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## Settling for Less? Organizational Determinants of Discrimination-Charge Outcomes

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C. Elizabeth Hirsh

Although more than 60,000 workers formally charge their employers with unlawful sex or race employment discrimination annually, fewer than one in five charges results in outcomes favorable to the complainant. Building on sociolegal and organizational theory, this study examines how employing organizations avoid unfavorable discrimination-charge outcomes. Using EEO-1 establishment reports matched to discrimination charge data provided by the Equal Employment Opportunity Commission, I assess the effect of employers' legal experience, resources, and indicators of legal compliance on the likelihood that complainants receive favorable charge outcomes, benefits, monetary settlements, and policy change mandates. In general, I find that legal experience, establishment size, and indicators of legal compliance insulate employers from unfavorable charge outcomes. However, in situations where employers are willing to settle claims, legally experienced establishments are more likely to pay monetary damages and receive mandates to change their workplace policies.

**I**n August 2004, the U.S. Equal Employment Opportunity Commission (EEOC) announced the resolution of a class-wide discrimination lawsuit against Home Depot in which several workers alleged unlawful treatment on the basis of sex, race, and national origin (U.S. Equal Employment Opportunity Commission 2005). The resolution mandated that Home Depot should pay \$5.5 million to current and former workers as well as appoint an equal employment opportunity (EEO) coordinator, provide antidiscrimination law training to managers, and remain under EEOC monitoring for more than two years. While this resolution afforded legal redress for those subjected to sex and race discrimination at

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Please direct correspondence to Elizabeth Hirsh, Cornell University, 323 Uris Hall, Ithaca, NY 14853; e-mail: ch347@cornell.edu. I thank Ron Edwards and Bliss Cartwright at the Equal Employment Opportunity Commission for providing access to their data. I appreciate the helpful comments of Barbara Reskin, Lowell Hargens, Paul Burstein, Becky Pettit, *LSR* reviewers, and *LSR* editor Carroll Seron on earlier drafts of this article. A previous version of this article was presented at the annual meetings of the American Sociological Association, Montreal, Canada, August 2006. Research support comes from the National Science Foundation (grant no. SES-0602496).

Home Depot, such far-reaching settlements are the exception rather than the norm for discrimination disputes. Of the 60,000 sex and race discrimination complaints filed annually with the EEOC—the federal agency that Congress created to receive, investigate, and resolve employment discrimination claims—fewer than one in five claims results in outcomes favorable to the complainant (U.S. Equal Employment Opportunity Commission 2004). Thus although EEO law enforcement provides redress for a few, most workers who file formal complaints of employment discrimination receive no remedy.

This mixed scorecard for antidiscrimination enforcement embodies a long-standing question for law and society scholarship regarding the capacity of the law to provide redress for its intended beneficiaries. Federal EEO laws give workers who perceive unlawful employment discrimination the right to file formal charges of discrimination with the federal EEOC or a local fair employment agency; indeed all workers must file with the EEOC or a local agency before initiating a private lawsuit. However, as EEOC enforcement statistics reveal, employers prevail in the vast majority of discrimination claims.

A host of factors are potentially responsible for this employer advantage: workers may bring erroneous complaints, employers may be especially adept at defending claims, or the increasingly subtle nature of discrimination in the post-civil rights era may complicate EEOC investigations. In an effort to understand how workers, employers, and regulatory agents negotiate discrimination disputes, this article explores the conditions that produce (or fail to produce) favorable outcomes for workers who file charges of sex or race discrimination under federal EEO laws. More specifically, I consider how defending organizations influence the charge resolution process to their advantage.

A long tradition in law and society research recognizes that legal resolutions do not unfold in a vacuum; rather, structural features of the law and regulated actors shape the legal process and its outcomes. For instance, in his classic article “Why the ‘Haves’ Come Out Ahead: Speculation on the Limits of Legal Change,” Galanter (1974) argues that because legal disputes often occur between parties with unequal resources and experience, the more powerful players can strategically manage their engagement with the legal system to maximize their long-term interests and minimize losses. In addition, new institutional theory in sociology draws attention to the myriad ways in which organizations respond to the law and regulatory efforts. For example, a convincing body of research demonstrates that organizations responded to civil rights law by adopting employment practices—such as EEO offices, affirmative action plans, and due process procedures—to demonstrate

their commitment to the law and the normative ideals that it embodies (Edelman 1990; Dobbin et al. 1993; Sutton & Dobbin 1996). More recently, institutional scholars have noted the capacity of such organizational structures to inform common understandings of what it means to comply with the law (Edelman 2005; Edelman et al. 1999; Nelson & Bridges 1999), such that organizational practices and routines geared toward managing diversity become tantamount to EEO legal compliance.

Building on both traditions, this article examines how employers shape discrimination-charge outcomes and the type of benefits that are awarded through charge settlements—including monetary benefits, nonmonetary benefits and mandated workplace policy changes. Drawing on law and society research, I examine the ways in which legal experience, resources, and know-how enable employers to strategically manage their engagement with the charge resolution process. From institutional theory, I consider how organizations emphasize EEO compliance strategies to demonstrate commitment to fair employment practices and antidiscrimination law. My central argument is that legal experience, resources, and compliance strategies enable employers to structure their engagement with the charge resolution process so as to minimize unfavorable charge outcomes. The data for this project come from a national random sample of private work establishments that I matched to discrimination charge data obtained from the EEOC. In addition, I spent several months observing charge processing at an EEOC district office. I incorporate insights from this experience to enrich my account of the EEOC's charge resolution process and how employers respond to allegations of discrimination.

I begin with a discussion of the legal basis for bringing charges of discrimination and the EEOC charge resolution process. Next, I discuss the role organizations play in shaping discrimination-charge outcomes. Here I elucidate theoretical expectations regarding the relationship between legal experience, organizational resources, EEO compliance, and discrimination-charge outcomes. Finally, I present a statistical analysis of the effect of organizational characteristics on the likelihood that complainants receive favorable charge outcomes and various types of relief—including monetary benefits, nonmonetary benefits, and workplace policy changes—among a sample of sex and race discrimination charges filed with the EEOC between 1991 and 2002. Although the EEO legal framework covers discrimination on the basis of several protected classes, including sex, race, color, national origin, religion, age, and disability status, my analysis focuses only on charges citing race, color, national origin, or sex discrimination.

## **EEO Law and Charge Resolution**

The most comprehensive EEO legislation is Title VII of the Civil Rights Act of 1964. Title VII bans the use of race, color, national origin, sex, and religion in employment decisions among work establishments with at least 15 employees. Originally, the law was intended to protect workers from race discrimination; however, during congressional debates, opponents of the law added sex as a way to thwart its passage, assuming that if legal protection was extended to white women, the legislation would fail (Graham 1990:134–9). To the surprise of opponents, the law passed even with the inclusion of sex and provides legal recourse for those discriminated against on the basis of sex, race, color, national origin, and religion. In 1978, Congress passed the Pregnancy Discrimination Act, which amended Title VII to include pregnancy discrimination as a form of unlawful sex discrimination.

Title VII also created the EEOC to receive, investigate, and conciliate workers' claims of discrimination. In filing claims with the EEOC, workers can cite discrimination involving a variety of employment issues. First, complainants can bring charges citing the use of sex, race, color, and national origin in the allocation of workplace rewards. Such charges may involve allegations of discrimination in hiring, promotion, termination, pay, or disputes concerning the terms and conditions of employment such as benefits or working hours. Second, workers can bring harassment claims. Harassment involves unwelcome conduct that is sufficiently enduring or severe to render the workplace a hostile environment. Although sexual harassment has been the subject of considerable public attention in recent years, complainants can cite harassment on the basis of any protected status (i.e., race, national origin, age, religion). Finally, complainants can bring charges of retaliation. Retaliation complaints do not involve claims of direct discrimination; rather, complainants allege retaliation if they suspect that their employers retaliated against them after they complained about discrimination against themselves or another worker.

While Title VII of the Civil Rights Act of 1964 is the foundation of antidiscrimination law and generates the majority of discrimination claims, the Equal Pay Act (EPA) of 1963 provides additional protection from pay discrimination for women. Under the EPA, women can bring charges against their employer alleging that their pay is not comparable to that of men working in the same capacity. Although women alleging pay discrimination have the option to file under either Title VII or the EPA, most complaints of pay discrimination are processed under Title VII. Because the EPA covers workplaces with at least two employees while the size criterion for Title VII is 15 employees, most EPA claims involve gender pay

disparities that occur in very small work establishments that fall under Title VII's statutory minimum.

