

## **Statistical analysis of religious discrimination complaints through the Equal Employment Opportunity Commission**

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### **ABSTRACT**

This study is an analysis of the Equal Employment Opportunity Commission (EEOC) data dealing with Religious Discrimination charges filed in the United States was from 1992 through 2012. This study has three implications for use in industry. First, the study will examine trends in merit-based discrimination charges by North American Industry Classification System (NAICS) code as listed in Table 2 (Appendix A) and also by geographical region to analyze whether a particular code (industry sector) and geographic region that exhibited higher rates of merit-based charges. Second, the study will analyze whether the EEOC conciliation process results in a particular religion having higher rates of successful or unsuccessful conciliations. Finally, the individual religious classifications were analyzed to determine increases in religious discrimination complaints.

The findings concluded that the healthcare sector had a more significant increase in non-meritorious religious discrimination charges than the other comparative categories. The data indicates that there was a significant increase in the Muslim religion conciliation failures while the other religious categories did not show a significant increase over the relevant period. For reasons that have yet to be identified, more claims are filed in the southern region than other geographical regions. In fact, the number of claims in the southern region is double or almost double the number of claims for each of the other regions for each type of claim. The results indicate that there has been a significant increase in the number of religious discrimination claims filed with the EEOC over the relevant period.

Keywords: Religious discrimination, hostile work environment, EEOC

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## **INTRODUCTION**

The proliferation of religious discrimination charges has posed significant challenges to employers, both public and private, to achieve EEOC compliance and avoid costly settlements and litigations. As this study was undertaken, it was hypothesized that certain religion(s) or sects might be filing a disproportionate number of charges. Study consideration was also given to whether certain regions of the country as well as certain industries which might be incurring statistically significantly higher incidents of charges than other regions, industries and religious affiliations. The study concludes by examining the comparative success of settlements of meritorious charges by geographical region. The data for this analysis was obtained through extensive inquiries from the EEOC. It is assumed that the data is correct for an analysis related to religious discrimination.

Discrimination in general within the workplace has received a great deal of attention over the last 20 years. Findley et al. (2013) give a host of examples for sexual discrimination. Although not the same type of discrimination, the EEOC has jurisdiction over discrimination complaints within the workplace.

The study begins by examining both the statutory basis for religious discrimination, as well as a brief review of relevant case law on the essential elements of the employer's accommodation requirements for employees who have requested accommodations due to their religious beliefs. This review is intended for the purpose of establishing a general framework for dealing with religious discrimination complaints. Religious discrimination complaints are intricate in nature and complex in terms of legal compliance for employers.

Title VII (1964 Civil Rights Act) prohibits employment discrimination on the basis of race, color, religion, sex or national origin. The Equal Employment Opportunity Commission (EEOC) is the federal agency responsible for the investigation of employment discrimination charges. However, there are also certain state and local human relation commissions that share that responsibility. This study is an analysis of religious discrimination charges filed with the EEOC during the period of 1992 through 2012.

Religious discrimination is broadly defined by the EEOC as "treating a person (applicant or employee) unfavorably because of his/her religious beliefs." Religious discrimination is not limited to traditional organized religions, but includes religious beliefs that are practiced by a small group of people who are not part of a formal church or sect. Further, Title VII defines "religion" as "all aspects such as religious observances and practices, as well as sincerely held beliefs." EEOC has ruled that religious observances and practices include, but are not limited to the following: "attending worship services, praying, wearing religious garb or symbols, displaying religious objects, adhering to certain dietary rules, proselytizing or other forms of religious expressions or the refraining from such activities ("EEOC Compliance Manual," 2008, para. 10).

