

Employment Practices Liability - 2021 Overview

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The Health Care Financial Industry



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2021 Employment Practices Liability Overview

- Employment Practices Liability:
 - History
 - Why important
 - What is it and what does it cover
- Trends:
 - Social Inflation
 - Illinois Biometric Information Privacy Act Claims
 - Sexual Harassment Claims
 - LGBTQ
 - Covid-19

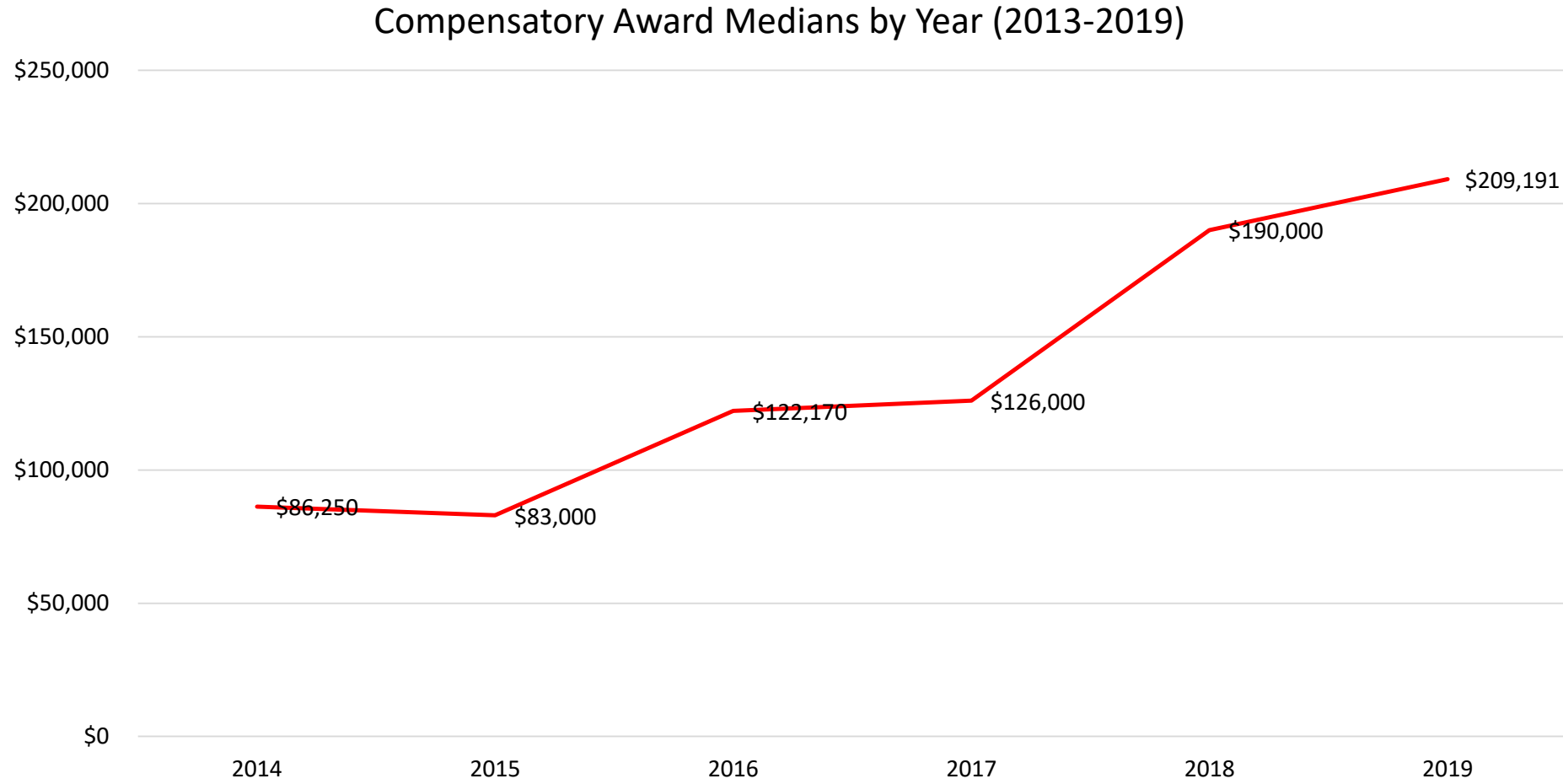


Social Inflation

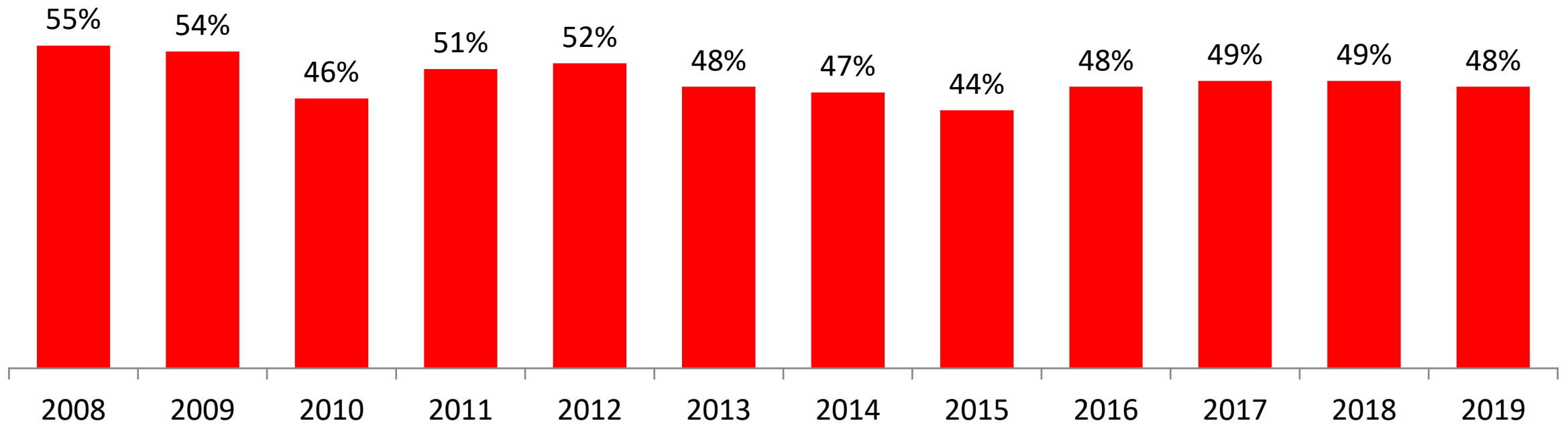
- Rising Costs of insurance claims that are a result of societal trends and views towards increased litigation, broader contract interpretations, plaintiff friendly legal decisions, and larger jury awards.
 - Expanding Law
 - State & Local Level
 - Additional protected classes
 - Sexual Orientation
 - Gender Identity
 - Increasing costs to resolve claims



Median EPL Trial Awards



Plaintiff Recovery Probability in EPL Cases Tried



Illinois Biometric Information Privacy Act (“BIPA”)

- BIPA requires any private entity collecting biometric information to obtain prior written consent from consumers or employees, detailing how they will use the data and how long the records will be kept.
 - Biometric identifier is a “retina or iris scan, fingerprint, voiceprint, or scan of hand or face geometry.”
- Relief under BIPA