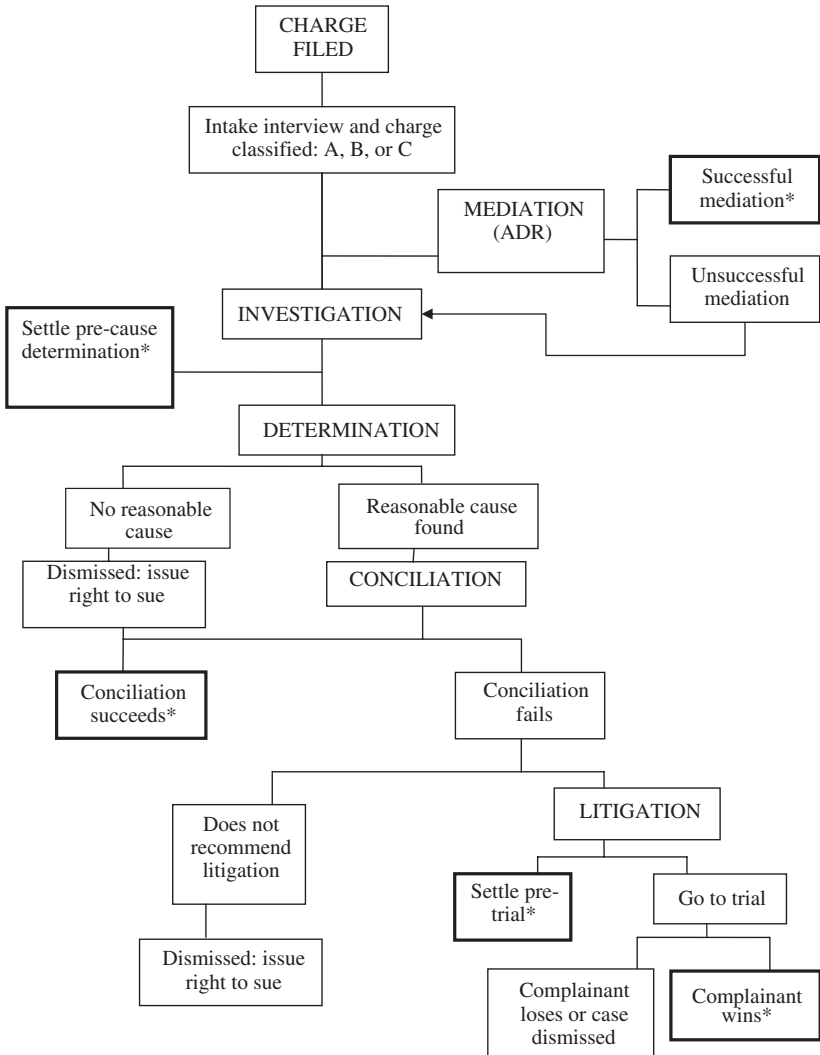
In addition to filing charges with the EEOC, workers can also bring claims of discrimination to local Federal Employment Protection Agencies (FEPAs), such as local civil rights commissions. However, all complaints that allege violation of federal law are co-filed with the EEOC, and FEPAs often transfer cases to the EEOC for processing. Among the EEOC charges that I analyze, roughly one-fifth were transferred from FEPAs. Title VII also provides access to the federal courts but requires that workers file with the EEOC or a FEPA to receive a "right-to-sue" letter before proceeding to court. Thus although the EEOC constitutes one step in a larger regulatory framework that involves local agencies as well as the federal courts, nearly all employment discrimination claims interact with the EEOC administrative process in some way.

Figure 1 provides a schematic of the EEOC's charge resolution process. When the EEOC receives a complaint of discrimination, the first step is an intake interview with the complainant. The purpose of this interview is twofold: to determine if the grievance falls under federal EEO law, and to assess the prima facie merit of the claim. If the claim is within federal jurisdiction, the EEOC intake officer writes a formal charge of discrimination and serves it on the accused employer.<sup>1</sup> Beginning in the late 1990s, the EEOC started a "Charge Handling Priority System" to prioritize cases at intake according to the presumed merit of the case. Under this system, roughly 19 percent of cases are classified "A," indicating that there is strong prima facie evidence to suggest that unlawful discrimination has occurred; 58 percent of cases are categorized "B," indicating that prima facie evidence of discrimination is moderate; and the remaining 23 percent of cases are classified "C," indicating that the prima facie case for discrimination is weak (unpublished analysis of the EEOC charge data; available upon request).

In the late 1990s, the EEOC also implemented an Alternative Dispute Resolution (ADR) program that offers some complainants and employers the option to informally mediate the charge before a formal investigation takes place. These mediations are distinct from formal settlements obtained by the EEOC in that a professional mediator rather than an EEOC investigator oversees the resolution. In addition, details of the resolution are not disclosed to EEOC personnel or to the public. Typically, the EEOC will extend

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<sup>1</sup> The EEOC will write a formal charge for any claim that falls under federal EEO law, even if the initial evidence is weak. Most claims that the EEOC turns away are due to jurisdictional issues. Unfortunately, EEOC data do not allow an accurate count of how many inquiries do not result in formal charges.



**Figure 1. The Charge Resolution Process.**

*Note:* \*Outcome favorable to complainant.

the ADR option to cases with moderate prima facie evidence of discrimination (i.e., those classified as “B” cases). If the parties come to an agreeable resolution in ADR, there is no further investigation and the case is closed. If the dispute is not resolved through ADR, the case is returned to EEOC personnel for investigation—along with all other cases not deemed appropriate for ADR.

During an investigation, EEOC investigators solicit information from both the complainant and the employer. Such information includes a position statement from the employer, which allows

employers the opportunity to describe their side of the story. In addition, investigators typically give the employer a “request for information” in which they ask the employer to provide information related to the claim, such as personnel records for the complainant as well as similarly situated employees, pay systems, statements from witnesses, and other relevant evidence. Investigators may also conduct phone interviews with managers, personnel officers, and other witnesses, and in some cases, they may conduct on-site visits to gather relevant evidence.

The intensity of investigations varies considerably across cases. At one end of the continuum are complainants who approach the EEOC to receive a default right-to-sue letter, rather than a formal investigation, so that they can proceed to court on their own. According to EEOC policy, complainants can request an immediate right-to-sue letter if they are facing a statute of limitations requiring that they act quickly in court. Under such conditions, the EEOC will waive the investigation and issue a right-to-sue, certifying that the case is sufficiently complex such that the Commission cannot conclude the investigation before the statute of limitations expires. While there are no data on the proportion of claims that result in default right-to-sue letters without an investigation, one lead EEOC investigator described these as infrequent and emphasized that even among those seeking a right-to-sue, most complainants and their attorneys want to know the employer’s position on the claim and will hold out for the EEOC investigative report before proceeding on their own.<sup>2</sup> At the other end of the continuum are cases that receive detailed investigations, which might entail phone interviews and on-site visits to solicit statements from coworkers, supervisors, and company leadership.

The processing category assigned at intake provides some indication of the depth of investigation. For instance, cases that are categorized as strong cases receive thorough investigations, while the weaker cases receive considerably less attention. Indeed the categorization system was introduced to enable investigators to concentrate their efforts on cases with stronger initial evidence of discrimination. Thus it is plausible to assume that roughly 20 percent of cases are identified as having strong *prima facie* evidence of discrimination (“A” cases) and receive thorough investigations, roughly 60 percent (“B” cases) receive moderate investigative attention, and the remaining 20 percent (“C” cases) may generate little more than a position statement from the employer.

Based on the evidence obtained through investigation, the EEOC then determines the merit of the claim. If investigators

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<sup>2</sup> This information is based on personal correspondence with a lead investigator at an EEOC district office.

determine that there is not reasonable cause to believe that unlawful discrimination did occur, the case is dismissed and the complainant then receives the right-to-sue letter. If investigators determine that there is reasonable cause to believe that the employer violated antidiscrimination law, investigators move to conciliate the case. According to EEOC aggregate charge data, investigators find reasonable cause of discrimination in only 5 to 10 percent of all cases.<sup>3</sup>

In particularly egregious instances of discrimination, a case may be moved directly to litigation after the determination of reasonable cause. But typically, conciliation follows a determination of reasonable cause. About one-third of cases that receive reasonable cause determinations are successfully conciliated, with both parties agreeing to a settlement. In the remaining two-thirds of cases, conciliation fails and the investigator must decide to either close the case and issue a right-to-sue letter or recommend litigation and transfer the case to the EEOC legal unit.

Less than 1 percent of all claims filed with the EEOC reach the legal unit. Among those that do, the decision to litigate is at the discretion of EEOC attorneys. If the legal unit decides to litigate, the EEOC becomes the plaintiff and takes control of the case. Attorneys on both sides begin the discovery of information process. At the end of discovery, either party can initiate a request for summary judgment, which enables the courts to resolve cases where the facts indicate that one party is entitled to judgment. This is more commonly used as a defense tactic by employers. If an employer brings a summary judgment request, the judge examines the strength of the EEOC's case and determines whether the facts of the case warrant a trial. If the judge grants an employer's request for summary judgment, the ruling indicates that the EEOC does not have sufficient evidence to continue with the lawsuit and the case is dismissed—an agreeable outcome for the employer. If a defendant's request for summary judgment is denied, the case proceeds to court.

Given that the EEOC litigates few cases, federal regulation of race and sex discrimination is best characterized as an administrative rather than a formal legal process. Formal legal actors, such as attorneys and the courts, are involved in a minority of cases; these include the few hundred that the EEOC litigates each year as well as an estimated 10,000 sex or race discrimination cases that individuals may litigate privately after exhausting the EEOC process.<sup>4</sup>

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<sup>3</sup> While cases categorized as having strong prima facie evidence at intake (i.e., "A" cases) are more likely to receive reasonable-cause determinations, reasonable-cause decisions do not necessarily correspond to intake categorizations.

<sup>4</sup> While specific data on the number of sex and race discrimination lawsuits filed annually by private parties in federal district court are unavailable, data from the Administrative Office of the U.S. Courts suggest that in the late 1990s and early 2000s, roughly

The remaining 50,000 annual claims are resolved in the context of the EEOC administrative process.

It is important to recognize that a case can settle at any point during this process if both parties agree to the terms of a settlement. Although the EEOC manages the resolution process and defines specific criteria necessary for settlement, the agency does not unilaterally issue resolutions and does not represent the interests of the complainant.<sup>5</sup> Rather, in the majority of cases, the actors involved in the dispute determine when and how resolutions occur. In some circumstances, parties reach a settlement during the initial investigation, while in other cases, parties settle after the EEOC makes a formal decision regarding the merit of the case.