## **DEFINITION OF TERMS**

After a charge of discrimination is filed with the EEOC, a preliminary investigation is conducted to determine the meritorious status of the complaint. A determination is then made by the EEOC as to whether "reasonable cause" exists to support the alleged claim of discrimination by an employee(s). The evidentiary burden of "reasonable cause" is a lower burden of proof

than the “preponderance standard” used in civil litigation. The resolution of charges may result in one of the following (“EEOC Definition of terms,” n.d. para. 1-8):

1. **No reasonable cause**- after investigation the alleged charge lacks merit and the employee may be issued a “right to sue” letter.
2. **Reasonable cause** – after the EEOC preliminary investigation the alleged charge is found to have merit.
3. **Negotiated settlement**- An out of court settlement providing a complete resolution of the charge without further legal recourse to the charging party or the employer.
4. **Withdrawal with benefits**- charges withdrawn by the charging party upon receipt of desired benefits.
5. **Successful conciliations**- After a reasonable cause determination, settlement results in substantial relief to the charging party and all others adversely affected by the discrimination.
6. **Unsuccessful conciliation**- After a reasonable cause determination, efforts to conciliate are unsuccessful and the charge may go forward to litigation. This is defined to be a “merit resolution.”

## PURPOSE OF THE STUDY

This study will examine trends in merit-based charges by NAICS code, religious affiliation and geographical region in the United States to analyze whether a particular code (industry sector), religious affiliation or geographic region indicated statistically significant increases or decreases in the rates of merit-based charges from 1992 to 2012. Each category is treated as an individual set of data to allow the comparisons of like items.

In addition, based on the number of merit-based cases, the study will determine whether the EEOC conciliation process results in a given industry, particular religion or geographic region having statistically significant increases or decreases in the number of successful conciliations from 1992-2012.

There were a total of 50,642 religious discrimination charges filed with the EEOC during the 1992-2012 period. These claims were then broken into categories of “meritorious” and “no reasonable cause” by the EEOC. Of the meritorious category, there were also subcategories of “successful conciliation” and “unsuccessful conciliation” which was also monitored by the EEOC.

## REASONABLE ACCOMMODATION & UNDUE HARDSHIP

According to the SHRM Religion and Culture Survey Report (2008), religious discrimination charges increased 69 percent during 1998-2008, a faster rate than race, national origin, or sex discrimination charges. There were substantial increases in religious discrimination charges with reasonable cause versus non-reasonable cause from 1992-2012. In examining possible reasons for the increase in religious discrimination charges, the authors analyzed cases where reasonable accommodations would pose undue hardship and others that would not.

Title VII sections 701(j) discrimination, 703, and 717 require employers “to accommodate the religious practices of employees and prospective employees.” Significantly, the Title VII “undue hardship” defense is defined very differently than the “undue hardship”

defense for disability accommodation under the 1967 Americans with Disabilities Act (ADA). Under Title VII, the undue hardship defense to providing religious accommodation requires a showing that the proposed accommodation in a particular case poses a “more than de minimis” cost or burden, which is a far lower standard for an employer to meet than undue hardship under the ADA, which is defined in that statute as “significant difficulty or expense.” EEOC has cited some common reasonable accommodations to include: “flexible scheduling, voluntary shift substitutions or swaps, job reassignments, and modifications to workplace policies or practices” (“Religious Discrimination, n.d., para. 9). Several of the representative court decisions interpreting “undue hardship and “reasonable accommodation” include:

As a result of the seminal *Trans World Airlines (TWA) v. Hardison*, 432 U.S. 63<sub>2</sub> (1979), the Equal Employment Opportunity Commission revised their guidelines on religious discrimination and reasonable accommodation. *Trans World Airlines* argued that alteration of work schedules based on religion, without consideration for the seniority system set forth in their union collective bargaining contract, posed an undue hardship and would result in discrimination among other employees. *Hardison*, a Jewish employee, objected to working on Saturdays so he could observe the Sabbath.

The United States Supreme Court held that TWA was not required to violate their collective bargaining agreement to accommodate *Hardison* by violating the contractual seniority system, which was not shown to have a discriminatory purpose. Further, the Court held that TWA was not obligated to make an accommodation, which would result in additional overtime pay, or to reduce the work schedule of *Hardison*, if such costs were more than de minimis.

