



Standing for dignity in the workplace

Testimony in Support of HB 2800
February 6, 2023

Chair Holvey, Vice Chairs Elmer and Sosa, Members of the Committee,

My name is Kate Suisman. I am an attorney at the Northwest Workers' Justice Project. We represent workers in low-wage jobs when bad things happen to them at work, like when they are not paid or are discriminated against for being in a protected class or retaliated against for speaking up. We also engage in policy advocacy and try to bring the important perspectives of workers in low-wage jobs and immigrant workers to these policy discussions.

I write in strong support of HB 2800, a bill to clarify that age discrimination cannot be justified based on common proxies for age like costliness, length of service or retirement eligibility.

NWJP is a small firm of 7 attorneys, and we unfortunately can't take all the cases that we review. We prioritize cases based on a number of factors, including likelihood of obtaining a positive result for a worker. Age discrimination cases are significantly harder to prove than other types of discrimination, due to the narrow interpretation of age discrimination in case law, among other things. We often decline cases involving only a potential age discrimination claim, because the case is likely too difficult to prove, especially for low-wage workers where there is rarely a paper trail to prove intentional discrimination. Currently, we generally offer only "limited representation" to investigate age discrimination cases and have historically rarely been able to offer to continue representing workers past that stage. This is true even when we believe what happened to the worker was wrong. Because NWJP's mission is to meet the legal needs of underserved workers, we are often the last chance the worker has to find an attorney.

According to a 2019 analysis of civil rights complaints filed with the Oregon Bureau of Labor and Industries (BOLI,) age discrimination claims have the *lowest* rate of success of any type of discrimination- in only .56% (less than one percent) of claims brought to BOLI between January 2016 and October 2018 did BOLI find "substantial evidence of discrimination." That is, only 4 out of 707 age discrimination claims brought to BOLI in this close to three year period were found meritorious. The rest were dismissed without a finding of evidence of discrimination. (See attached survey.)

We regularly hear from workers who are forced out of low-wage jobs just as they approach retirement age and wonder what recourse they have when they are fired after giving 15, 20, 30 years of their life to an employer. We see experienced workers who are told they now cost the company too much, as is the case in the testimony I submitted on behalf of a former client. We see older workers laid off and replaced with temporary workers. I have also submitted anonymous testimony from a worker who contacted us recently. Thank you.

BOLI – BY THE NUMBERS

Matthew C. Ellis and Quinn Kuranz

MEETING WITH BOLI RE CONCERNS

SOL/90 day notice – can this shorten the statute?

Closed case files – timeliness and cost

Closed case files – redactions (ie “information of a personal nature”)

Complaints: Complainants don’t get Responses

Complaints: no investigation; ask for witnesses and then don’t contact them then claim a “lack of substantial evidence”

Employee call line – like TA or make TA available to both

Mechanism to remove an investigator – investigator shows bias,

BOLI should seek statutory penalties in wage and hour cases –

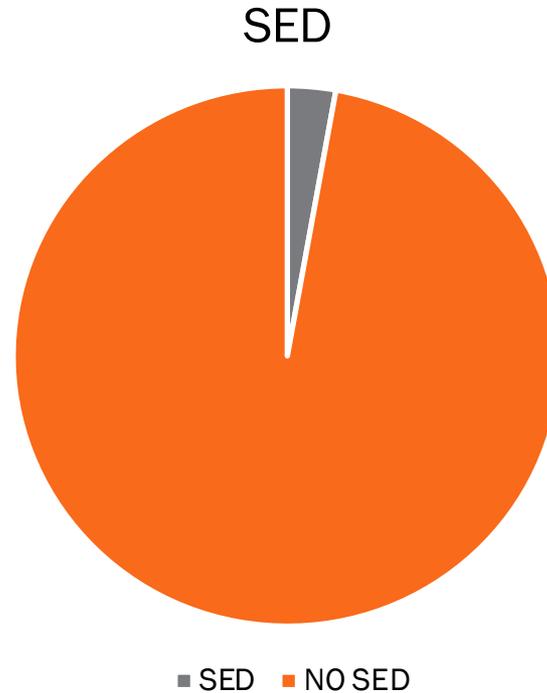
BOLI complaints anonymous/jane doe format