As this discussion demonstrates, charge resolution is a complex process in which social actors encounter a formal administrative system but remain very much involved in the evolution of the outcome. Because Title VII did not explicitly define what constitutes discrimination (see Blumrosen 1993; Graham 1990), the law itself provides little guidance for EEOC personnel to define and identify discrimination. As a result, EEOC investigators are left with the onerous task of distinguishing lawful from unlawful behavior. While this is a difficulty faced by all regulatory agents, for EEO law enforcement, the situation is complicated by the fact that most discrimination in the post-civil rights era is subtle, concealed in structures and practices that are not blatantly discriminatory (Bisom-Rapp 1999; Sturm 2001). This diffuse nature of contemporary discrimination, coupled with the ambiguity of EEO law generally, forces investigators to make decisions regarding the merit of cases without clear legal instruction or empirical evidence. Under these conditions, the parties involved in the case have considerable opportunity to manipulate the administrative process and its outcomes.

In addition, because the parties involved can settle the claim at any time, charge outcomes are not isolated events at which point the complainant either prevails or loses. Outcomes emerge out of bargaining, negotiation, and compromise—blurring the lines between winning and losing. For instance, a complainant may receive some compensation but never get a definitive statement (i.e., a reasonable-cause finding) that the alleged discrimination occurred. Alternatively, the complainant may receive a favorable decision with respect to the merit of the claim but walk away with no monetary settlement. For example, in a racial harassment lawsuit filed

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20,000 employment discrimination cases were filed in district court annually (Nielson & Nelson 2005). Assuming that private lawsuits are similar to EEOC charges in terms of bases of discrimination, about 10,000 lawsuits would involve race or sex discrimination.

<sup>5</sup> The only exception is if the case is litigated.

against North Carolina's transportation department in 2005, while a jury ruled that workplace conditions did constitute a racially hostile environment, they did not award the plaintiffs the monetary damages they had sought. Because the jury validated their claims, plaintiffs considered this decision a victory. However, the employer could also view the decision favorably, as the employing organization escaped a potentially costly payout (Lillard 2005). As this example illustrates, winning and losing can take on different meanings depending on the actors' immediate and long-term incentives for engaging with the law (Burstein & Monaghan 1986; Galanter 1974).

### **The Organizational Construction of Charge Resolution**

Taken together, the ambiguous nature of EEO law and the EEOC administrative process as well as the emergent nature of charge resolutions provide considerable latitude for the actors involved with charge resolutions to strategically structure their interaction with the law. As Edelman et al. note, "[t]he more ambiguous and politically contested the law, the more open it is to social construction" (1999:407). Thus the structure of the charge resolution process allows the actors involved to participate in how charges are resolved and with what outcomes. In the discussion that follows, I suggest three mechanisms by which employing organizations can influence the charge resolution process and its outcomes.

#### **Legal Experience**

First, employing organizations bring prior legal experience to the charge resolution process and can exploit this experience in dealing with discrimination disputes. As Galanter (1974) observes, actors who repeatedly interact with the law—repeat players—enjoy the advantages afforded by legal experience in comparison to actors who utilize the law on rare occasions—the one-shotters. Formally, the legal system is neutral with respect to these types of parties, but informally repeat players enjoy certain advantages. Repeat players are larger units with greater experience and resources. Having done it before, repeat players enjoy specialized knowledge and institutional memory, which allows them to strategically interact with the legal process. On the other hand, one-shotters are smaller, inexperienced actors, usually individuals for whom the stakes of any single case are high. An extensive literature affirms Galanter's thesis. For example, Wheeler and his colleagues (1987:428) found employers to have an edge in disputes with employees in a sample of state Supreme Court cases; Albiston (2003)

uncovers a similar employer advantage among published cases involving the Family Medical Leave Act.

In the context of discrimination-charge adjudication, employers are much more likely than the average employee to have prior experience with the legal system in general and the charge resolution process in particular. Drawing on this experience, employers can tailor their response to claims depending on the nature of the dispute, the strength of available evidence, and how the adjudication process unfolds. This may entail settling particularly strong cases early in the administrative process to avoid a disruptive investigation or subsequent legal battle. An EEOC settlement is often preferable to fighting an ongoing dispute that may consume organizational resources and tarnish the company's public record. Agreeing to settle may also give employers more leverage in determining the terms of the settlement. For instance, complainants and EEOC officials may view an organization that is willing to settle as cooperative and thus soften their demands in negotiations. Alternatively, legal experience may afford employers the prudence to stall the administrative process to their advantage, especially in situations where the evidence is inconclusive. By delaying the production of relevant documents and delaying discussions of settlement, employers can exhaust complainants, persuading them to settle for less.

Complainants, on the other hand, typify the one-shotters. For most complainants, the filing of a discrimination claim is a rare and reluctant encounter with the legal process. As studies of claiming behavior suggest, aggrieved workers hesitate to raise claims because doing so reifies their status as victims, jeopardizes their jobs, and in the end is not worth the legal battle (Albiston 2005; Bumiller 1988; Marshall 2005). When workers do take legal action, to the extent that they endure the psychic costs of initiating a dispute and mobilizing the regulatory apparatus, the stakes are high.

### **Organizational Resources**

In addition to the legal experience edge, employers enjoy greater resources and exclusive access to key evidence relevant to workplace discrimination claims, as compared to the typical worker. While discrimination charges are filed against individual work establishments, many establishments are subsidiaries of larger firms and thus can draw on the resources of their parent organization when faced with a charge. In addition, as Bisom-Rapp (1999:990) notes, all documents relevant to liability are the property of the establishment. Aside from an initial statement from the complainant, the EEOC obtains most evidence related to the claim from the employer. This includes personnel files, pay records, and

statements from supervisors and other employees who have information pertinent to the claim. Establishments familiar with the charge resolution process can strategically manage how they disclose such evidence to EEOC investigators. Indeed, in recent years organizations have increasingly established internal legal or human resource units whose primary responsibilities include dealing with employee disputes (see Edelman & Suchman 1999; Heinz et al. 1998; Westin & Feliu 1988). The presence of such specialized legal units and actors allows organizations to draw on pre-established routines to manage the uncertainty associated with accusations of discrimination and ensures calculated responses to claims.

### **Demonstrating Compliance**

Finally, organizations may shape individual charge resolutions by demonstrating compliance with EEO law more generally. First, employers may demonstrate compliance with EEO law by drawing attention to workplace structures and procedures that are consistent with fair employment practice. An extensive literature documents the extent to which work organizations have adopted EEO policies and practices, such as formal grievance procedures, an EEO office, affirmative action plans, and internal labor markets in the wake of antidiscrimination legislation (Edelman 1990, 1992; Dobbin et al. 1993; Sutton & Dobbin 1996). In resolving discrimination charges, employers may emphasize these fair employment structures to underscore the fact that the company takes EEO legislation seriously and to signal to EEOC administrators as well as the aggrieved worker that the issue raised in the claim is an aberration rather than a systematic workplace issue. For instance, as Schultz (1990) reports, in Title VII cases challenging sex segregation, employers referenced affirmative action plans, training programs, and sex-specific recruitment efforts as evidence of their efforts to comply with EEO law.

In theory, the presence of EEO-related policies should minimize discrimination in the workplace; however, research evidence is mixed regarding whether and which policies do. For instance, Kalev et al. (2006:603–4) find that the presence of affirmative action plans, diversity committees, and diversity staff are related to increases in the representation of women and blacks among managers, yet diversity training programs and diversity evaluations are largely ineffective for increasing managerial diversity. Edelman and Petterson (1999:121) conclude that EEO structures, including affirmative action plans, have had little impact on substantive gains for women and minorities, and Hirsh and Kornrich (2008) report that establishments subject to affirmative action requirements are just as likely to receive discrimination charges as establishments

without such requirements. Thus although EEO structures do not guarantee sex- and race-neutral practices, to the extent that such structures are consistent with the normative aim of antidiscrimination law, they may provide leverage in resolving discrimination claims by signaling an organizational commitment to equal opportunity.

Second, employers may demonstrate legal compliance by making reference to empirical indicators of gender and race equality, such as the presence of women or minorities in the workplace or among high-level positions. For example, in a charge alleging national origin discrimination that I investigated while observing charge processing at a district EEOC office, an employer provided a list of all employees' national origins and job titles along with a letter emphasizing the extent to which persons of diverse national origins were represented throughout the occupational hierarchy. Indeed, the EEOC takes such information into consideration when determining the merit of workers' claims, as occupational integration, especially across hierarchical positions, is suggestive of sex- and race-neutral employment practices. Such evidence of a diverse workforce may cast doubt on complainants' claims of discrimination and employers' discriminatory intent. In short, emphasizing compliance—by citing the presence of employment structures geared toward managing diversity as well as demonstrating evidence of a diverse workforce—can provide a powerful means by which organizations mediate the charge resolution process and minimize the penalties associated with noncompliance.

## Hypotheses

While organizations will generally have more legal experience and resources than the typical worker, not all work organizations are equally equipped to manage the charge resolution process. Establishments will vary in their experience with the law and the EEO administrative process. For instance, as I observed at the EEOC district office, employers' formal responses to discrimination charges can vary from a handwritten note provided by a small employer to professionally prepared legal documents submitted by in-house counsel. Such variation in employers' responses will in turn produce variation in the extent to which employers can leverage legal experience, organizational resources, and EEO compliance indicators to resolve discrimination charges with minimal costs. This discussion suggests four hypotheses regarding the influence of organizational characteristics on charge outcomes and settlements.

