



WillisTowers Watson 

**Anthony Allen , Corporate Risk and Broking
Willis Towers Watson 26 Century Boulevard
Nashville, TN 37214**

D: +1.615.872.3874 C: +1.615.631.2989

Anthony.Allen@WillisTowersWatson.com

www.willistowerswatson.com

**R. Mark Adams M.S., OSHE, CRM, CWCA
Senior RCCA/ICC Consultant
Willis Towers Watson 26 Century Boulevard
Nashville, TN 37214**

D: +1.615.872.3726 C: +1-615-804-7838

AdamsM@willistowerswatson.com

www.willistowerswatson.com



Willis Towers Watson, Anthony Allen and R. Mark Adams assumes no liability for the content of the information contained in this presentation.

This information is based upon the best sources available at the time which may not pertain to all issues.

Willis Towers Watson cannot give any expressed or implied warranty for this presentation in regard to any safety, health or compliance with any rule, law or regulation. We only assist you in fulfilling your responsibility in controlling accidents and losses.

Please consult with your legal representative before implementing any of these suggestions.

Planning Logistics and Analysis Needs

PLAN – A Risk Management & Insurance Perspective

We will share insights on how to position your organization for the best outcome in the event of a loss; including carrier expectations and actions to take to prevent and mitigate losses.

Areas of focus include:

Trucking Liability,

Property,

Workers Compensation, and

Employment Practices.

State of the Casualty Market – Factors Impacting Rate 15 October 2020

Prognosis: This is the good news.

We anticipate a challenged casualty environment through the balance of 2020. Umbrella / Excess carriers will seek **material rate increases and while restricting coverage terms & conditions** for the next **several quarters**. In addition, carriers are actively seeking to add Communicable Disease and COVID-19 Exclusions.

Forecast

General Liability:

Property

Automobile Liability:

Workers' Compensation:

Premium Increase

7.5% to 15%+

7%

8% to 15%+

Flat to +4%

State of the Casualty Market – Factors Impacting Rate 15 October 2020

Forecast	Premium Increase
Directors and Officers Liability (D&O)	56%- 82%
Employment Practices Liability (EPL)	10% - 25%
Umbrella: High Hazard	50%+
Umbrella Low Hazard	30%+
Excess Liability: High Hazard	150%+
Excess Liability Low Hazard	75%

WTW had one customer with a 450% increase and other with a 745% with ½ of the insurance coverage

Large Truck Liability and Excess State of the Market - Trends

- **Excess Attachment Points rising**
 - ✓ What use to be \$1M-\$3M is becoming \$5M-\$10M
 - ✓ “Buffer” Layers required to fill up to attachment
- **Overall Capacity is depleting**
 - We are consistently seeing 20-40% reduction in capacity
- **Carriers are putting up “Shorter” limits \$5-\$10M is norm**
- **Pricing Correction due to losses**
- **Can no longer purchase the 25 mil\$ blocks of excess coverage**
- **Loss Payback Features**
- **Multi-year Aggregated programs**

So What Does All of This Mean?

Previous – we could purchase

- **3 million\$ primary with a 1 million\$ deductible/SIR**

Now – what is available to purchase

- **5 million\$ primary with a 3 million\$ deductible/SIR**

The difference

- **Higher primary = 's higher premiums 3 mil\$ to 5 mil\$**
- **Higher deductible/SIR from 1 mil\$ to 3 mil\$**

So What Does All of This Mean?

Previous

- Using 3 million\$ primary
- At 3 million\$, in the past could get carrier to write the next 7-10 mil\$ of coverage.
- Then your could bite off big chunks in 10 million\$ to 25 million\$ to get to your ultimate coverage.

Now

- Using 5 million\$ primary
- 5-10 million\$ is a buffer layer
- Cost is 2-3 mil\$ premium for 5 mil\$ in coverage
- Each new “layer” cost is 80%(+/-) of the underlying
- Problem

So What Does All of This Mean?

Options

- **Retain/self-insurance the 5 mil\$ (Normal cost is 2 to 3 mil\$ for 5 mil\$ in coverage)**
- **How do you do that?**
 - **Cash**
 - **LOC**
- **WTW has other options to help ease this exposure**

Results using a 100 million\$ total insurance

- **Due to the price increases and extra exposure, companies are now only purchasing 50% to 70% of what they used to buy**

Example

Recent Peer Examples

Previous - 10 carriers to \$200 mil target

Now – 16 carriers And \$50 mil less Coverage

Cost – 40% to 70% more

Result – Cost more to purchase less and the company has more exposure

Expiring Tower			Renewal Tower			
Limit	Layer	Layer Rate Relativity	Limit	Layer	% Premium Increase	Layer Rate Relativity
\$200M	7th XS (\$50m x \$150m) QS 2 carriers	53%	Did Not Purchase; Self Insured			
\$150M	6th XS (\$75m x \$75m) QS 3 carriers	18%	\$150M	13th XS (\$25m x \$125m) (QS 4 carriers & Client; 1 incumbent (6th xs) 3 new carriers)	1292%	153%
\$75M	5th XS (\$25m x \$50m)	85%	\$125M	12th XS (\$10m x \$115m) (New Carrier)	811%	97%
\$50M	4th XS (\$10m x \$40m)	96%	\$115M	11th XS (\$10m x \$105m) (New Carrier)	837%	96%
\$40M	3rd XS (\$5m x \$35m)	89%	\$105M	10th XS (\$10m x \$95m) (Incumbent on 6th xs QS)	880%	85%
\$35M	2nd XS (\$10m x \$25m)	43%	\$95M	9th XS (\$10m x \$85m) (Incumbent on 7th xs; Dropped Down)	1057%	85%
\$25M	1st XS (\$5m x \$20m)	52%	\$85M	8th XS (\$10m x \$75m) (New Carrier)	1260%	82%
\$20M	Lead (\$10m x \$10m)	64%	\$75M	7th XS (\$10m x \$65m) (New Carrier)	199%	88%
\$10M	Buffer \$4m x \$6m Primary \$6m		\$65M	6th XS (\$10m x \$55m) (New Carrier)	241%	96%
			\$55M	5th XS (\$10m x \$45m) (Incumbent on 4th xs; moved up in tower)	254%	90%
			\$45M	4th XS (\$5m x \$40m) (New Carrier)	233%	89%
			\$40M	3rd XS (\$5m x \$35m) (Incumbent)	260%	75%
			\$35M	2nd XS (\$10m x \$25m) (New Carrier; Client 50% QS)	329%	141%
			\$25M	1st XS (\$5m x \$20m) (Incumbent)	30%	74%
			\$20M	Lead (\$10m x \$10m) (Incumbent)	-9%	52%
			\$10M	Buffer \$4m x \$6m (Incumbent) Primary \$6m (Incumbent)		