BOLI enforcement of failure to produce employment records statute – ORS
652.750/ORS 652.900 – may assess a \$1,000 penalty for violation of ORS

652.750

BOLI disparate impact rule to bring age discrimination claims

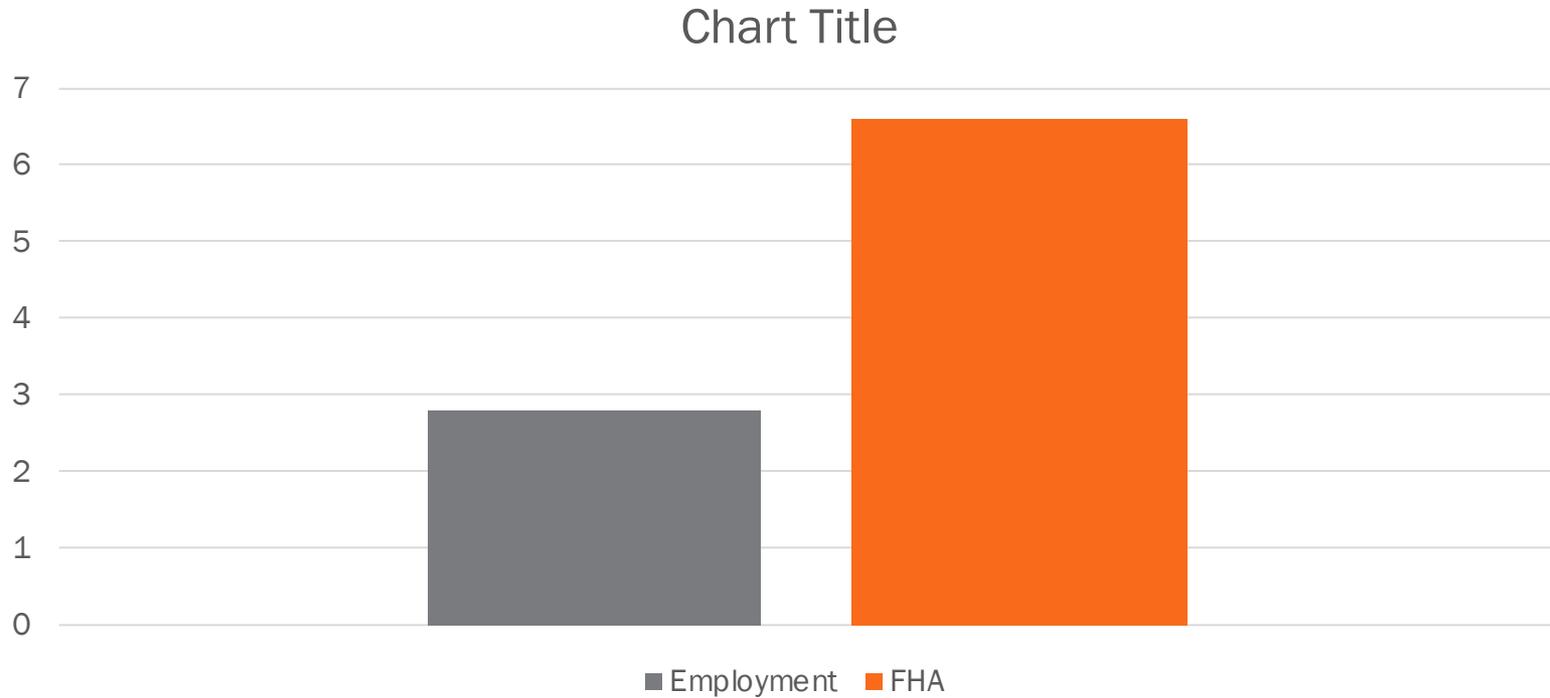
WHAT ARE MY CHANCES OF GETTING SED WITH BOLI FOR AN EMPLOYMENT CLAIM? (1/2016 – 10-2018)



SED: 288 (2.8%)
No SED 9849 (97.2%)