*Hypothesis 1: Establishments with previous experience with the charge resolution process should be less likely to experience unfavorable charge outcomes. Among cases that settle, establishments with prior experience with charge resolutions should be better equipped to manage the strategic nature of negotiation and thus less likely to incur extensive damages.*

*Hypothesis 2: Drawing on their resources, larger establishments and those that are subsidiaries of larger organizations should be less likely to experience complainant-favorable charge outcomes and, among cases that settle, extensive damages.*

*Hypothesis 3: Establishments that are subject to affirmative action requirements should be more effective in demonstrating compliance with EEO law and thus less likely to experience unfavorable charge outcomes and, among cases that settle, extensive damages.*

*Hypothesis 4: Establishments that are sex- and race-integrated should be more effective in demonstrating compliance with EEO law and thus less likely to experience unfavorable charge outcomes and, among charges that settle, extensive damages.*

## **Administrative Factors**

The accused organization is not the only social institution that can affect the interpretation of EEO violations and the enforcement of law. The regulatory agency responsible for administering the law, in this case the EEOC, can also affect the application of the law and its outcomes. A recent study by Lancaster et al. (2006) thoroughly documents how administrative properties of the EEOC affect charge outcomes net of the legal characteristics of the claim. While the primary purpose of the current study is to assess the influence of employing organizations on charge outcomes, following Lancaster and colleagues, I take into account several administrative factors that may influence charge resolution.

First, different kinds of violations may be treated differently during the investigative and administrative process. The EEOC's charge summary statistics indicate that sex charges are more likely to result in complainant-favorable outcomes as compared to charges involving race discrimination (U.S. Equal Employment Opportunity Commission 2004). Thus I expect charges alleging sex discrimination to obtain more favorable outcomes as compared to those citing race or national origin discrimination. In addition, the employment issue raised in the claim may affect the available evidence, the parties' stake in resolving the claim, and the final outcome. For instance, cases alleging discrimination in hiring may be more difficult for complainants to win because job applicants have little access to information regarding the workplace and its personnel practices as compared to cases involving promotion or

termination, where employees presumably have some knowledge of their current employer's practices.

Second, the scope of the potential infraction may affect its outcome. While all claims filed with the EEOC pertain to a single worker, occasionally the EEOC will group individual claims into class action cases. This grouping may occur at the point of filing if several workers approach the EEOC together, or the EEOC may later designate a group of individually filed claims as a class after identifying a systematic grievance against a single employer. Either way, to the extent that class charges indicate that the alleged pattern of discrimination is systematic and not the result of an isolated misunderstanding, charges involved in class action cases may be more likely to result in favorable outcomes for complainants. Indeed, in analyzing the outcome of sex discrimination lawsuits, Burstein (1989:658) found that plaintiffs who were a part of larger class action suits were more likely to win than individual plaintiffs. Thus to the extent that class filings lend evidentiary support to complainants, class action claims should be more likely to produce complainant-favorable outcomes.

Third, the application of the law may vary across temporal and geographical regulatory environments. The EEOC's annual budget determines case loads and the amount of time investigators can dedicate to each case. Moreover, variation in administrative agendas and investigative techniques across EEOC districts may produce variation in charge outcomes. Indeed, the Lancaster et al. study (2006) found that the state in which the charge was filed accounted for considerable variation in charge outcomes.

Given these potential effects of administrative context, I include controls for the basis of the charge (sex or race), the complainant's race, the employment issue involved in the claim (i.e., hiring, promotion, termination, pay, harassment, or other issues), class action charges, the EEOC's annual budget, and the EEOC office where the charge was filed in all analyses of charge outcomes.

## Summary

In sum, building on law-and-society as well as institutional perspectives, I suggest three ways by which organizations can shape the charge resolution. First, organizations can draw on their legal experience to negotiate charge outcomes that are consistent with their long-term interests. Second, organizations can shape the charge resolution process by leveraging organizational resources and controlling evidence relevant to the claim. Third, organizations can emphasize indicators of EEO compliance to cast doubt on complainants' allegations of EEO violations. Next, I test these

hypotheses by analyzing the outcomes of roughly 11,000 race and sex discrimination charges filed against mid- to large-sized work establishments from 1991 to 2002.

## **Data and Methods**

To monitor organizations' compliance with federal antidiscrimination laws, the EEOC requires firms to submit EEO-1 forms documenting the gender and racial composition of their workforce. All private work establishments with at least 100 employees and all federal contractors with at least 50 employees are required to file annual EEO-1 reports. These reports cover more than 40 percent of persons employed in the private sector nationally (Robinson et al. 2005:16). The EEOC also collects data describing the basis and outcome of each discrimination charge it receives as well as charges filed with FEPAs.<sup>6</sup> These data include characteristics of the charge itself and all actions taken by the EEOC while resolving the charge, including the final resolution and any benefits awarded.

To construct a dataset for this analysis, I drew a national random sample of 2,166 work establishments, with probability for inclusion proportional to establishment size, from the EEO-1 national database for 2002. This constitutes a roughly 1 percent sample of all work establishments that filed EEO-1 reports in 2002. I then extracted retrospective EEO-1 reports dating back to 1990 for each establishment included in the 2002 sample. Finally, I matched the EEO-1 sample to all charges of alleged sex or race/national origin discrimination filed against each establishment from 1990 to 2002.

During this period, workers filed 11,471 charges of sex or race/national origin employment discrimination against the 2,166 establishments included in my sample. Of the 11,471 charges, I dropped 167 charges that were not resolved by 2002, and 46 charges that were missing data on key variables.<sup>7</sup> In addition, since I am interested in how organizations' prior experience with the charge resolution process affects charge outcomes, I did not analyze charges filed in 1990 because I lacked information on charge filings prior to 1990. Thus I dropped the 448 charge filings from 1990. Analyses are based on the 10,810 charges filed against

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<sup>6</sup> Every charge that alleges violation of federal EEO law is sourced in the EEOC's charge database regardless of whether the charge was received and processed by the EEOC or a FEPA.

<sup>7</sup> The majority of claims that were not resolved by 2002 were complaints filed in 2001 or 2002.

establishments included in my sample from 1991 to 2002 for which there are complete data.

### Dependent Variables

Because charge resolutions can take many forms, I employ four dependent variables to capture various types of charge outcomes and settlements. First, I investigate the determinants of charges that result in *any* outcome favorable to the complainant. Given the complex nature of the charge resolution process and the myriad ways in which resolutions can occur, delineating complainant-favorable and unfavorable outcomes is difficult. I identify charge outcomes as favorable to complainants if they result in benefits for the complainant and/or successful conciliations.<sup>8</sup> Specifically, I employ a binary variable coded 1 if (1) the case is settled with benefits—including monetary benefits or a positive change in employment conditions, such as reinstatement, promotion, or workplace policy changes; (2) the case is withdrawn by the complainant after benefits are awarded;<sup>9</sup> or (3) the case is successfully conciliated. I code this variable 0 otherwise.

In addition to the final outcome of the case, I am also interested in the type of relief complainants obtain through settlements. To identify the conditions under which complainants receive benefits, my second dependent variable is a binary measure of whether a resolution results in any nonmonetary benefit for the complainant. Nonmonetary benefits include reinstatement, a promotion, a neutral reference, or a favorable change in employment terms, such as a desirable work schedule. Third, to isolate the financial penalties associated with EEO violations, my third dependent variable is a measure of whether a charge resolution provides any monetary relief to the complainant. Again, I use a binary variable to identify cases that involve either direct (i.e., cash) or indirect (i.e., back pay) monetary benefits for the complainant. Finally, some charge resolutions benefit not only the aggrieved party but the entire workforce by mandating that the accused employer change workplace policies in the direction sought by EEO law. For

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<sup>8</sup> My coding of complainant-favorable outcomes is consistent with the EEOC's definition of outcomes favorable to the complainant, with one important exception. The EEOC considers unsuccessfully conciliated charges as favorable to the complainant because all conciliations entail a meritorious finding with regard to complainants' allegations (U.S. Equal Employment Opportunity Commission 2007). However because unsuccessful conciliations imply that the complainant did not receive an agreeable resolution, I do not code these as favorable to the complainant.

<sup>9</sup> This may occur when an employer offers the complainant benefits shortly after receiving the charge and the complainant then withdraws the charge. For instance, if a complainant files a charge of discrimination in promotion and the employer then promotes the worker, the complainant may withdraw the charge.

**Table 1.** Descriptive Statistics

Measure	Mean	Std. Dev.
<i>Dependent Variables</i>		
Complainant-favorable outcome (among all cases, $N = 10,810$ )	0.14	0.35
Nonmonetary benefits (among cases settled, $N = 1,535$ )	0.45	0.50
Monetary benefits (among cases settled, $N = 1,535$ )	0.66	0.47
Policy change (among cases settled, $N = 1,535$ )	0.07	0.26
<i>Independent Variables</i>		
Number prior charges	29.69	58.52
Establishment size (log)	7.44	1.34
Parent size (log)	9.88	1.80
Federal contractor	0.61	0.49
Proportion female employees	0.45	0.24
Sex segregation, $D$	0.33	0.16
Proportion minority employees	0.27	0.19
Race segregation, $D$	0.26	0.13
Hire	0.06	0.24
Promote	0.18	0.38
Terms and conditions	0.02	0.13
Pay	0.07	0.26
Harassment	0.29	0.46
Other issue	0.14	0.35
Terminate (referent)	0.49	0.50
Sex charge	0.39	0.49
Race charge (referent)	0.73	0.45
Black	0.57	0.50
Asian	0.03	0.18
Other nonwhite	0.13	0.33
White (referent)	0.23	0.41
Class action	0.04	0.20
EEOC budget	2,805.73	173.31
EEOC district office*	—	—
Years observed since 1990	6.72	3.41
$N$ (total cases)	10,810	

\*The confidentiality agreement with the EEOC disallows presenting descriptive statistics for the EEOC district office.

instance, resolutions can mandate that employers institute affirmative action plans, hire an EEO coordinator, formally post job openings, or revamp pay systems. Thus my fourth dependent variable is a binary measure coded 1 if the charge resolution involves a mandated change in workplace policy for the accused employer and coded 0 otherwise. Table 1 provides descriptive statistics for all dependent and independent variables.