In *Vargas v. Sears Roebuck*, 79 Mass. App. Ct. 1107: 944 N. E. 2d 632 (2011), the Court held that the employer’s reasonable accommodation requirement does not have to match the employee’s demand for accommodation. In this case, a Hispanic employee with Native American religious beliefs violated the company’s appearance policy by having long hair. When asked by the employer to put his ponytail in his shirt or jacket to conceal his long hair, the employee refused. The court ruled that the employer had provided a reasonable accommodation for his religion, and the employee termination was upheld. (Bennett-Alexander & Hartman, 2011).

In *Peterson v. Hewlett Packard*, 358 F.3d 599 (2004), an employee brought a suit against his employer for refusal to remove biblical passages from his cubicle after being asked to remove the passages. The court held that the biblical passages offended homosexuals and violated the company’s harassment policy. *Peterson*’s termination for insubordination was upheld.

On July 22, 2008, “in response to an increase in charges of religious discrimination, increased religious diversity in the United States, and requests for guidance from stakeholders and agency personnel investigating and litigating charges of religious discrimination,” the Equal Employment Opportunity Commission (EEOC) issued a new Compliance Manual section regarding religious discrimination in the workplace. The new section provides more explanation and descriptions of dressing and grooming standards, use of employer facilities for religious purposes, use of tests and other selection procedures. Undue hardship is addressed in conjunction with examples of safety risks and concerns. There is also a new section in the manual containing questions and answers, as well as best practices for avoiding religious discrimination. These guidelines are relevant for employers seeking to deal proactively with the challenges posed by potential and actual charges” (Carter et al., 2008, para.1).

In *EEOC vs. The Geo Group*, the U.S. Court of Appeals 616 F. 3d (2010) held that the employee's request of accommodation would constitute undue hardship in a prison because a Muslim female employee who wore a khimar, which concealed her identity, could create security problems associated with misidentification. Further, the employee violated the "no-headgear" policy by wearing the khimar. The appellate court determined that the specific risks identified and explained by the prison wardens satisfied the necessary showing of undue hardship.

In the landmark *Trans World Airlines, Inc. v. Hardison et al.*, 432 U.S. 63, 53 L. F. 2d. 113 (1997), the Jewish employee could not be accommodated with scheduling changes because it would have violated the union seniority system. In *EEOC v. Kelly Services*, the U.S. District Court and EEOC affirmed that a Muslim employee could not be accommodated because wearing a khimar violated the "safety-driven dress policy."

"The determination of whether a particular proposed accommodation imposes an undue hardship must be made by considering the particular factual context of each case. Relevant factors may include the type of workplace, the nature of the employee's duties, the identifiable cost of the accommodation in relation to the size and operating costs of the employer, and the number of employees who will in fact need a particular accommodation." ("Compliance Manual," 2008, p. 35). See Appendix B for the EEOC's best practices for eradicating religious discrimination in the workplace.

## **IMPLICATIONS OF RELIGIOUS ACCOMMODATIONS**

Employers are required to make reasonable accommodations based on employee requests, however, the employee is not required to grant the request if it poses more than more than "de minimis" hardship. Making reasonable accommodations is essential from a legal standpoint, as well from organizational performance perspective.

According to the SHRM Religion and Corporate Culture Survey Report (2008), 531 businesses were included in the research to determine the organizational performance-related factors most affected by providing religious accommodations. Respondents were asked to select their top two choices from a list of seven factors as follows: employee morals, employee retention, employee loyalty, reputation of organization, positions as an employer of choice, workforce productivity, and recruitment of top employees. There were 62% of employees from 531 businesses who indicated that employee morale was on the top two choices (SHRM, 2008).

## **METHODOLOGY**

The NAICS code was provided by the EEOC for the purpose of obtaining EEOC discrimination charges for the select industry sectors during relevant period (1992-2012) to include: Public Administration (Code 92) (total 299,788 business included), Health and Social Assistance (Code 62) (total 1,611,468 businesses included), Educational services (Code 61) (total 402,000 public educational institutions, Manufacturing (Code 31-33) (total 13,986 businesses), Other Services (equipment machine repair, service industry except public administration (Code 81) (total 2,174,657), Public Administration (includes federal, state and local government agencies that administer and manage public programs and have executive, legislative and judicial authority over other institutions in a given area) (Code 92) (total 299,778 public entities included).