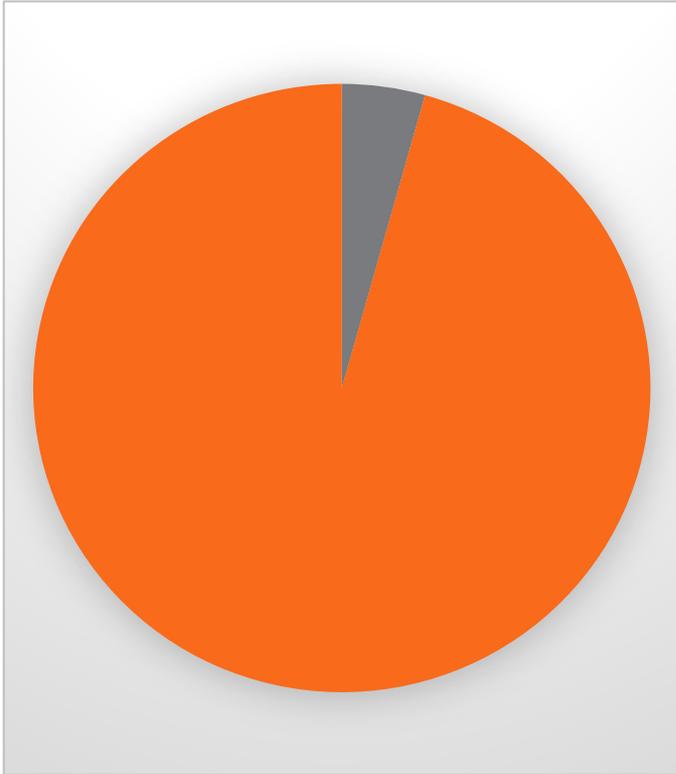
Total: 10,137

NOTE: CHANCES ARE HIGHER FOR NON-EMPLOYMENT CLAIMS



Employment: 2.8%
Fair Housing: 6.6%

RELIGIOUS DISCRIMINATION

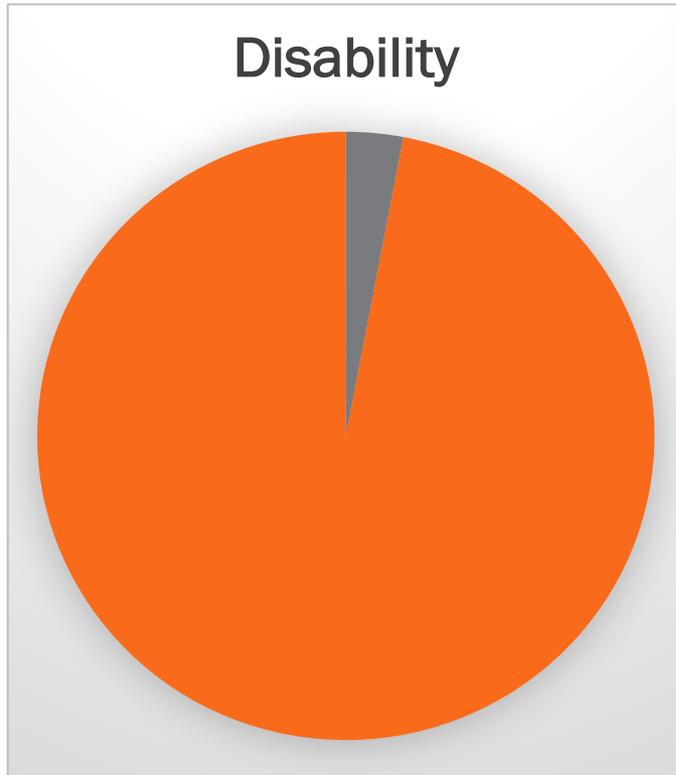


SED: 5 (4.5%)

