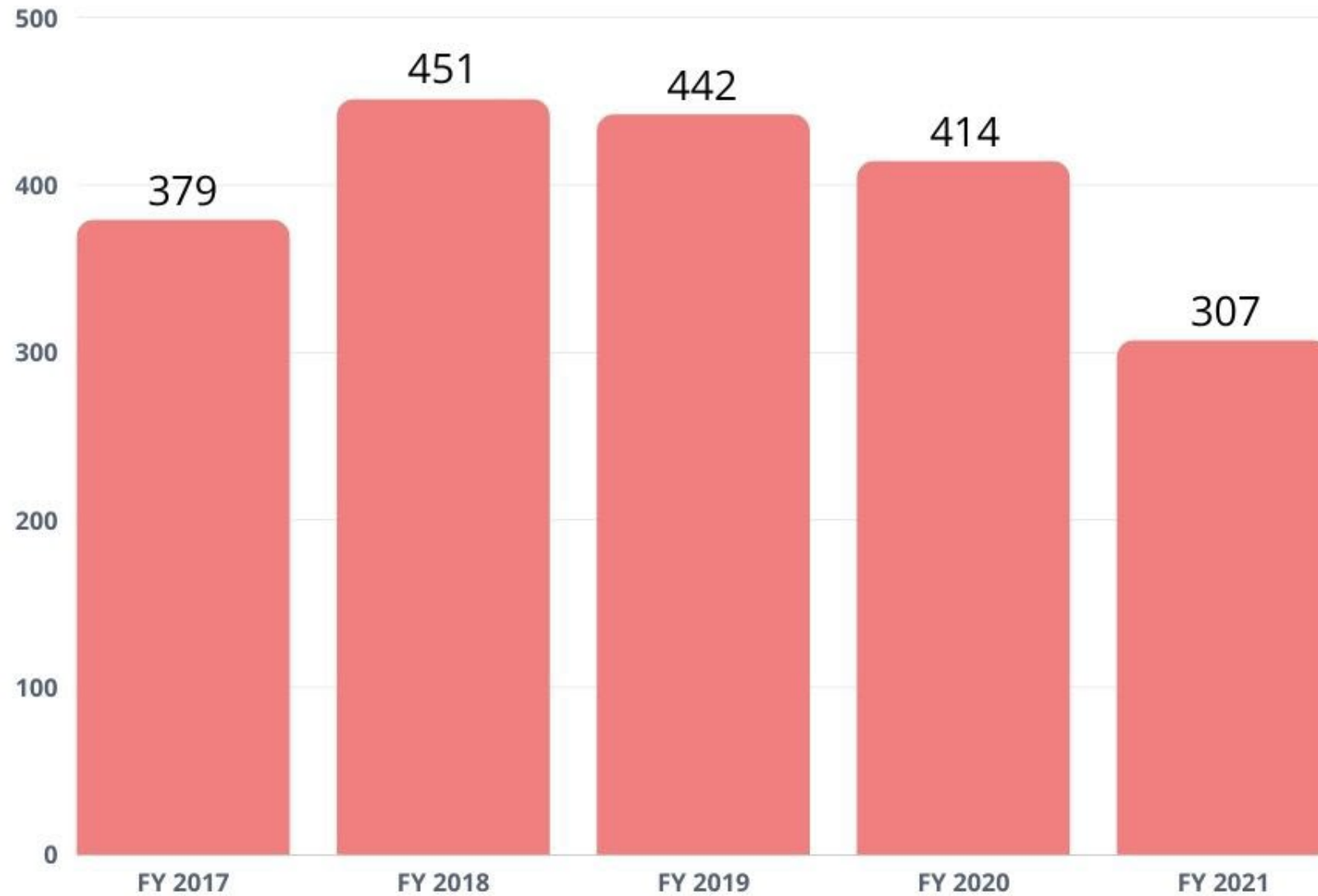
## Annual EEOC Charges (All Categories)