The data were available in a format that allowed a straightforward and effective statistical analysis of the data. There was one data point per category for each year forming a time-series on an annual basis. This allowed the analysis to take place using least-squares linear regression to estimate the slope for each representation of the data (i.e., successful and unsuccessful conciliations for various categories such as Protestants vs. Catholics and Protestants vs. Muslims). The interested reader can visit the NIST (2013) reference for further information on the least-squares regression method. The basis of all of the analyses done on the data was the comparison of the fitted regression slopes for the different categories against the slopes for the remaining significant categories. The categories tested of each type of claim are shown in Table 1 (Appendix A).

First, before a slope for a given category is considered, the slope has to be statistically significant. If a slope is not statistically significant, then it is potentially zero. A potentially zero slope would indicate that there is not a significant increase (or decrease) in the number of claims filed over the given time period. However, any categories that are not significant indicate that there is a random fluctuation in the data but no trend is significant.

Next, the slopes of significant categories are compared against like categories (i.e., successful conciliations for Catholics vs. Muslims). For these significant categories, the slopes are compared to each of the other like categories. When there is a significant difference between these slopes, it indicates that one category is rising at a faster rate than the comparative category. All categories had an overall significant increase in the number of claims. This analysis looks at the subcategories which likely contributed most to the totals. There were no categories that had significant decreases in the number of claims.

## FINDINGS

This study incorporated representative court decisions interpreting “undue hardship and “reasonable accommodation” from four industries and four different religions. Presented cases have shown the evolution of the court’s interpretation of “reasonable accommodation” and subsequent changes in EEOC guidelines.

Based on EEOC data, the following data were compiled as received from the EEOC (I. Kundra-EEOC, personal communication, March 14, 2013). The categories that were found to have significant and insignificant increases in the number of claims are listed in Table 1 (Appendix A). These results are discussed as follows. Some of the actual statistics are given below while others are summarized in Table 1.

There has been an increase in the number of EEOC religious discrimination claims filed during 1992-2012 without merit for five industries selected both in the public and private sectors throughout the United States. The SHRM Religion and Culture Survey Report indicated that in 2008, only 6% of HR professionals reported an increase in the requests for religious accommodation in the last 12 months—compared with 20% in 2001 (p.10). The findings support the fact that the employers have decades of guidance from case law, and suggest that employers are taking more proactive actions to minimize and eliminate religious discrimination in the workplace.

As shown in Table 1 (Appendix A), likely the reasons for increased successful conciliations include the following: First, the EEOC has provided employers with revised guidelines on best practices for eradicating religious discrimination. Second, employers have incorporated diversity training as a training requirement. Hence, employers have become more

sensitive to religious accommodation requests and follow the law. Third, due to high costs of litigations, and the increased number of claims, employers obviously want to settle and reduce the costs of litigation.

### **By Industry**

Although many categories had significant increases, some categories did not have significant increases in their claims. Notably, the Public Administration industry sector did not have significant increases in any of the four categories (Merit-based claims, Non-merit based claims, Successful conciliation claims, and Unsuccessful conciliation claims). A comparison of the Public Administration sector and the Manufacturing sector is shown in Figure 1 . It can be seen in this figure that the Public Administration sector has been flat over the 21 year period while the Manufacturing sector has seen increased claims over the same time period.

Manufacturing had a significant increase (slope = 1.658,  $t = 2.492$ ,  $p\text{-value} = 0.022$ ) in Failed Conciliation claims over the time period. This was the only industry to see an increase in the Failed Conciliation claims while not seeing an increase in the Successful Conciliation claims. In fact, Manufacturing saw a steady increase in the overall number of Merit-Based claims (slope = 2.321,  $t = 3.085$ ,  $p\text{-value} = .006$ ) while not seeing an increase in the number of Non-Merit-Based claims ( $t = 0.521$ ,  $p\text{-value} = 0.608$ ). The Management industry sector had a steady increase in the overall number of both Merit-Based and Non-Merit-Based claims while there was no indicated increase in the Success or Failure of the conciliation of the Merit-Based claims. The category for Health Care saw significant increases in claims and Successful Conciliation claims but did not have a significant increase in the number of Failed Conciliation claims. The category for Other Services revealed a unique pattern. The number of Merit-Based claims did not increase significantly while the number of Non-Merit-Based claims did increase significantly. Also, Other Services saw an increase in the number of Successful Conciliation claims while the Failed Conciliation claims did not show a significant increase over the same time period.