Why?

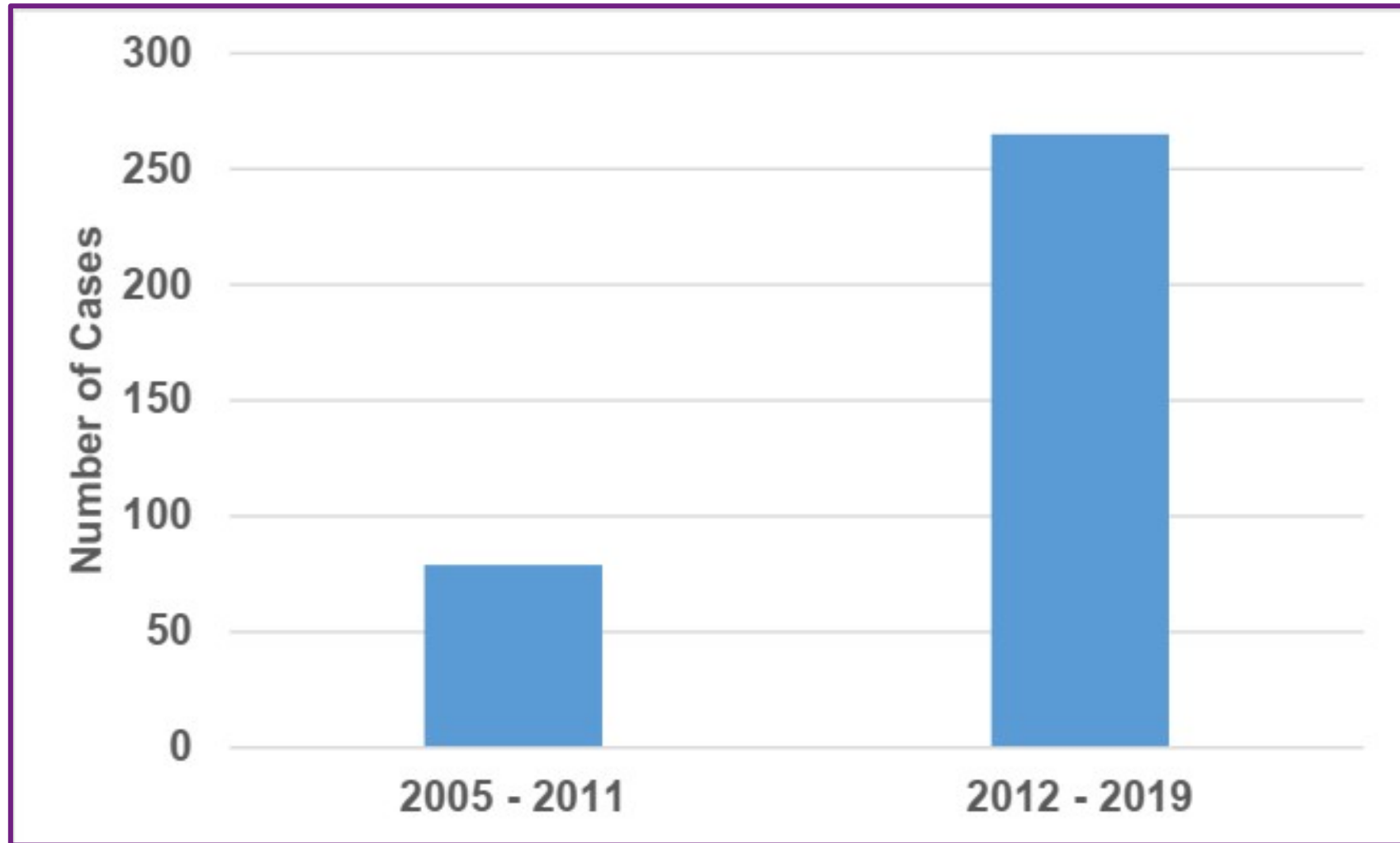
Legislative & Courtroom Trends

- **Between 2010 and 2019, at least:**
 - 47 verdicts or settlements >\$10M
 - 22 verdicts or settlements >\$40M
- **Of these > \$10M, 2/3rds are in**
- **4 states:**
 - California
 - Texas
 - Georgia
 - New Mexico
- **In 2019: Need to update**
 - 13 verdicts or settlements >\$10m
 - 5 verdicts or settlements >\$40m
 - (2-TX; 2-GA; 1-NM)
 - 2 verdicts or settlements >\$100M
 - (1-TX; 1-GA \$280M)

Social Inflation

- Numbness to high verdicts, in an age of mega earnings for celebrities, sports figures, and CEOs.
- Belief that corporations must be held accountable
- Social media create viral concerns – founded and unfounded