# Annual EEOC Charges (Sexual Harassment)

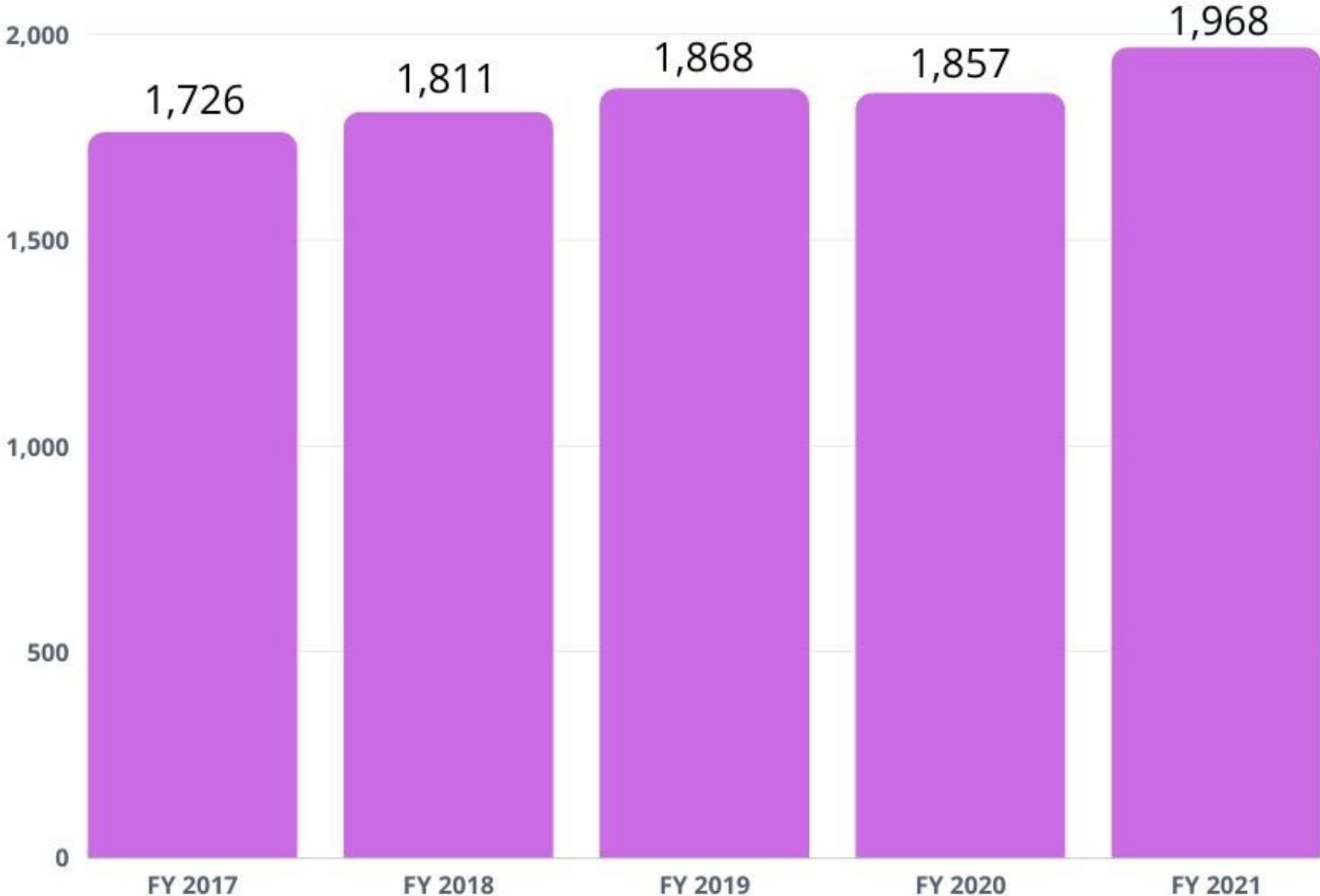


## New York State Charges (Sexual