No SED 110

Total: 115

DISABILITY DISCRIMINATION

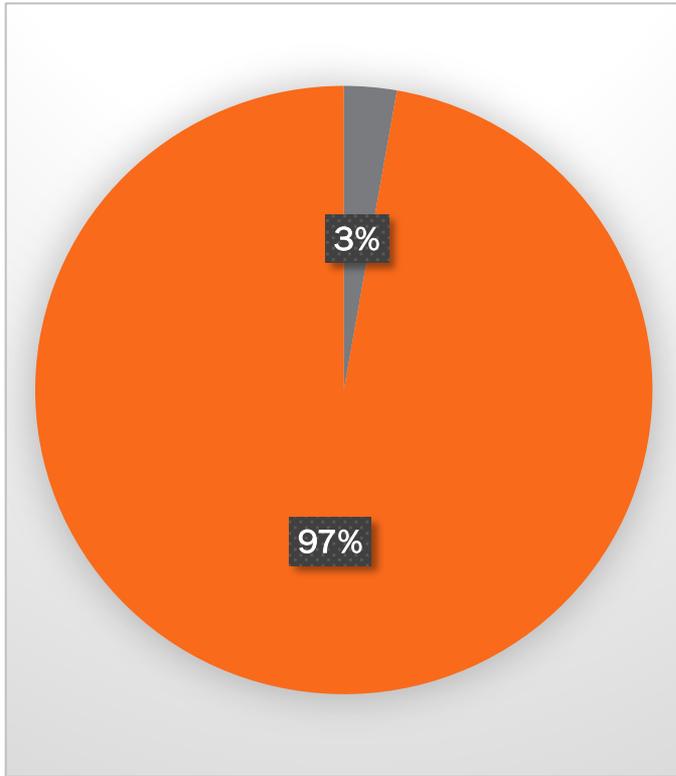


SED: 42 (3.1%)

No SED 1362

Total: 1404

“WHISTLEBLOWER” RETALIATION

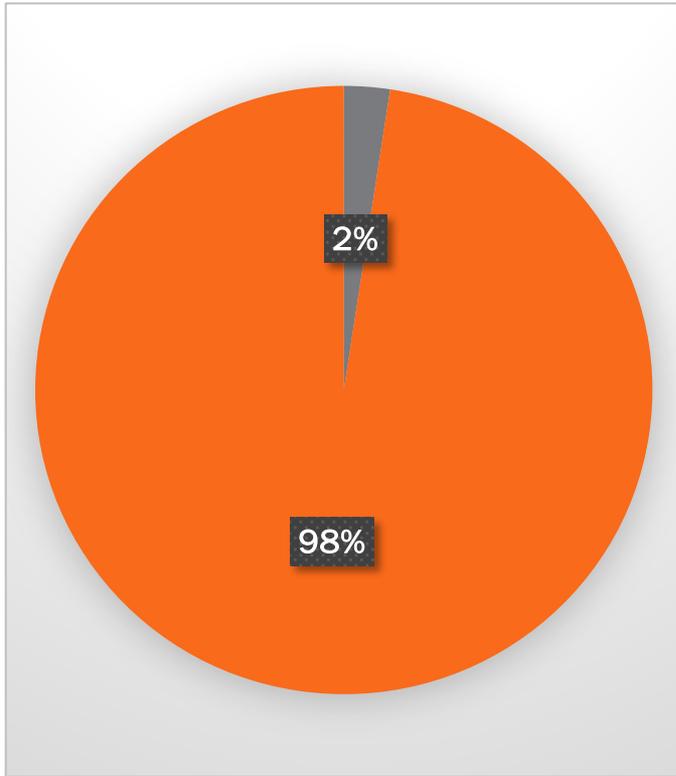


SED: 36 (2.7%)