Number of Cases with Verdicts over \$1 Million



**Table 6. Rear-End Crashes and Mean Verdict Size
(Excluding Defense Verdicts)**

Issues Brought Against the Defendant	Mean Verdict	Sample Size
Rear End	\$5,050,527.26	31
Rear End & Ran a Red Light / Stop Sign	\$2,580,833.33	6
Rear End & Construction / Work Zone	\$3,443,750.00	4
Rear End & Failed to Slow Down	\$6,700,000.00	3
Rear End & Equipment / Maintenance Issue	\$1,225,000.00	2
Rear End & Speeding	\$3,015,000.00	2
Rear End, Construction / Work Zone & Failed to Slow Down	\$7,250,000.00	2

Table 2. Percent of Cases that Yielded a Plaintiff Verdict by the Issues Brought Against the Defendant in Court

Issue Brought Against the Defendant in Court	Percent of Plaintiff Verdicts²⁹	Number of Cases
HOS / Log Book	100.0%	26
Driver History	100.0%	14
Controlled Substance	100.0%	13
Left Scene of the Crash / Failed to Call 911	100.0%	8
Health Related Issue	100.0%	5
Sleep/Fatigue	91.7%	36
Driver on their Phone	91.7%	12
Rear End Collision	89.2%	66
Work Zone / Construction	88.9%	18
Unfavorable Hiring Practice	87.5%	24

The proliferation of nuclear verdicts in trucking has really gained steam over the last decade or so.

The Wall Street Journal recently published an article analyzing data from VerdictSearch that reports a more than a **300% increase in the frequency of \$20 million-plus verdicts in 2019** from the annual average from 2001 to 2009.

The trucking industry is no different – Alan Pershing, CEO of CaseMetrix, a database of court verdicts and settlements primarily in the southeast, says, “...**there are five times as many verdicts that are \$20 million-plus in the last five years compared to the prior five years (2010-2014).**”

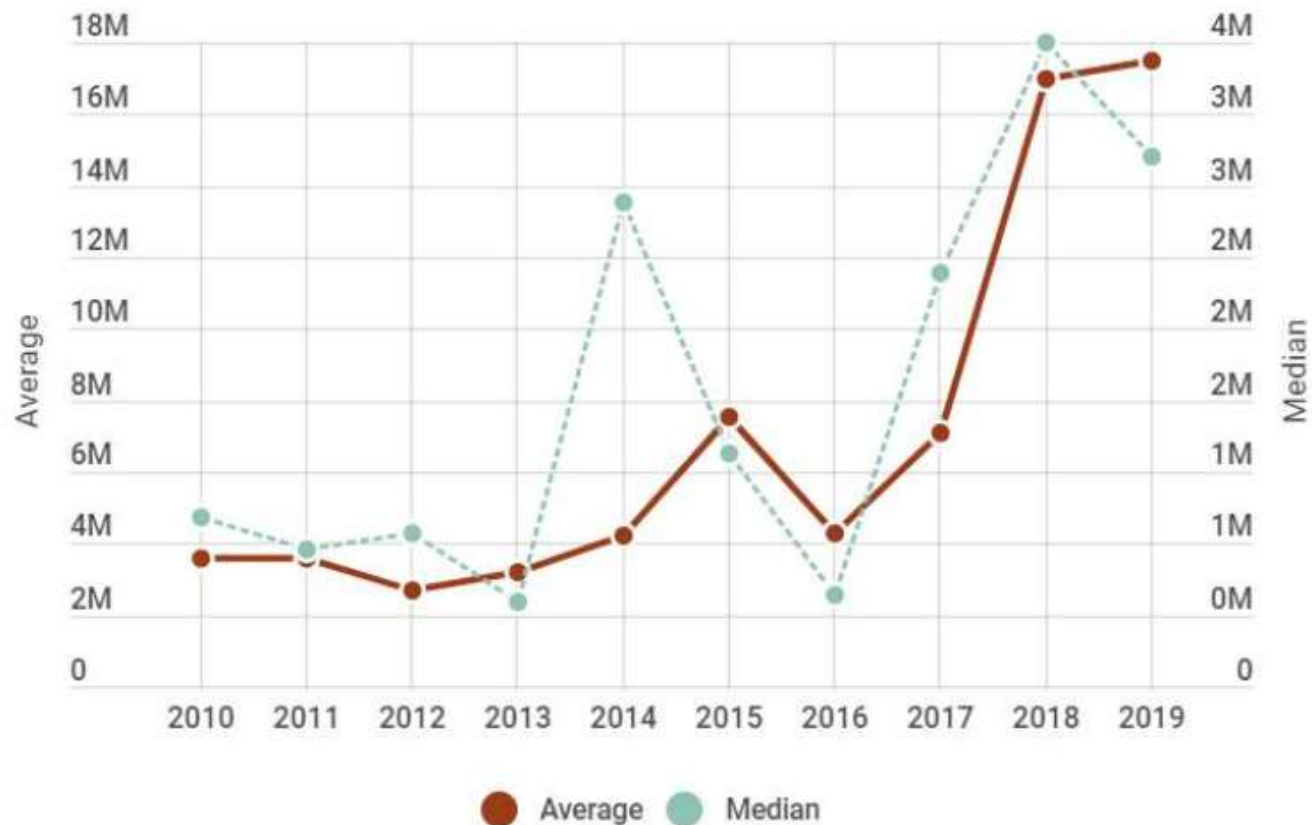
<https://www.freightwaves.com/news/are-nuclear-verdicts-out-of-control>

“The median verdicts have gone from \$23 million to \$44 million over the last 18 months.”