### Independent Variables

Theoretically, I am interested in the extent to which employing organizations leverage their legal experience and resources to influence charge outcomes. To assess the effect of employers' experience with the charge resolution process, I employ a measure of the number of charges filed against the establishment in previous years. I calculate this measure by summing the number of charges filed against each establishment since 1990. This measure includes all previous charges filed against each establishment contained in

the EEOC database since 1990. However, because the data are longitudinal, the number of years observed since 1990 will vary depending on when the charge was filed. For instance, for charges filed in 1991, data on prior charges will cover one year, while for charges filed in 2002, data on prior charges will cover 12 years. To account for such variation, I include a control variable indicating the number of years observed since 1990.<sup>10</sup>

Next, I employ two measures to assess organizational resources. To the extent that larger establishments possess greater resources than smaller establishments, my first measure is the total number of employees (full- and part-time) at each establishment. And because most establishments in my sample (90 percent) are subsidiaries of larger organizations and can presumably draw on the resources of their parent organization when faced with legal claims, I also include a measure of the total number of workers employed by the parent organization.<sup>11</sup>

In addition to legal experience and size, evidence of compliance with EEO law may affect the likelihood that establishments receive unfavorable charge outcomes. To investigate the effect of EEO-related policies on charge outcomes, I use a binary variable to identify establishments that hold federal contracts and are thus subject to affirmative action requirements enforced by the Office of Federal Contract Compliance (OFCCP).<sup>12</sup> To assess the influence of substantive indicators of EEO compliance, I employ four measures of the extent to which women and racial minorities are represented in the workplace and across job levels. To measure the presence of women and minorities in the workplace, I include measures of the proportion of female employees in the establishment and the proportion of employees who are members of racial minority groups, including African Americans, Asian Americans, and Hispanics. Next, to assess the extent to which these groups are represented across job levels, I include measures of sex- and race-occupational segregation. The index of dissimilarity ( $D$ ) measures the extent of sex- and race-occupational segregation in the workplace (Massey & Denton 1988:284) by summarizing how similarly

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<sup>10</sup> To examine whether the left-censored nature of this measure may be picking up on linear effects in the data, I also estimated models using a measure of experience with the charge resolution process that included only charges filed in the *previous* year. Results (available upon request) were similar to those presented here.

<sup>11</sup> In regression models, I employ a log transformation of establishment size and parent size.

<sup>12</sup> While this measure identifies establishments that presumably have affirmative action programs, I lack information on additional EEO structures, such as the presence of diversity staff, offices, and training programs. To more fully address the impact of EEO structures on discrimination-charge outcomes, I would ideally have information on these additional structures.

two groups are distributed across occupational categories within each establishment. For sex segregation, I calculate the dissimilarity between female and male workers across nine broad occupational categories, and for race segregation, I calculate the dissimilarity index between whites and nonwhites.<sup>13</sup>

Finally, I include several control variables to take into account administrative factors and characteristics of charges that might influence outcomes. First, because EEOC enforcement statistics suggest that charge processing and resolutions differ for sex and race charges, I include a binary variable identifying charges citing sex discrimination. Second, to control for the race of complainants, I include dummy variables identifying charges filed by blacks, Asians, and other nonwhites, using charges filed by whites as the referent category.<sup>14</sup> Third, since standards of proof and available evidence differ for charges involving various employment issues, I include a series of dummy variables that identify charges citing discrimination in hiring, promotion, pay, terms and conditions of employment, harassment, and other issues; charges involving termination are the referent category. Fourth, to the extent that class action claims imply evidence of systematic discrimination, I include a dummy variable identifying charges that the EEOC has designated as part of a class action case. Fifth, because these data are longitudinal and the EEOC's budget varies from year to year, I include a measure of the EEOC's annual budget (in millions of dollars) in the year the charge was filed. Finally, to account for variation in administrative processes across EEOC local offices, I include a set of 18 dummy variables identifying the EEOC district office where the charge was originally filed.<sup>15</sup> However, due to the confidential nature of these data, I do not report model estimates for the EEOC district office measures.<sup>16</sup>

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<sup>13</sup> The nine broad occupational categories include officials and managers, professionals, technicians, sales workers, office and clerical, craft workers, operatives, laborers, and service workers.

<sup>14</sup> While the sex of the complainant may also be important for charge outcomes, because charges alleging sex discrimination are predominantly filed by women, including a measure of the sex of the complainant resulted in collinearity. Thus I omit complainants' sex from the analysis.

<sup>15</sup> Due to model convergence problems, I do not include the EEOC district office dummy variables in models predicting the likelihood of a policy change mandate.

<sup>16</sup> Another administrative characteristic that may affect the processing of claims is how the charge is categorized at intake (A, B, or C), according to the EEOC's Charge Handling Priority system. Because this system was not fully implemented until 1997, and my charge data cover 1990 to 2002, the majority (79 percent) of charges in my dataset lack information on categorization. Thus I cannot incorporate categorization information into the analyses.

## Models

I employ logistic regression to estimate the likelihood that complainants receive (1) a favorable outcome, (2) nonmonetary benefits, (3) monetary benefits, and (4) mandated changes in workplace policy. Because the data include multiple charges for a given establishment, I include a random intercept term,  $u_{0j}$ , to account for this nested structure. This random intercept term takes into account the dependence among charges filed against the same establishment by allowing the intercept of each establishment to vary. The models take this general form:

$$\pi_{ij} = \gamma_{0j} + \gamma_{p0}X_{pij} + \gamma_{0q}Z_{qj} + u_{0j} + e_{ij}$$

where  $\pi$  = the outcome of interest (complainant-favorable outcome, nonmonetary benefits, monetary benefits, policy change) for charge  $i$  filed against establishment  $j$ ,  $i$  = charge,  $j$  = establishment,  $X$  = a vector of  $p$  covariates at the charge level,  $Z$  = a vector of  $q$  covariates at the establishment level,  $u_{0j}$  = a random intercept term for establishment  $j$ , and  $e_{ij}$  = a residual error term.

To examine the extent to which organizations influence both charge outcomes and the terms of settlement, I estimate two sets of models. First, to identify the determinants of charge outcomes, I estimate the likelihood that the complainant receives a favorable charge outcome using data on *all* 10,810 charges included in my sample. Results from these analyses will identify the determinants of complainant-favorable charge outcomes. Next, to examine how employers negotiate various forms of settlements, I estimate the likelihood that the complainant obtains (1) a nonmonetary settlement, (2) a monetary settlement, and (3) a change in workplace policy, among only cases that settle in some way. Results from these analyses will reveal the extent to which establishments draw on their organizational resources to structure the penalties associated with settlements.<sup>17</sup>

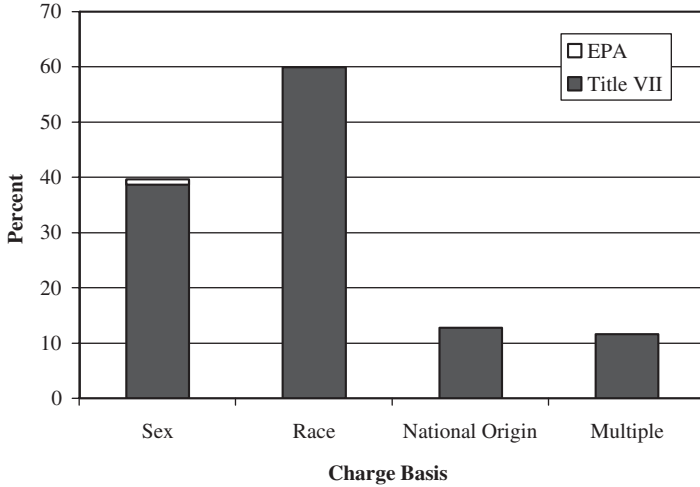
## Results

### Charge Bases, Issues, and Outcomes

Before presenting the determinants of charge outcomes, I first provide a descriptive overview of the types of charges included in my sample and their outcomes. Figure 2 provides a breakdown of

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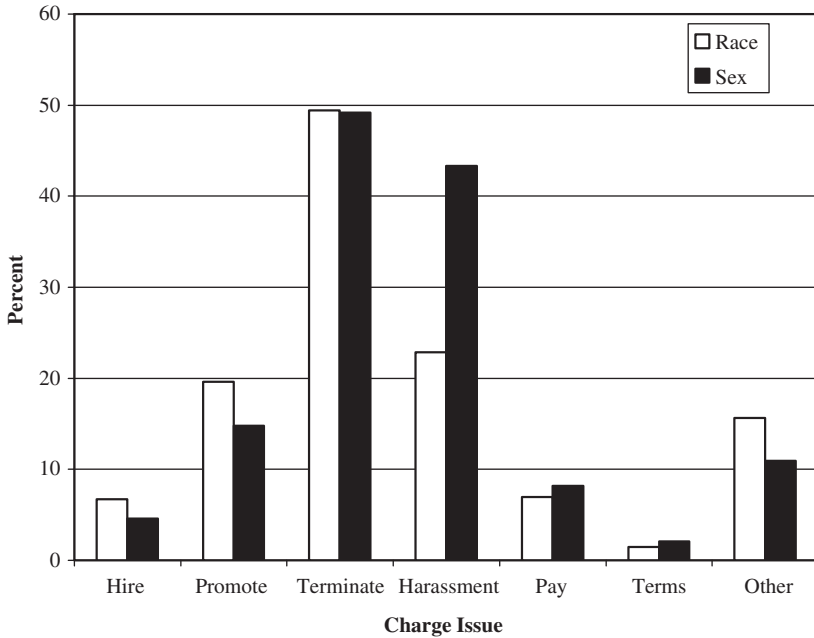
<sup>17</sup> In additional analyses, I also tried modeling charge outcomes using a multinomial logit model predicting five different types of charge outcomes. Results (available upon request) were consistent with those presented here. For ease of interpretation, I present results generated from logistic regression models.