No SED 1271

Total: 1307

RACE AND N.O. DISCRIMINATION

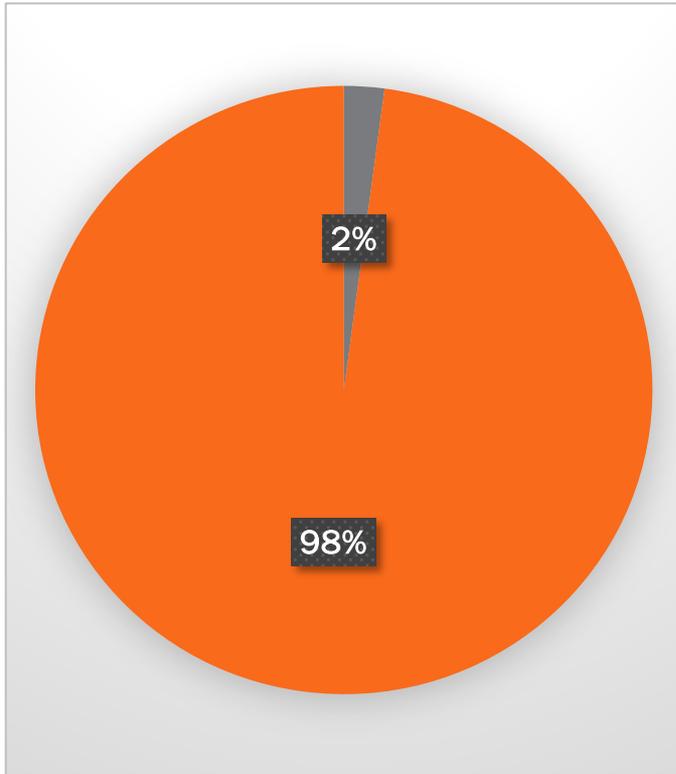


SED: 17 (2.4%)

No SED 691

Total: 708

SEX DISCRIMINATION

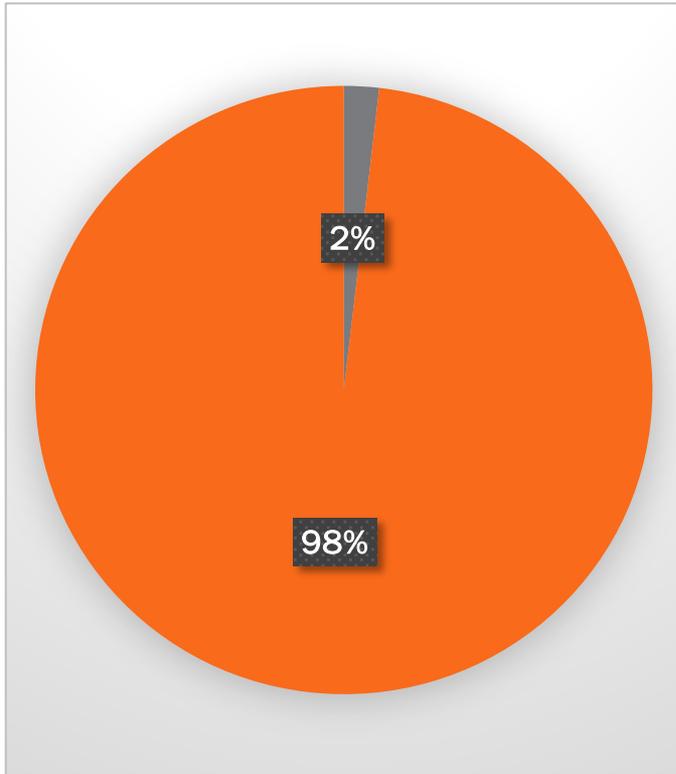


SED: 39 (2.1%)