<https://www.wsj.com/articles/surging-truck-insurance-rates-hit-freight-operators-11578934834>

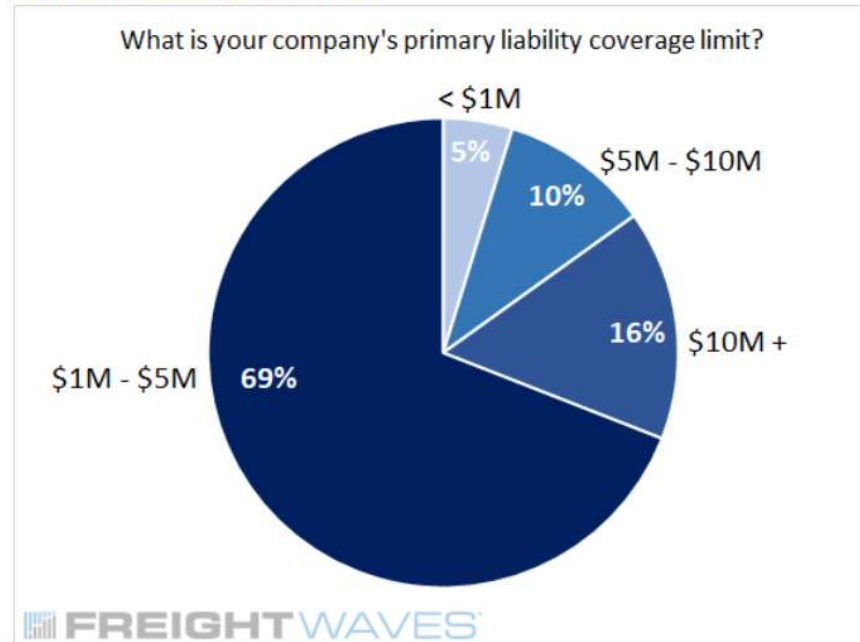


Figure 3 - Verdicts in Motor Vehicle Accidents Involving Trucking Companies



Source: CaseMetrix LLC, Alan Pershing, CEO and Co-Founder

Figure 12 - Survey Question Five



- Our legal defense contacts believe the vast majority of carriers carry at least a \$1 million primary liability coverage plan. Most of the carriers they have worked with in the past carried between \$3 - \$5 million.

The Dirty Five

The Dirty Five is a plaintiff strategy centering around five details that are often used to win over the minds of juries against trucking companies and win huge settlements.

The Dirty Five generally refer to the following:

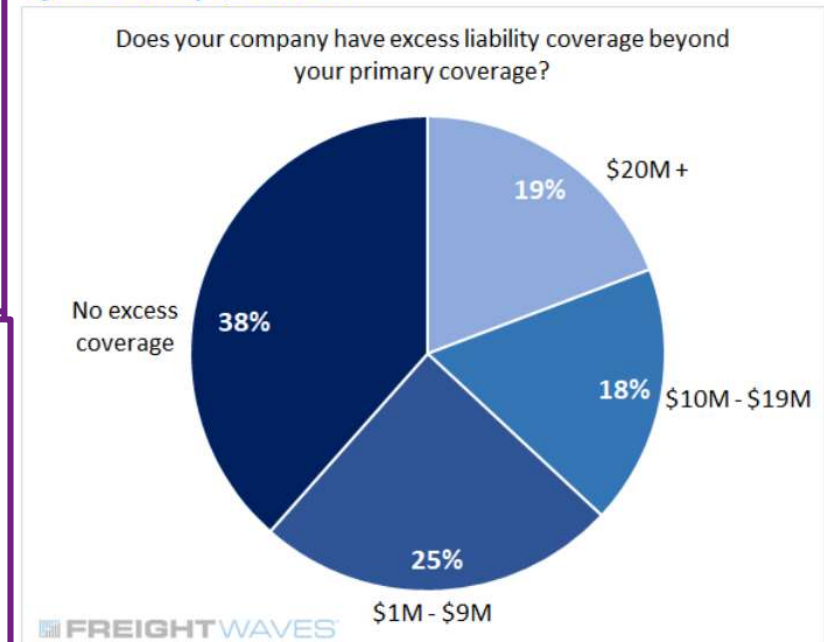
1. Fatigue.
2. Distracted driving.
3. Driving under the influence of drugs and alcohol.
4. Lack of equipment maintenance.
5. Inexperienced or improperly trained driver.

If a plaintiff attorney can effectively prove or demonstrate any of the above took place, the potential for a nuclear verdict grows significantly.

<https://s29755.pcdn.co/wp-content/uploads/2020/03/Are-Nuclear-Verdicts-Out-of-Control-January-10-2020-4.pdf>

FREIGHTWAVES FREIGHTINTEL RESEARCH

Figure 13 - Survey Question Six



- More than one-third of respondents do not carry excess liability coverage. Of those that do, the highest grouping is those carrying between \$1 and \$9 million.

Solution

Talk with us. We have options that other brokers don't have. What are they?

- **Access to markets**
- **Carrier/Underwriter relationships**
- **We know how to tell your story**
- **Data forecasting**
- **Analytics – we have over 100 of our own actuaries**
- **Relationships with resource partners**
- **Alternative risk financing (proprietary)**
- **Risk and Claims Consulting**

Property Coverage & Business Interruption

What is expected from the insurance carrier?

- That business take reasonable steps to prevent and minimize losses
- That you maintain all fire suppression systems per NFPA Standards
- That you implement and use a “Hot Work Permit System”
- That you notify the insurance carrier when there is impairment to your fire suppression system
- Inform them of any modifications to your business

Property Coverage & Business Interruption Exclusions

- 1. Insurance Policies Changed in the Aftermath of SARS**
- 2. Virus and Bacteria Losses Were Excluded**
- 3. Contingent Business Interruption Insurance Policies**
Contingent business interruption insurance (CBI) policies can include loss of commerce caused by disease or other related disasters
- 4. Flood and Earthquake Damages**
- 5. Equipment Breakdown**
- 6. Read Your Policy and Especially The Exclusions and Endorsements**
- 7. Carriers Winning All COVID-19 Lawsuits**

Property Coverage & Business Interruption

What can businesses do?