Comparing the slopes of like results within each of the four categories determines which industries grew at a faster rate than the other industries – if at all. There are only two industries (Health Care and Other Services) that showed significant increases in Successful Conciliations. There were no significant differences between the slopes of these two categories which might indicate that the two industries are similar.

For Merit-Based claims there were three industries that showed significant increases over the time period. These three industries were Manufacturing, Management, and Health Care. Out of these categories, Manufacturing Merit-Based claims increased at a significantly faster rate than the Management industry. However, the rate of increase of Manufacturing Merit-Based claims was not significantly different than the Health Care industry. The rate of increase Health Care industry claims was not significantly different from Management industry.

Non-Merit-Based claims is potentially one of the more important categories because it represents claims filed with the EEOC that were not found to have merit but require great resources of both the EEOC and the respective companies to reach that conclusion. As such, it is important to discover which, if any, of the industries has a faster rate of growth than the other industries. As shown in Table 1 (Appendix A), three industries have significant growth over the time horizon – Management, Health Care and Other Services. Comparing each of these showed that the Health Care industry had a significantly faster growth rate of Non-Merit-Based claims

than the other two industries.

### **By Region**

The analysis of increased claims by region is rather non-descriptive for most of the regions in most of the categories. In all regions, the number of Merit-Based and Non-Merit-Based claims steadily rose significantly. This indicates that there has been an overall attitude in the United States to bring forth claims than before. However, in the Northeast region, there was not a significant increase in the number of Failed Conciliation claims ( $t = 1.860$ ,  $p\text{-value} = 0.078$ ). This would suggest that there is possibly either a different attitude, different level of education, or even a different demographic in the Northeast as compared with the rest of the country. At the very least, it is a finding that would warrant further investigation in the future as it could be a link that could reduce future litigation.

As indicated above, the only region that did not show a significant increase in the claims was the Failed Conciliation category of the Northeast region. For the remaining regions within the Failed Conciliation category, the South region had a higher rate of increase (slope = 10.966) in claims as compared to the other two regions (Midwest region slope = 1.682 and West region slope = 5.084). Likewise for Successful Conciliation claims, the South region had a significantly higher rate of increase of claims than all of the other regions. For the category of Merit-Based claims, the South Region again had a significantly higher rate of increase in claims compared to the other regions. Lastly, for Non-Merit-Based claims, the South region was again a significantly higher rate of increase (slope = 38.360) than the other regions (West region slope = 19.110, Midwest region slope = 18.919, and Northeast region slope = 11.178). These findings are perhaps the most important finding in this entire report. There is a significant trend that the Southern Region has a higher rate of increase of religious discrimination claims as opposed to the other region.

### **By Religious Affiliation**

Why are there more religious discrimination cases with merit being reviewed and resolved by the EEOC? There were substantial increases in religious discrimination charges with reasonable cause (Merit-Based) versus non-reasonable cause (Non-Merit-Based) as determined by the EEOC. There are several factors, including political events, new laws, and the events of 9/11/2001 that have occurred since 1997 suggesting that some parties may be more willing to resolve religious discrimination charges with or without benefits.