No SED 1807

Total: 1846

RETALIATION

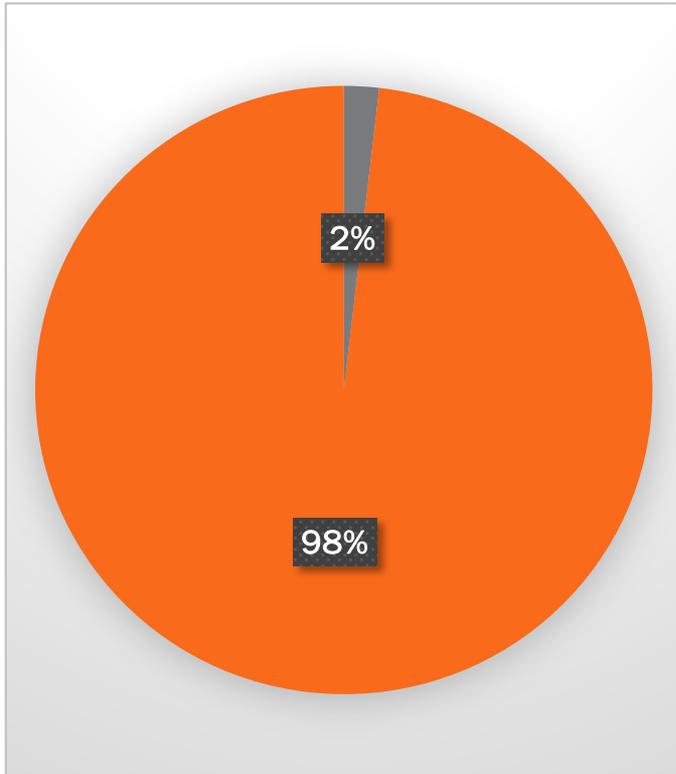


SED: 21 (1.8%)

No SED 1123

Total: 1144

SEX ORIENTATION

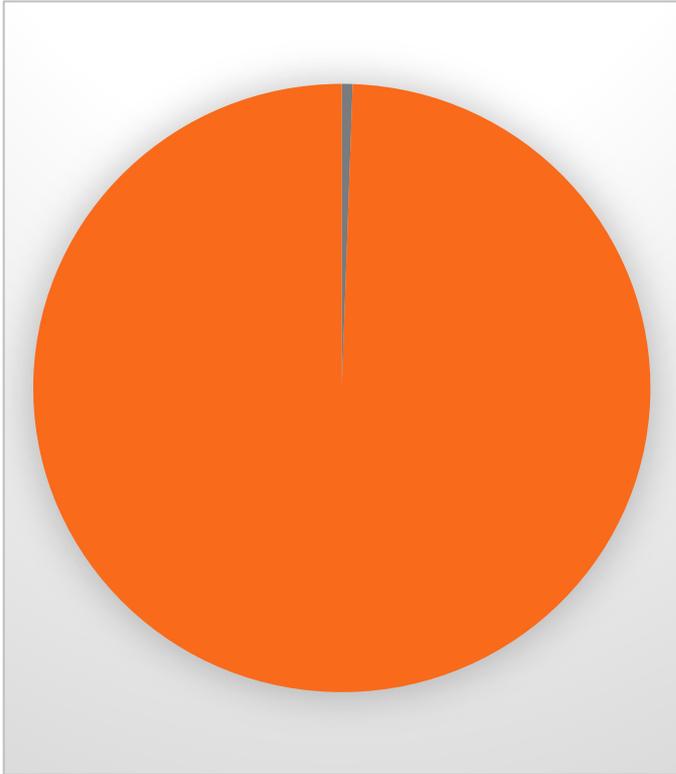


SED: 2 (1.8%)