1. Vulnerability Analysis
 - Top five natural and man-made exposures
2. Create and develop Emergency Action Plans around those top identifiable exposures
3. Practice (Table Top)
4. Have broker perform an audit
5. Develop relationships with
 - Local EMS
 - Suppliers for
 - Emergency Generators
 - Storm clean up

Workers' Compensation

Drivers

- Static Position/Body Mechanics
- Ergonomic Issues
- Wellness/Stretching/Breaks

Vehicle Maintenance

- Fall Protection
- Caught In/Between
- Lockout/Blocking
- Confined Space (Tankers)
- Load Securement

Workers' Compensation

Injury/Illness Prevention

- Expectations/Accountability
- Training
 - New Hire
 - Regular/Annual
- PPE
- Make Accidents Important/Investigation
- Modified Duty
 - ReEMPloyAblity

Commercial Automobile Liability/Claim Defense

Driver

- Age/Health/Sleep Deprivation
- Proper DQ and vetting

Technology

- Reasonableness (*This is a big change*)
- Crash Prevention
- Collision Avoidance radar braking
- Automatic lane departure devices
- Dash Cams - Cloud

Liability/Claim Defense

Accountability

Don't Give Plaintiff's Attorney The Ammunition

- If you are using technology and your driver has internal violations, you must
 - Address/Coach/Discipline
 - Document
 - The same holds true for your Drivers Handbook/Safety Manual

Liability/Claim Defense

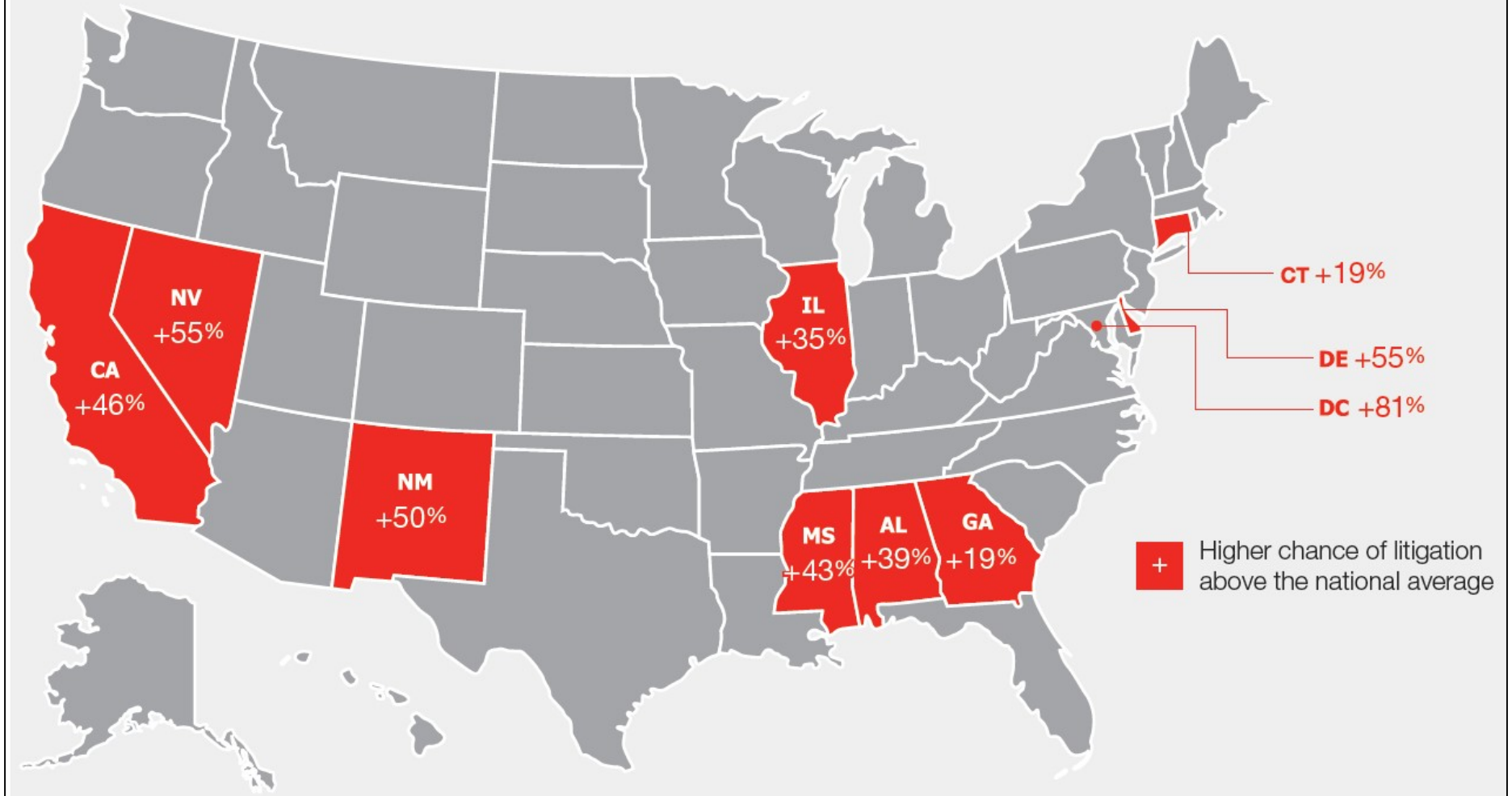
Rapid Response Teams

- Get there quick
- Preserve the scene/pictures/**drones**
- Make sure not to start vehicles, we can lose all information
 - ✓ Event Data Recorders HTEDR, ACM, ECM, ECU – Semi Tractors
 - ✓ EDR, Infotainment – passenger vehicle
- Attorney Preservation/Spoliation Letters