In terms of the numbers, there is a major visible difference between the residuals for the Muslim category compared with the other categories. The regression residuals for this category deviate from a normal pattern and increased in magnitude during the years 2010-2012. This suggests that there has been a recent change in the variation associated with these types of claims by this category. At this time, it is difficult to posit as to the reason for this. Although Muslims make up less than 2 percent of the United States population, they accounted for about one-quarter of the 3,386 religious discrimination charges filed with the EEOC last year (Greenhouse, 2010). As can be seen in Table 1 (Appendix A), this is also the only religious affiliation category that saw significant increases in all four types of claims. Interestingly, the categories for Protestants, Jewish and Catholics all saw the same types of patterns for claims filed. Each of these affiliations saw significant increases in Merit-Based and Non-Merit-Based claims as well



as Successful Conciliations. However, each of these affiliations also showed no significant increase in the number of Failed Conciliations.

Muslim religious discrimination suits appear to have three common bases for alleged religious discrimination charges. The cases fall into one of three categories, including the following: (a) the requirement to pray five times a day, which partially occurs during work time and interfere with the employees' work responsibilities (b) the requirement of female Muslims to wear khimars, which frequently conflict with dress code policies and/or safety issues (c) perceived or actual discrimination based on bias towards Muslims. Since 9/11, Byng (2008) compared how the perception of Muslims and their identity is similar to that of racial minorities in the United States after reviewing news stories in the Northeast and in the *Washington Post* from May 2002 to May 2003. He coded text to identify key words associated with "Muslims" and "discrimination." His analysis revealed evidence of employment discrimination in a factory where a Muslim employee worked for 15 years and was terminated on September 12, 2001. Other reports indicate that females in a daycare center in Virginia where a father asked them to locate "more names for workers-not Muslims" (Byng, 2008, p. 671).

As mentioned above, Successful Conciliations were up significantly over the time period for each of the religious affiliation categories. Out of these categories, the Muslim category had a significantly higher rate of increase in these types of claims. Also as previously mentioned, Failed Conciliation claims are only significantly higher for the Muslim category. For Merit-Based claims the Muslim category was found to have a significantly higher rate of increase than the other categories. Lastly, for the Non-Merit-Based claims, the Muslim category was again found to be significantly increasing at a faster rate than any of the other affiliation categories.

## CONCLUSIONS

Religious discrimination continues to be an issue facing employers in a number of industries in the United States. The findings in this study support a number of assumptions regarding religious discrimination in the workplace. From 1992 -2012, the actual number of total complaints filed by employees has increased dramatically based on the data provided in this study. The increase in the number of "no reasonable cause" complaints would indicate that employees are much more likely to file religious discrimination complaints that have no merit based on a lack of understanding on the part of employees regarding the true nature of this type of discrimination. The health care sector has experienced the largest percentage increase in religious discrimination complaints which could be consistent with the growth of the health care sector in general, in terms of increased employment opportunities. The number of religious discrimination complaints filed by Muslims has increased at a higher rate than the other religious affiliations listed in this study. This finding could be attributed to a number of factors including an increase in the Muslim population in the US workforce, and the cultural issues facing this segment of the workforce since the 9/11 terrorist attacks in 2001. However, additional research should be conducted to ascertain the reasons for the increase in the number of religious discrimination complainants filed by this segment of the workforce population. As a region, the South has experienced the highest increase in the number of religion discrimination complainants as compared to the other geographic regions of the country. This could be attributed to the increased number of manufacturing and nonmanufacturing facilities that have located or relocated to this region of the country due to right to work legislation and cheaper labor costs.

Additional research is needed in this area to determine the cause and effect relationship between religious discrimination and regions of the country.

As employers continue to address the issue of religious discrimination in the workplace, it would be beneficial to develop and implement human resource policies that not only identify methods to eliminate religious discrimination practices but incorporate diversity training that has components that provide management with the skill sets to address such issues as reasonable accommodation, undue hardship and the changing demographic composition of the religiously diverse workforce of the 21<sup>st</sup> century.