Harassment)



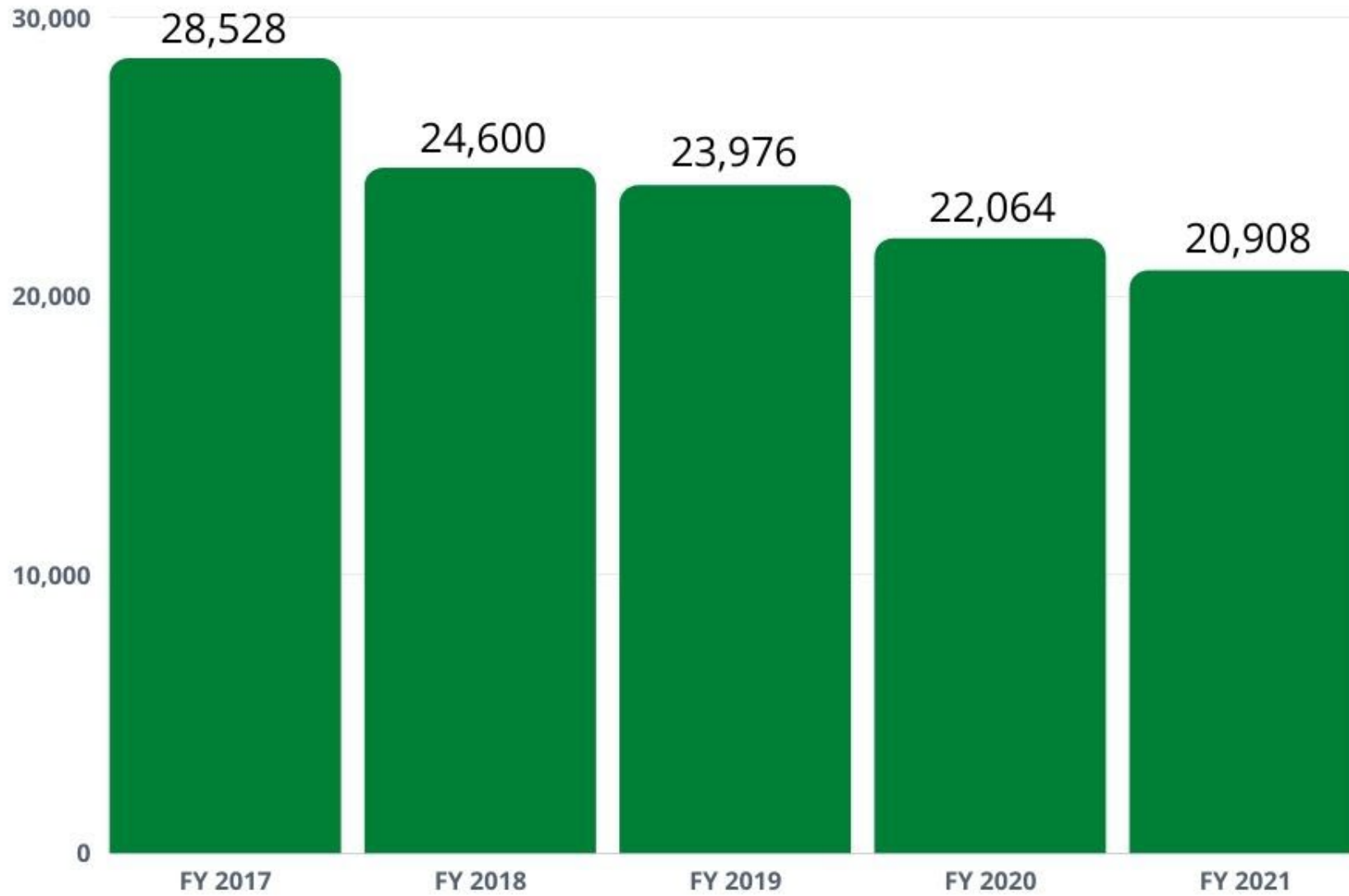
As reported by U.S. EEOC (includes charges filed with EEOC or state agency)