EEOC Statistics



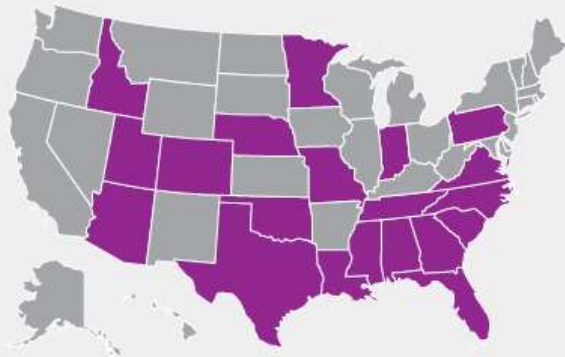
STATES WITH THE HIGHEST EMPLOYEE LAWSUIT RISK



State Laws Are In Place That Exceed Us Federal Recommendations

E-VERIFY

E-Verify requires employers to confirm through a national register that a worker is authorized to work in the United States.

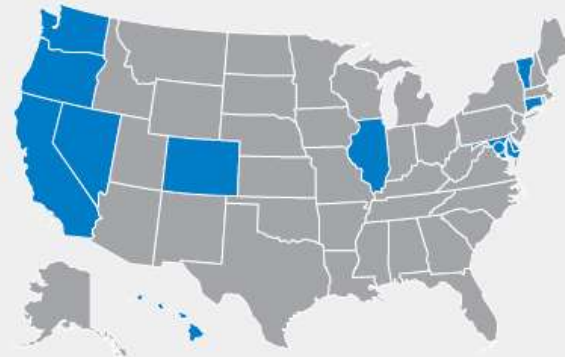


— AL
— AZ
— CO
— FL
— GA
— ID
— IN
— LA
— MN
— MO
— MS
— NC
— NE
— OK
— PA
— SC
— TN
— TX
— UT
— VA

Source: US Citizenship and Immigration Services, 2016

CREDIT CHECKS

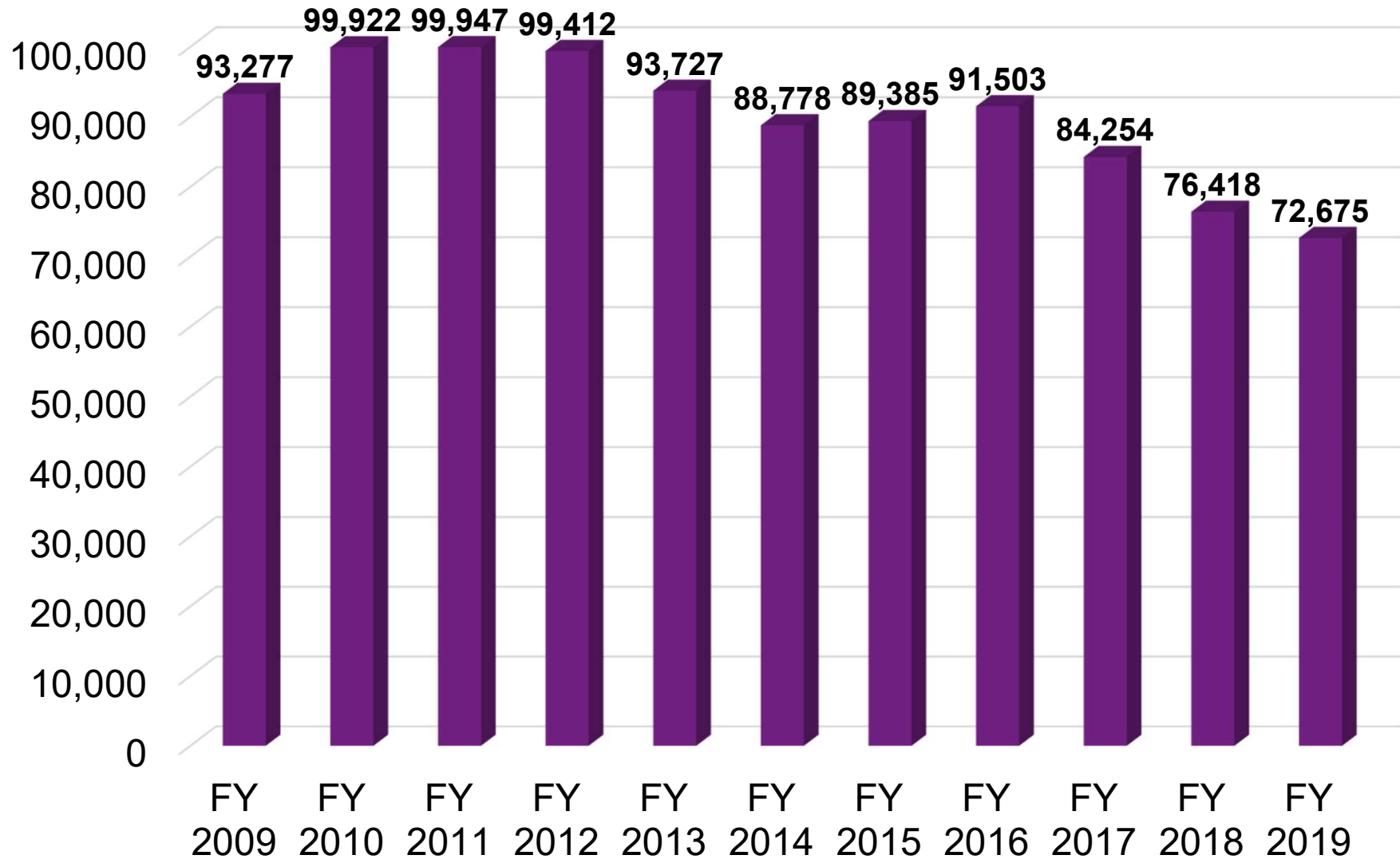
Employers are restricted from taking employment actions related to the credit history or credit report of an employee or job applicant.