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**APPENDIX A – TABLES AND FIGURES**

Table 1: Significantly Increased Claims 1992-2012

		Conciliation Claims		Merit-Based Claims	
		Successful	Failed	Merit	Non-Merit
<b>Industry</b>					
	Manufacturing		X	X	
	Management			X	X
	Health Care	X		X	X
	Other Services	X			X
	Public Admin.				
<b>Region</b>					
	Midwest	X	X	X	X
	Northeast	X		X	X
	South	X	X	X	X
	West	X	X	X	X
<b>Affiliation</b>					
	Protestants	X		X	X
	Muslim	X	X	X	X
	Jewish	X		X	X
	Catholic	X		X	X

X - denotes significant increase in slope over time period

"blank" - denotes insignificant increase in slope over time period

Table 2: North American Industry Classification Systems for Industries Included in Study

North American Industry Code	Code Description
31-33	Manufacturing
55	Management of Companies and Enterprises
62	Health and Other (referred to as Health Care in this paper)
81	Other Services
92	Public Admin.

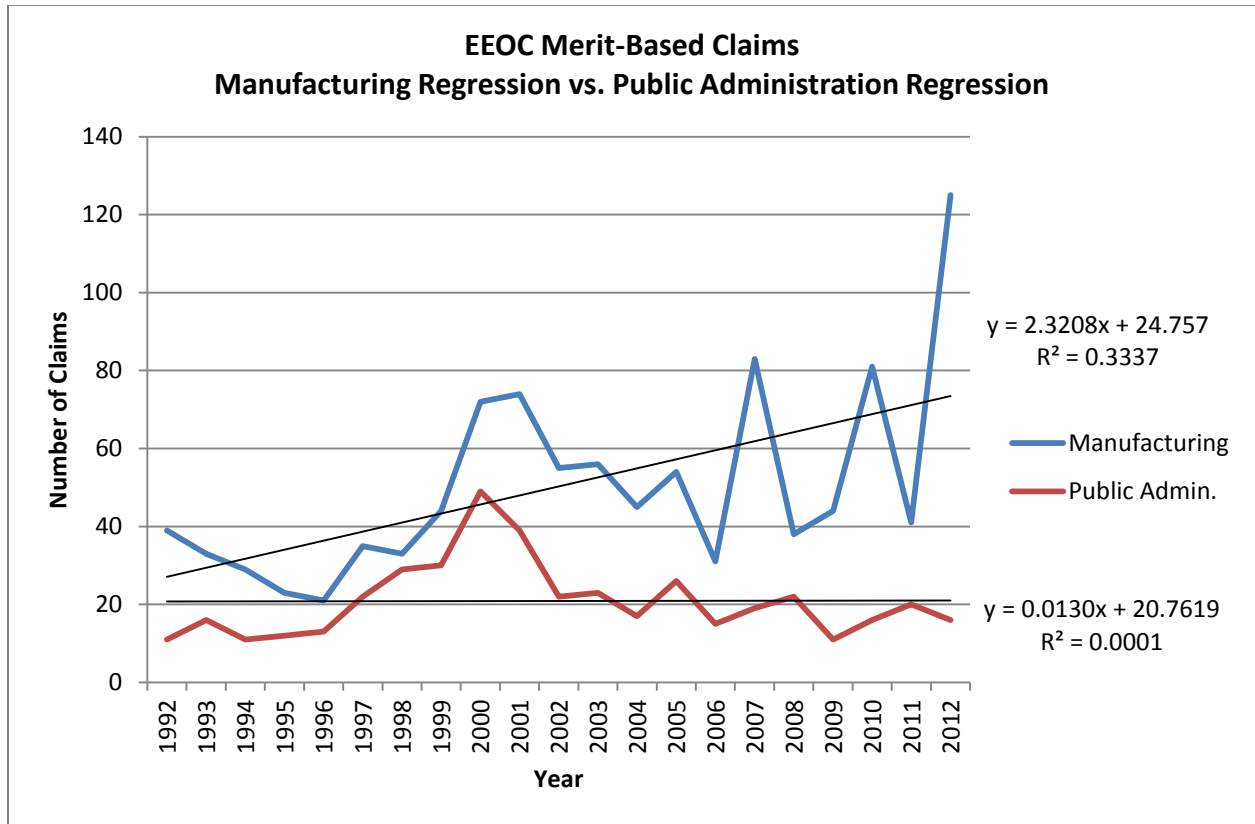


Figure 1: Example of Significant and Insignificant Merit-Based Claims