**Figure 2. Breakdown of Charges by Bases,  $N = 10,810$ .**

charges by the basis of the claim; charges in my sample can cite discrimination on the basis of sex, race, national, origin, and multiple bases, such as sex and race. As seen here, roughly 60 percent of charges cite discrimination on the basis of race, about 40 percent of charges involve sex discrimination, and about 13 percent involve discrimination on the basis of national origin. Complainants can also file charges citing multiple bases of discrimination; for instance, black women often bring charges on the basis of sex and race. About 12 percent of charges involve multiple bases of discrimination, with the majority citing sex and race discrimination.

Figure 3 provides a breakdown of the employment issues cited in charges filed against the establishments in my sample, separately for race and sex charges. Here and throughout the analysis, for ease of presentation I combine charges citing discrimination on the basis of race, color, and national origin into a single category denoted as “race” charges. As seen in Figure 3, termination is the most commonly cited issue among the charges in my sample; nearly half of all sex charges and race charges involve disputes over termination. Harassment and promotion are the next most commonly cited issues in discrimination claims; however, the relative frequency of each varies for sex and race charges. For sex charges, complainants cite harassment in about 43 percent of all cases but cite promotion in only 15 percent of cases. For race discrimination, both harassment and promotion each constitute roughly 20 percent of all race claims. Thus while harassment is a commonly cited issue in both sex and race claims, sex charges more frequently involve harassment. Less than 10 percent of claims involve disputes



**Figure 3. Breakdown of Charge Issues by Sex and Race,  $N = 10,810$ .**

over pay, roughly 5 percent involve disputes over hiring, and about 10 percent involve disputes regarding other employment issues, such as benefits, working hours, or retaliation.<sup>18</sup>

With regard to charge outcomes, EEOC enforcement statistics suggest that fewer than one in five complaints filed with the agency result in outcomes favorable to the complainant (U.S. Equal Employment Opportunity Commission 2004). As displayed in Figure 4, my data are consistent with this estimate. Of the 10,810 complaints, only 16 percent result in favorable outcomes for charging parties. The share of complainants receiving benefits is similar; about 15 percent of complainants receive some kind of benefits, with roughly 10 percent receiving monetary benefits and 6 percent receiving nonmonetary benefits. Resolutions that mandate changes in workplace policy for employers are especially rare; policy change mandates occur in only 1 percent of all cases.

Figure 5 provides a breakdown of the type of relief complainants receive in cases where the parties settle the dispute in some manner. Among cases that settle, complainants receive some kind

<sup>18</sup> Because my sample is restricted to charges that allege sex or race/national origin discrimination, charges involving retaliation are only included in the sample if they also allege sex or race discrimination.

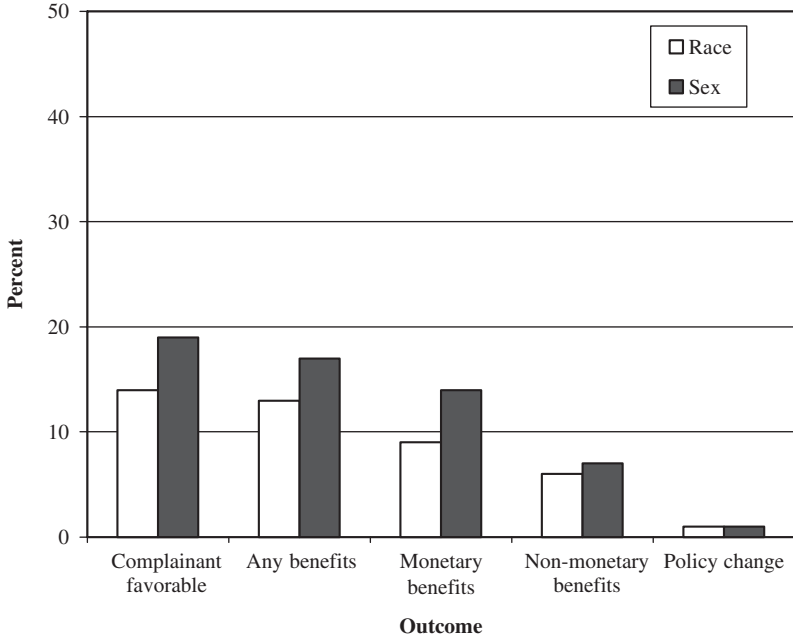
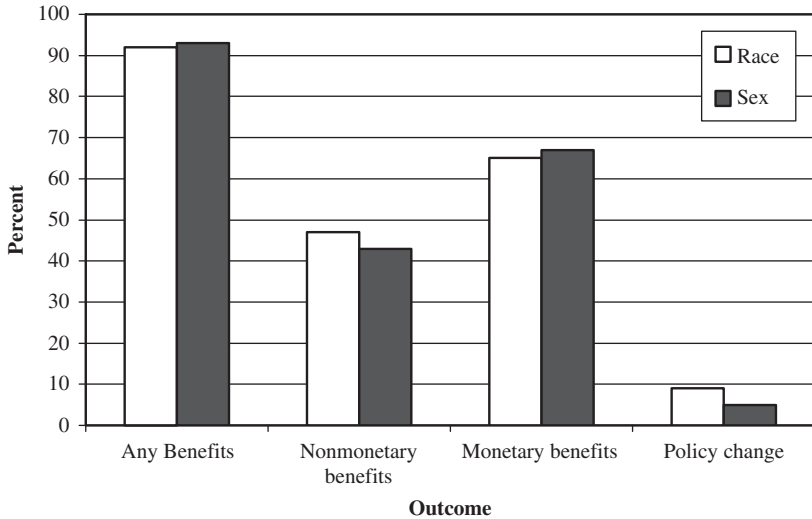


Figure 4. Breakdown of Charge Outcomes by Sex and Race, *N* = 10,810.

of benefit 90 percent of the time. About two-thirds of settlements include monetary penalties, with the typical monetary settlement totaling just over \$20,000. In addition, almost half of settlements include nonmonetary benefits, while only 5 to 10 percent of settlements require employers to change workplace policies. Thus although settlements are uncommon, they typically involve some kind of monetary or nonmonetary relief for complainants yet rarely require a policy change for employers. Next, I examine how employers’ legal experience, resources, and demonstrations of EEO compliance affect the likelihood of these outcomes.

**The Determinants of Charge Outcomes**

Table 2 presents logistic regression estimates of the effect of establishments’ legal experience, size, EEO compliance, and charge characteristics on whether the resolution is favorable to the complainant. The results identify an advantage for establishments with prior legal experience in resolving discrimination charges. As seen in Table 2, the results support Hypothesis 1, that establishments with prior experience with the charge resolution process should be less likely to receive complainant-favorable outcomes. With every prior charge of discrimination, the odds that the complainant will



**Figure 5. Breakdown of Benefits Among Cases that Settle by Sex and Race,  $N = 1,535$ .**

receive a favorable outcome decrease by about 1 percent.<sup>19</sup> Thus establishments that have previous experience with discrimination charge processing maintain an edge over less-experienced employers.

I find mixed support for Hypothesis 2, regarding the influence of establishments' size and organizational resources. While larger establishments are less likely to experience complainant-favorable outcomes, the size of the parent organization is not a significant predictor of charge outcomes. This suggests that the immediate resources that are available to establishments due to their size provide an advantage in resolving charges, but employers do not exploit the resources of their larger parent organizations.

The results provide support for Hypothesis 3, regarding the effect of affirmative action requirements on charge outcomes. I hypothesized that the presence of affirmative action requirements would protect establishments against unfavorable charge outcomes by demonstrating commitment to equal employment opportunity law. Indeed, the results in Column 1 of Table 2 indicate that for establishments with federal contracts, thus subject to affirmative action requirements, the odds of observing a complainant-favorable outcome decrease by roughly 16 percent, as compared

<sup>19</sup> I used the following formula to calculate the percentage change in the dependent variable associated with a unit change,  $\delta$ , in an independent variable,  $k$  (see Long 1997:225):  $100 \times [\exp(B_k \delta) - 1]$ .