No SED 107

Total: 109

AGE DISCRIMINATION

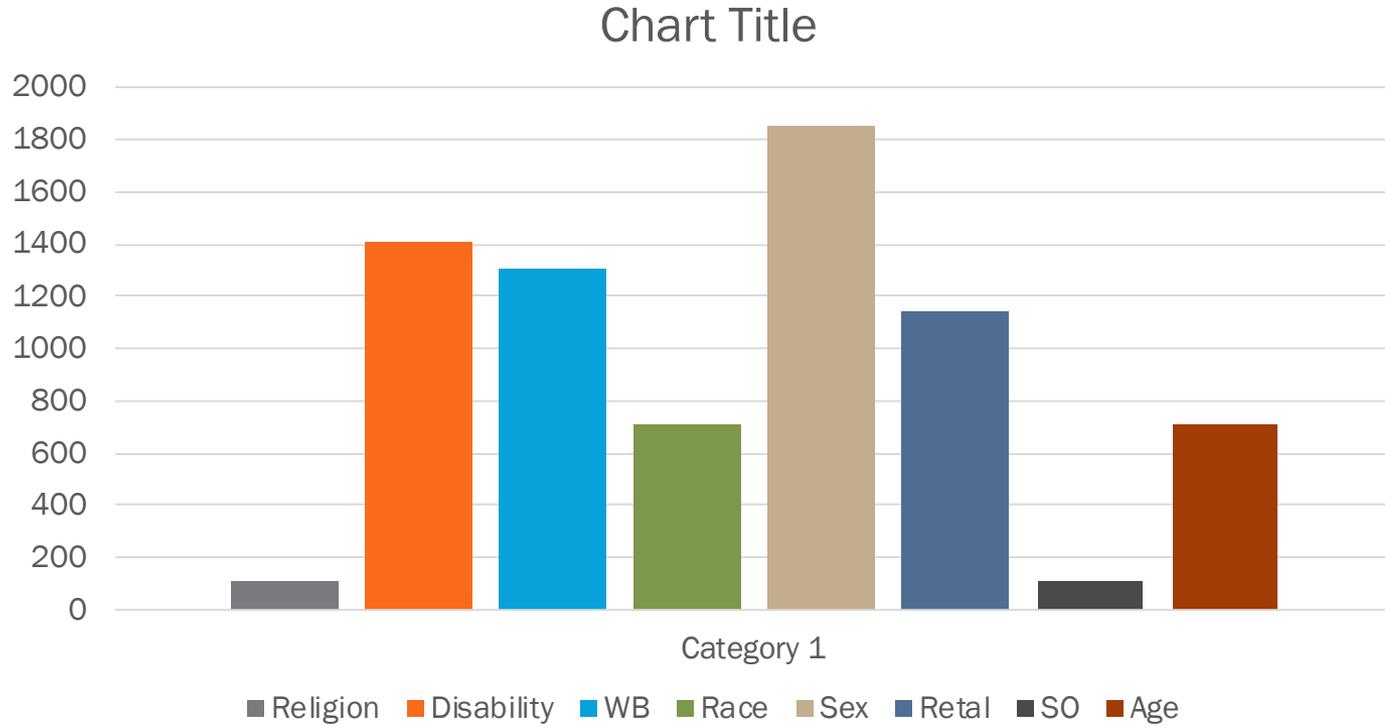


SED: 4 (.56%)