# Annual EEOC Charges (LGBTQ+ Based Sex Discrimination)

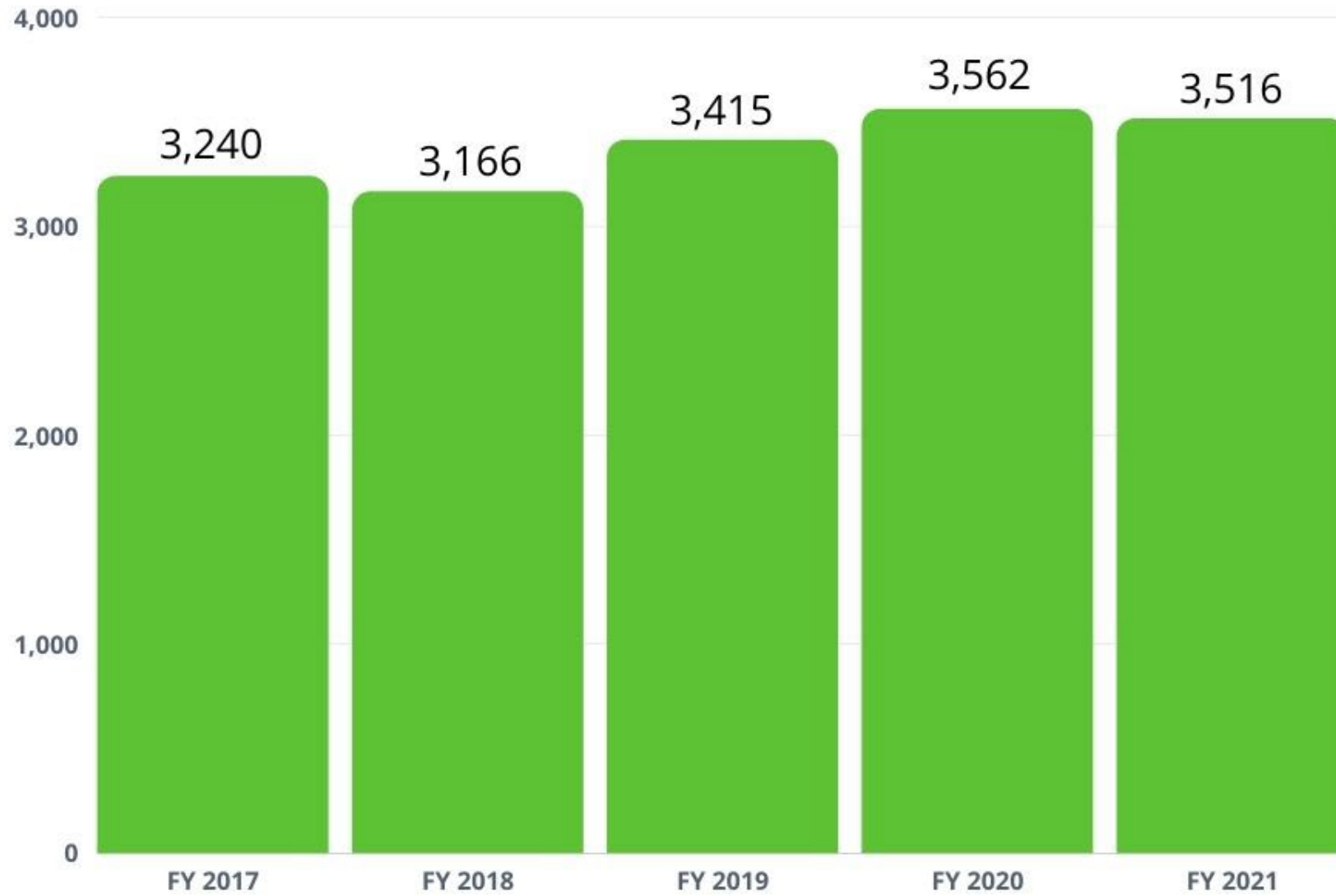




## Annual EEOC Charges (Race Discrimination)



## Annual EEOC Charges (Color Discrimination)



# Requirements

- ▶ Sexual Harassment Policy
- ▶ Annual Sexual Harassment Training
- ▶ Employee Rights Postings



# Additional Measures

- ▶ EEO & Anti-Harassment Policies
- ▶ Reasonable Accommodation Policies
- ▶ Anti-Harassment Training
- ▶ Management Training



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# Questions?



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