**Table 2.** Logistic Regression Estimates of the Effects of Employer and Administrative Characteristics on Complainant-Favorable Charge Outcomes

	Complainant-Favorable	
	$\beta$	SE
<i>Employer characteristics</i>		
Prior charges	-0.004**	0.001
Establishment size (log)	-0.059*	0.030
Parent size (log)	-0.025	0.023
Federal contractor	-0.176*	0.082
Proportion female	-0.107	0.175
Sex segregation, <i>D</i>	0.200	0.251
Proportion minority	-0.140	0.221
Race segregation, <i>D</i>	-0.606*	0.291
<i>Administrative characteristics</i>		
Hire	-0.205	0.131
Promote	0.140 <sup>†</sup>	0.078
Terms and conditions	0.423*	0.202
Pay	-0.044	0.113
Harassment	0.025	0.069
Other issue	0.316**	0.086
Sex	0.197**	0.069
Black	-0.064	0.079
Asian	-0.017	0.172
Other nonwhite	-0.015	0.096
Class action	1.033**	0.140
EEOC budget	0.000	0.000
EEOC district office <sup>a</sup>	—	—
Years observed since 1990	-0.014	0.016
Intercept	-1.871	0.977
$\sigma_{0j}^2$	0.358**	0.052
$\sigma_{ij}^2$	0.921**	0.013
Deviance		7,689.8
<i>N</i>		10,810

<sup>†</sup> $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$  (two-tailed).

<sup>a</sup>Controls for EEOC district office are included in the model but are not presented due to confidentiality concerns.

to results for noncontractors. Thus affirmative action requirements shield employers from unfavorable outcomes in the charge resolution process.

Despite the significant effect of affirmative action requirements, I find little support for Hypothesis 4, regarding the insulating capacity of substantive indicators of compliance, including sex and race composition and occupational integration. Among the compositional measures, only race segregation is a significant predictor of charge outcomes; however, the effect of race segregation is in the opposite direction than expected. The more racially segregated the establishment, the less likely complainants are to experience favorable outcomes.

Considering the influence of administrative factors on charge outcomes, results suggest that characteristics of the charge and variation in administrative context are important predictors of charge outcomes. Charges alleging sex discrimination are about 22 percent more likely to result in complainant-favorable outcomes as

compared to charges alleging race discrimination. Turning to the employment issue involved in the claim, the results presented in Table 2 suggest that claims involving promotion, terms and conditions of employment, and other employment issues are more likely to result in complainant-favorable outcomes than disputes over termination. As predicted, complainants are especially likely to prevail if they are part of a larger class action claim; being part of a class action charge increases the odds of a complainant-favorable outcome by 180 percent, as compared to unaffiliated charges. With regard to administrative context, results indicate that the EEOC's annual budget is not a significant predictor of observing a complainant-favorable outcome. Due to the sensitive nature of EEOC district office-level data, my agreement with the EEOC precludes me from reporting or interpreting model estimates for the EEOC district office dummy variables in Table 2; however, results suggest some variation in the odds of observing a complainant-favorable outcome by district office. Finally, the variance of the random intercept term,  $\tau_{0j}^2$ , is statistically significant, indicating significant variation in the intercepts across establishments.

### **The Penalties for Noncompliance**

While the previous results reveal the extent to which organizations mediate complainant-favorable outcomes in general, I am also interested in how employers negotiate specific types of settlements. Thus in the next set of models, I estimate the likelihood of observing nonmonetary benefits, monetary benefits, and mandates for policy change among cases in which employers settle the dispute in some way.

The first column of Table 3 presents logistic regression estimates of the effects of legal experience, establishment size, EEO compliance, and charge characteristics on the likelihood that the charge results in nonmonetary relief for complainants, among charges that settle. Similar to the model predicting complainant-favorable outcomes among all charges, the number of prior charges has a significant negative effect on the odds that complainants receive nonmonetary benefits; for every one additional charge, the odds of receiving nonmonetary benefits decreases by about 1 percent. However, unlike the results for all complainant-favorable outcomes, neither employers' resources nor indicators of EEO compliance are significantly related to complainants' receipt of nonmonetary benefits. Among administrative characteristics, complainants' race is significantly related to the odds of receiving nonmonetary benefits; blacks, Asians, and other nonwhite complainants are significantly more likely to receive nonmonetary benefits through settlement as compared to their white counterparts.

**Table 3.** Logistic Regression Estimates of the Effects of Employer and Administrative Characteristics on Receiving Nonmonetary Benefits, Monetary Benefits, and Policy Change Mandates, Among Charges that Settle

	Nonmonetary benefits		Monetary benefits		Policy change	
	$\beta$	SE	$\beta$	SE	$\beta$	SE
<i>Employer characteristics</i>						
Prior charges	-0.005*	0.002	0.011**	0.003	0.028**	0.004
Establishment size (log)	0.030	0.055	-0.051	0.061	-0.167	0.142
Parent size (log)	-0.011	0.044	0.002	0.048	-0.058	0.128
Federal contractor	-0.125	0.151	0.213	0.166	-0.378	0.390
Proportion female	0.293	0.317	-0.757*	0.353	1.829 <sup>†</sup>	0.938
Sex segregation, <i>D</i>	0.100	0.488	-0.300	0.533	2.377 <sup>†</sup>	1.264
Proportion minority	0.472	0.403	0.289	0.448	-1.773	1.247
Race segregation, <i>D</i>	0.013	0.562	0.402	0.614	-2.992	1.592
<i>Administrative characteristics</i>						
Hire	-0.531 <sup>†</sup>	0.279	-0.198	0.273	2.217**	0.446
Promote	-0.313 <sup>†</sup>	0.159	0.319 <sup>†</sup>	0.170	1.645**	0.275
Terms and conditions	0.033	0.410	0.945 <sup>†</sup>	0.548	1.331 <sup>†</sup>	0.701
Pay	-0.323	0.246	0.286	0.265	0.095	0.483
Harassment	0.135	0.140	-0.216	0.148	1.190**	0.272
Other issue	0.127	0.167	-0.499**	0.174	2.188**	0.383
Sex	0.117	0.142	0.074	0.149	-0.296	0.300
Black	0.462**	0.163	-0.092	0.169	-0.730*	0.329
Asian	0.707*	0.342	-0.311	0.362	-0.313	0.582
Other nonwhite	0.425*	0.187	-0.293	0.195	-1.437**	0.406
Class action	-0.579	0.388	-0.278	0.408	2.283**	0.597
EEOC budget	0.000	0.001	-0.001	0.001	-0.002	0.001
EEOC district office <sup>a</sup>						
Years observed since 1990	-0.048	0.032	0.049	0.034	0.125 <sup>†</sup>	0.064
Intercept	-3.317	2.044	3.523	2.187	-0.344	3.478
$\sigma_{0j}^2$	0.444**	0.126	0.849**	0.171	7.029**	0.844
$\sigma_{ij}^2$	0.893**	0.037	0.819**	0.034	0.310**	0.011
Deviance		1,686.3		1,410.5		206.2
<i>N</i>		1,535		1,535		1,535

<sup>†</sup> $p < 0.10$ ; \* $p < 0.05$ ; \*\* $p < 0.01$  (two-tailed).

<sup>a</sup>Controls for EEOC district office are included in the models predicting nonmonetary and monetary benefits but are not presented due to confidentiality issues. EEOC district office measures were omitted from the model predicting policy change mandates because of convergence problems.

The second column in Table 3 presents results of a similar model but predicts the likelihood that the settlement results in monetary relief for the complainant. The number of prior charges is positively related to the receipt of monetary benefits; for every one additional charge, the odds that the complainant receives monetary benefits increase by about 1 percent. Evidently, in situations where complainants can reach the settlement stage, employers with prior charge resolution experience are more likely to turn over monetary settlements. Neither establishment size nor parent organization size are significant predictors of monetary benefits among charges that settle. The analysis also provides little support for the effects of indicators of EEO compliance. Among the compliance measures, only the proportion of female employees is a significant predictor of monetary settlements, suggesting that establishments with more female employees are more likely to turn

over monetary relief. With regard to administrative factors, claims that involve disputes over promotion and the terms and conditions of employment are marginally more likely to receive monetary benefits, while claims that involve other employment issues are less likely to receive monetary relief, as compared to claims involving termination charges.

Finally, the third column of Table 3 presents estimates of the effects of organizational and administrative factors on the likelihood that charge resolutions involve a mandated policy change for the accused employer among cases that settle. Again, the number of prior charges is positively related to policy change; for every previous charge, the odds that the charge results in a policy change mandate increases by 3 percent. This finding suggests that establishments with a history of prior charges are more likely to receive mandates for policy change. Sex segregation and the proportion of female employees are positively related to the likelihood that the resolution involves a policy change, though these effects are only marginally significant. Nevertheless, these results suggest that complainants and the EEOC may be more likely to push for policy change if the workplace is highly sex-segregated and if there are a substantial number of female employees who may benefit from the policy change.

Several administrative characteristics are significantly related to the odds that charges result in policy change mandates. Nearly all employment issues—including hiring, promotion, terms and conditions, and harassment—are more likely to result in policy change mandates as compared to claims of termination. This is likely because policy change mandates are an appropriate remedy when the complainant remains employed at the charged establishment and thus can benefit from the policy change. Notably, while the results do not indicate an advantage for sex over race charges as in previous models, they do suggest that black and other nonwhite complainants are less likely than white complainants to receive policy change mandates. Finally, class action resolutions are considerably more likely to involve mandates for policy change, likely due to the systematic nature of class charges, as compared to stand-alone charges. Indeed, more than half of all settlements with mandated policy changes involve charges that are part of larger class action claims.