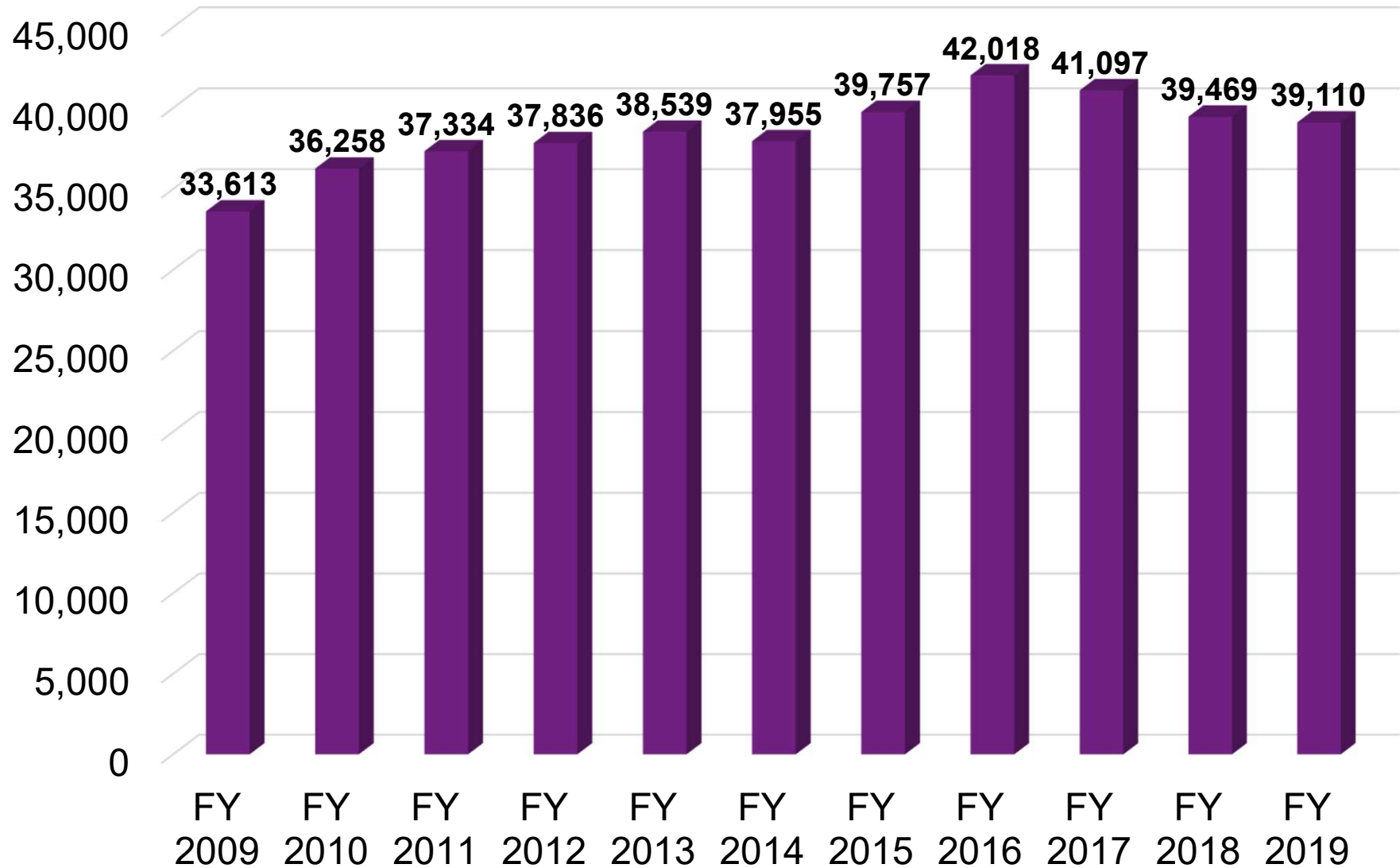
— CA
— CO
— CT
— DE
— DC
— HI
— IL
— MD
— NV
— OR
— VT
— WA

Source: Employment Screening Resources, States with Laws Regulating Credit Reports for Employment, 2017