 - Prevailing party may recover liquidated damages of \$1000 or actual damages, whichever is greater, for negligent violation. Liquidated damages of \$5,000 for intentional or reckless violation.
 - Court may also award injunction, attorneys' fees, and litigation costs.
- Rosenbach v. Six Flags Entertainment Corp (Jan. 25, 2019): Sustaining actual damages not necessary to confer standing to bring a civil suit; a technical violation is sufficient.
 - After Rosenbach, plaintiffs can bring class action lawsuits with large damage exposure even though neither the plaintiff nor anyone in the class has suffered any actual injury.
- Suits filed in 2019: 220
- Suits files in 2020: 264



Sexual Harassment

- Recent trends surrounding political and social empowerment have led to an increase in EPL claims.
- Percentage of women who allege they have been sexually harassed at work: 60%*
- Study by the National Academies of Sciences, Engineering, and Medicine found the following could predict likelihood or sexual harassment within an organization
 - Corporate Culture.
 - Men outnumbering women, particularly at the top of the organization.
- What happens when things “return to normal”?
- Underwriting Resource: [EEOC Sexual Harassment Statistics](https://www.eeoc.gov/eeoc/statistics/sexual-harassment/)



*<https://i-sight.com/resources/sexual-harassment-statistics-the-numbers-behind-the-problem/>