## Discussion

The foregoing results have several implications for the charge resolution process and the study of organizations' response to the law more broadly. First, employers that have prior experience with

the charge resolution process maintain an advantage in resolving future charges. The more experience employers have with the charge resolution process, the less likely they are to receive unfavorable charge outcomes, net of the administrative characteristics of the charge. In keeping with Galanter's thesis (1974), this finding suggests that larger and more experienced organizations can draw on their institutional know-how to navigate the charge resolution process to avoid unfavorable outcomes.

Second, in situations where employers are willing to settle, however, establishments with prior experience with the charge resolution process are less likely to receive nonmonetary benefits but more likely to pay monetary damages and receive mandates to change their employment policies. In other words, among cases that settle, legally experienced actors receive tougher penalties. One possible explanation for this pattern is that although prior charges do not necessarily indicate a history of discriminatory practices, they do provide a record of employee grievances over discrimination at the charged organization. Complainants as well as EEOC officials may take a harder line, pushing for monetary relief and policy changes, in negotiating settlements with such employers. Indeed, workers often inquire about employers' prior record when initiating their own grievances in an effort to legitimize their workplace experience and claim. It is also possible that experienced organizations are more likely to recognize cases in which the evidence against them is especially strong and will accept stricter penalties at the EEOC in order to avoid litigation. In other words, repeat players may strategically incur penalties from the EEOC to avoid potentially more costly payouts in court.

Third, indicators of organizations' EEO compliance afford employers some bargaining power in the charge resolution process. The results indicate a negative relationship between federal contract status and the likelihood that complainants receive a favorable outcome. This finding suggests that federal contract status and the affirmative action requirements that follow lend credibility to employers' defense, making complainant-favorable outcomes less likely. As I observed at the district EEOC office, many organizations argue this point directly when responding to discrimination claims; employers often highlight the success of their affirmative action programs or provide copies of their affirmative action goals and timetables as evidence of their commitment to fair employment practices. The results presented here suggest that such displays are convincing to the extent that they protect employers against unfavorable charge outcomes.

However, other forms of EEO compliance—including measures of gender and racial equity in the workplace—do not offer organizations much mileage in terms of avoiding unfavorable

charge resolutions. Evidently, the more consequential signal of EEO compliance for charge outcomes is contractor status as compared to compositional measures of sex and race equity in the workplace. Moreover, the effect of contractor status on complainant-favorable outcomes holds net of the presence of women and racial minorities in the workplace and levels of occupational segregation by sex and race. Consistent with an institutional view of the law and organizations, these findings suggest that structural indicators of legal compliance, such as affirmative action requirements, can take on legitimacy in the legal realm regardless of establishments' empirical progress toward gender and race equality. While affirmative action requirements are suggestive of increased attention to fair employment practices, they do not guarantee antidiscrimination or gender and race equity in practice (Edelman & Petterson 1999; Hirsh & Kornrich 2008). Yet in the context of charge resolution, such EEO compliance structures lend legitimacy to employers' claims.

Fourth, this analysis identifies a clear advantage for charges that are part of larger class action cases. Charges designated as class action claims are more likely to receive favorable outcomes, non-monetary benefits, monetary relief, and changes in employment policy, all else remaining equal. Presumably, complainants involved in a class action claim can share resources, evidence, and bargaining power to boost their chances against employers. Thus although rare, class designations afford complainants considerable leverage in negotiating charge outcomes and the terms of settlements.

Finally, these results confirm that complainants alleging race discrimination are less likely to prevail as compared to complainants alleging sex discrimination. Indeed, race claims are less likely to result in complainant-favorable outcomes, net of employers' experience and resources as well as other administrative characteristics of the claim. The source of this disparity may be due to variation in the issues raised in sex and race claims. As shown in Figure 3, sex charges are more likely to involve harassment while race charges more typically involve disputes over personnel-related issues, such as termination, promotion, and hiring. While not the focus of the current study, additional analysis (available upon request) suggests that sexual harassment charges are especially likely to result in complainant-favorable outcomes as compared to all other claims, when considered independent of organizational and administrative controls.

This disparity in favorable outcomes for sex versus race claims is particularly interesting given that Title VII was originally introduced to eradicate a history of discrimination against racial minorities, specifically African Americans; sex was added to the list of protected classes as a last-ditch effort by opponents to thwart its

passage. Moreover, recent research documents a declining significance of race in terms of the prevalence of discrimination-charge filings relative to other protected classes (Wakefield & Uggen 2004). The evidence presented here provides one possible explanation for this decline: claims of discrimination based on race or national origin seldom produce favorable outcomes. Given the odds of success, coupled with the social, psychological, and economic costs of formally alleging discrimination, workers may be reluctant to mobilize their rights. As Bumiller explains, many workers who perceive discrimination on the job do not pursue claims because they perceive their struggle as a doomed battle against “the corporation” (1988:25). In addition, in studies of discrimination lawsuits, Donohue and Siegelman (1991, 2005) demonstrate that the likelihood and size of rewards play an important role in determining the number of cases brought as well as the rate of plaintiff victory. In short, if workers perceive charges of race discrimination as largely unwinnable, they are left with little incentive to mobilize their rights.

## **Conclusion**

This article began with a question regarding employing organizations’ response to EEO law enforcement and the extent to which charge resolution provides redress for potential victims of discrimination. In general, the analysis presented here raises concerns about the capacity of the current discrimination claiming model to remedy discrimination in the labor market. The discrimination-charge resolution process offers relief to a small share of all workers who file formal charges, and organizational attributes—most notably, employers’ legal experience—inform charge outcomes net of the administrative characteristics of the case.

These findings have broad theoretical implications for the study of the law, organizations, and regulatory systems. First, this study reiterates and extends the insight that the law is an evolving institution, subject to influence by the social actors and institutions that it both protects and regulates. Antidiscrimination law enforcement is not an objective, clear-cut, or linear process; rather, regulatory efforts are subject to influence and redirection even as they are applied. For instance, the results presented here suggest that employing organizations affect how EEO violations are understood and punished; however, the nature of organizations’ impact varies as the regulatory process unfolds. The pivotal point in the charge resolution process is settlement. If employers avoid settlement, charge outcomes advantage repeat players; yet when employers

are compelled to settle, repeat players are especially likely to suffer penalties.

This formative nature of the charge resolution process complicates the incentive structure for compliance. As Rosenberg (1991:33) points out, the effectiveness of the law for producing social change depends in part on the credible threat of sanctions in the event of noncompliance. However, if employers approach discrimination-charge adjudication as a system that is subject to influence, there is more reason for employers to “bulletproof” (Bisom-Rapp 1999) against potential liability rather than interrogate employment practices that might, often unintentionally, disadvantage protected groups.

Second, the foregoing results are consistent with both resource-driven and cultural views of organizational response to the legal process. Evidently, employers can effectively mobilize their legal experience and resources to avoid unfavorable outcomes, suggesting that experienced and well-endowed organizations maintain an advantage in legal resolutions. However, the resource advantage is only part of the story. Consistent with Edelman and colleagues’ (Edelman 2005; Edelman et al. 1999) theory of legal endogeneity, I find that organizations influence the charge resolution process through demonstrations of compliance. Organizations’ indicators of EEO compliance play an important role in determining whether potential legal violations are resolved in favor of complainants. Thus while EEO law constrains the behavior of organizations by licensing and limiting certain employment behaviors, organizations also influence how the law is applied and with what outcomes. Moreover, to the extent that EEO structures provide some protection against unfavorable outcomes, organizations may be quick to adopt such structures without examining substantive patterns of inequity, such as racial and gender divisions of labor and workplace diversity.

While this research is an initial step toward unraveling the role employing organizations play in shaping legal outcomes in the context of employment discrimination law, its findings as well as limitations suggest several avenues for future research. First, given the importance organizations’ federal contractor status and related affirmative action requirements play in structuring charge outcomes, future research should more thoroughly detail *how* organizations leverage such policies to their advantage. For instance, what proportion of organizations mention their affirmative action plans in defending claims, and how is this defense received by regulatory officials? Moreover, how do additional indicators of EEO compliance, including EEO units and officers, diversity training programs, and internal grievance procedures, affect the evolution of legal resolutions?

Second, while findings suggest that experienced organizations are more likely to incur stiff penalties at the point of settlement, the mechanism driving this effect is unclear. It may be the result of the EEOC taking a hard line against organizations with prior charges, it may reflect a tendency among experienced organizations to strategically accept tough penalties at the EEOC to avoid the possibility of litigation, or it may be a combination of both. Future research might consider these alternatives by examining charge negotiations in more detail. Additional qualitative research on charge resolution at the EEOC or other claims processing agencies would be particularly useful in this regard.

Third, to the degree that sex and race charges have different fates in the administrative process and the potential consequence of this on workers' rights mobilization, future research should examine the race/sex disparity in charge outcomes in greater depth. One plausible direction is exploring how the issues raised in disputes may contribute to disparate charge outcomes by sex and race.

Finally, while the findings presented here raise some concern regarding the capacity of the EEO regulatory process to redress individual claims of employment discrimination, it is important to recognize that the EEOC process represents one step in the larger EEOC regulatory framework. Disputes over discrimination also play out within employing organizations through internal dispute resolution and in the federal courts through private lawsuits. Thus future research should address if and how organizations leverage their legal experience, resources, and compliance symbols in resolving discrimination disputes in these additional legal contexts.

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*Elizabeth Hirsh is Assistant Professor in the Department of Sociology at Cornell University. Her research interests are in the areas of workplace inequality, organizational structures, and the relationship between law and organizations, particularly with respect to equal employment opportunity law. Her current research focuses on employment discrimination and the consequences of alternative organizational and legal arrangements for gender and race inequality in the workplace.*