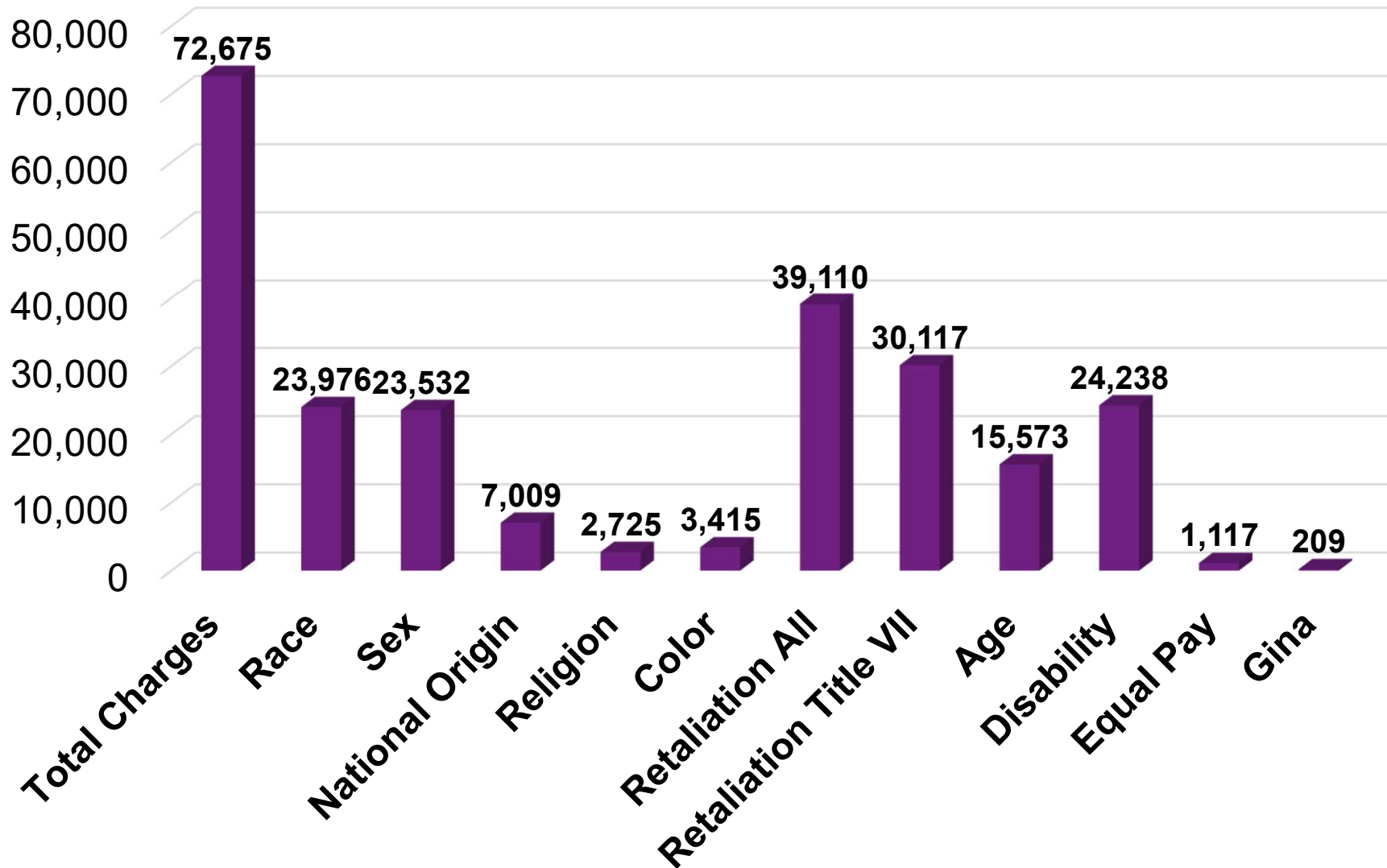
EEOC Total Charges 2009-2019



EEOC Total Retaliation All Statues Charges 2009-2019



EEOC Summary FY 2019



**Who In An Organization Is The Cause
For Most Employment Practices
Claims, Lawsuits, etc.?**

What Training Do They Get?

EPLI

Employment Practices Liability

What Does This Cover? Employment-related Claims Such As:

Wrongful Termination

Wage & hour

Defamation

Negligent violation of certain state or
federal employment laws

Harassment

Discrimination

Retaliation

Workplace Tort

The policies cover directors and officers, management personnel, and employees as insureds.

In short, EPLI coverage would generally be ***triggered*** by any allegation that a “***wrongful employment act***” was committed by an employer.

EPLI

Employment Practices Liability

Wrongful Termination – What is this?

Harassment - What is this? Are there different types?

Discrimination - What is this? Are there different types?


Retaliation - What is this? Are there different types?

Negligent violation of certain state or Workplace Tort

Federal employment laws

- **FMLA**
- **ADA and ADAAA**
- **ADEA**
- **FLSA**

Discrimination comes in many different forms:

Age (over age 40) 	Disability 	Equal Pay/ Compensation 	Genetic Information* 	Harassment 	National Origin 
Pregnancy 	Race/Color 	Religion 	Retaliation 	Sex 	Sexual Harassment 

How Much?

- The **average cost** to settle a discrimination claim is **\$125,000**
- The **median discrimination judgment** against an employer is about **\$200,000**
- The average cost to settle an employee lawsuit out of court is **\$75,000 (excluding legal fees)**
- The **average amount awarded to employees in jury trials** is **\$217,000**
- Employers win in less than 25% of Federal Court Cases
- **Average Deductible** with companies that had past claims ranges from **\$50,000 - \$250,000**
- All have **Prompt Reporting Clauses**

How Much?

Claims: The cost of claims and the duration of employment disputes are also rising. Here are some pertinent figures from Advisen research of EPLI underwriters:

- Defense costs regularly range from \$200,000-300,000
- Plaintiffs costs can amount to \$100,000
- Timeline for resolution of employment litigation: 18-24 months
- Timeline for dispute resolution: 12 months
- Multiple-claimant claims are on the rise: can incur higher insurance deductible

EPLI

Employment Practices Liability

One very important point to consider is that ***Employment Practices Liability Insurance provides coverage defense costs in addition to any settlement or judgment in the event of a covered claim.*** In other words, a claim does not need to be valid in order to trigger coverage; an ***EPLI policy will provide coverage for the cost to defend oneself in the event of all qualifying employment suits, including those that turn out to be frivolous.***

Coverage can also be ***endorsed (amended) to include coverage for alleged “Third Party Wrongful Act(s),”*** which are generally defined as ***allegations of discrimination or harassment toward some “third party” – i.e. a non-employee.*** In practice, this would generally apply to ***customers, vendors or subcontractors.***

Parting Thoughts

Cyber Coverage

- **One trucking company paid \$750K social engineering**
- **Large multi-state manufacturing company over \$3Mil social engineering**
 - Autonomous Vehicles
 - Social engineering and Ransomware

Workplace Violence

- Drivers
- Business

Social media

- Posting of accidents
- Harassment/Bullying
- NLRB Protected Concerted Activity Section 7



Please give your business card or email me if you would like a copy of this presentation.