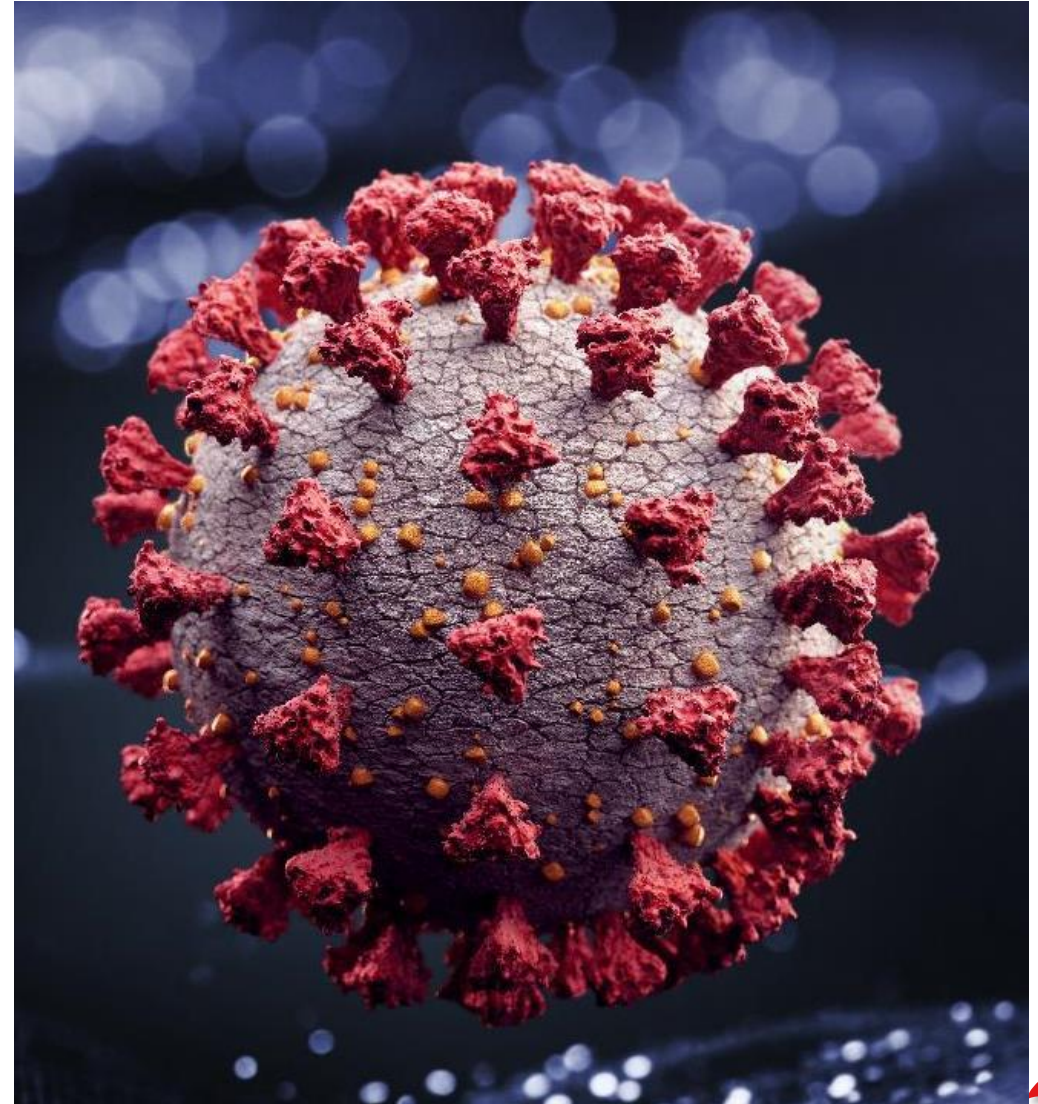
LGBTQ Protections

- In June of 2020, the U.S. Supreme Court held that Title VII protects employees and applicants for employment from discrimination based on sexual orientation and gender identity.
- 22 states already afforded protections based on sexual orientation and gender identity.
- Between 2014 and 2020, the EEOC reports
 - a 68% increase in LGBTQ discrimination charges, and
 - a 272% increase in monetary benefits recovered for LGBTQ claimants



COVID-19 Exposures

- Discrimination & Retaliation Claims arising from layoffs and failure to rehire
- Disability Accommodation Claims
- Wage & Hour Claims
- Family Medical Leave Act Claims
- Increased Lost Wage Claims
- Employers ability to require vaccinations?
 - Disability
 - Pregnancy
 - Religion
 - State Law
- Underwriting Resource: [Jackson Lewis COVID-19 Employment Lit-Watch](#)
 - 2096 COVID-19 EPL lawsuits filed through 4/16/2021



Questions





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