No SED 707

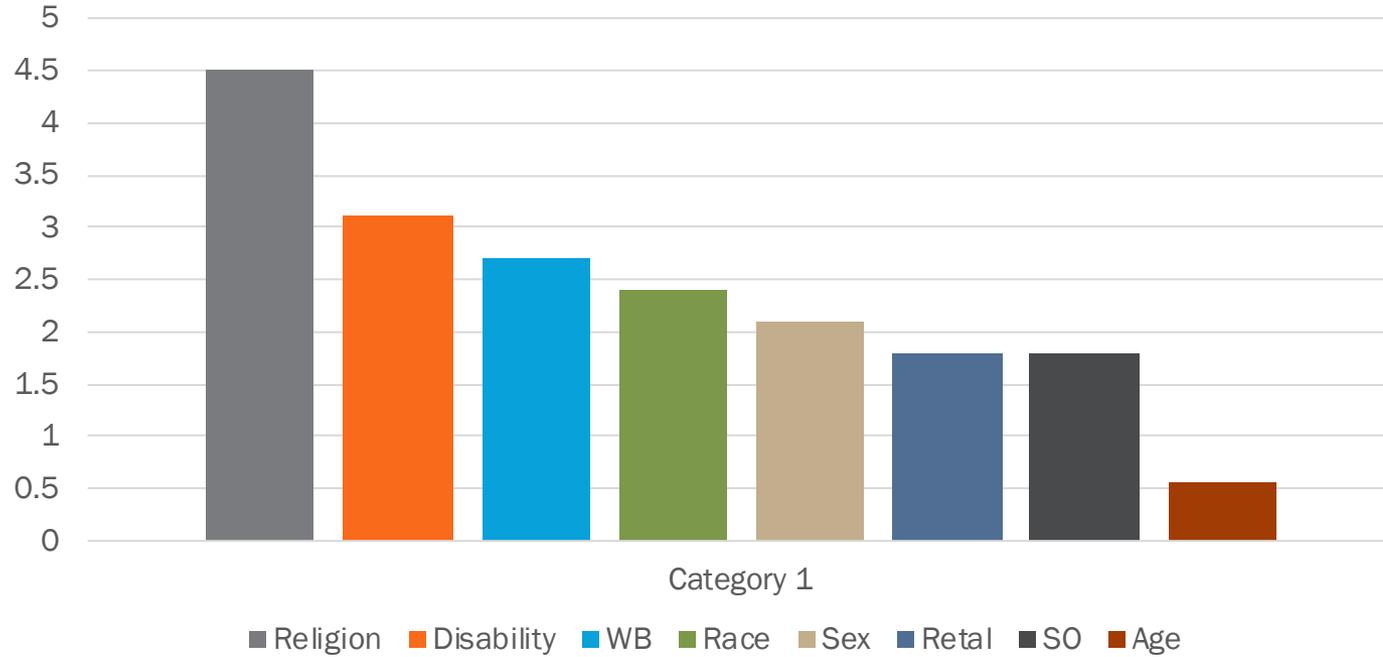
Total: 711

SUMMARY; TOTAL CLAIMS FILED BY KIND

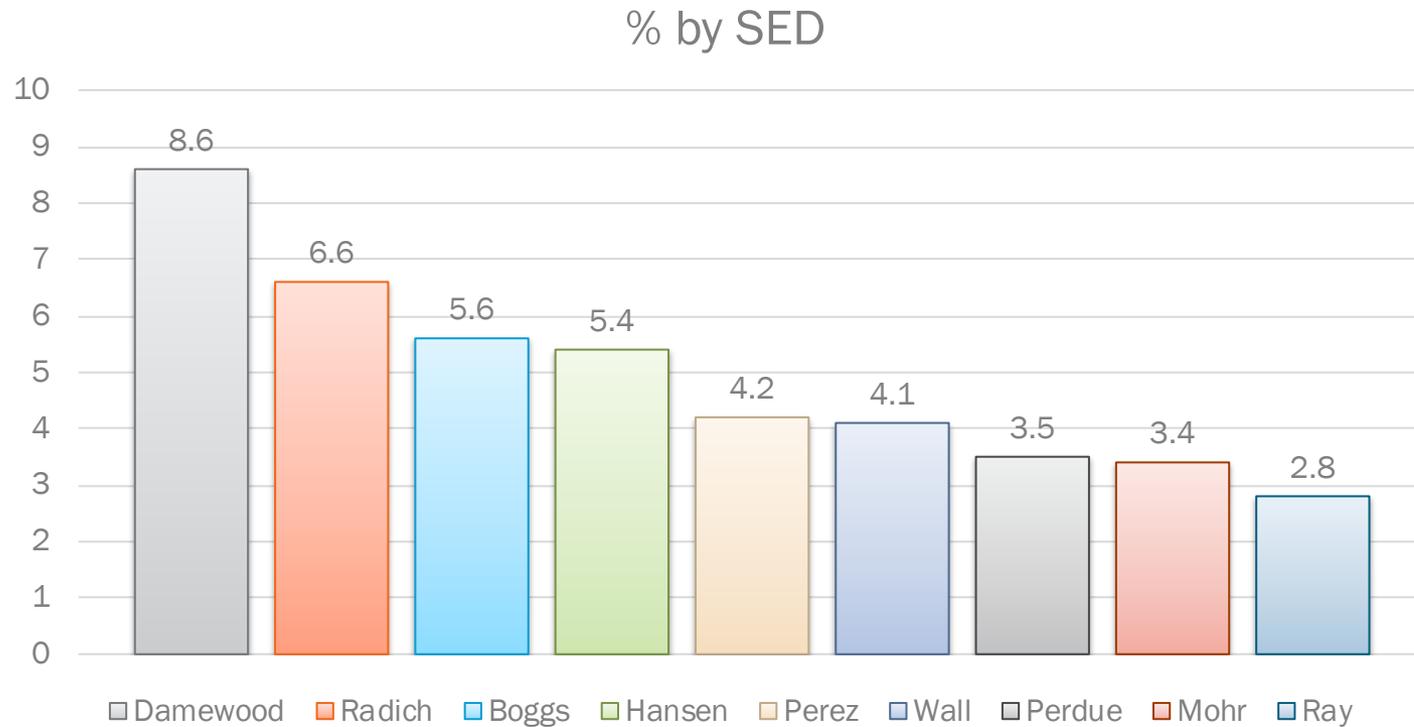


VS PERCENTAGE OF CHANCE OF SED BY KIND

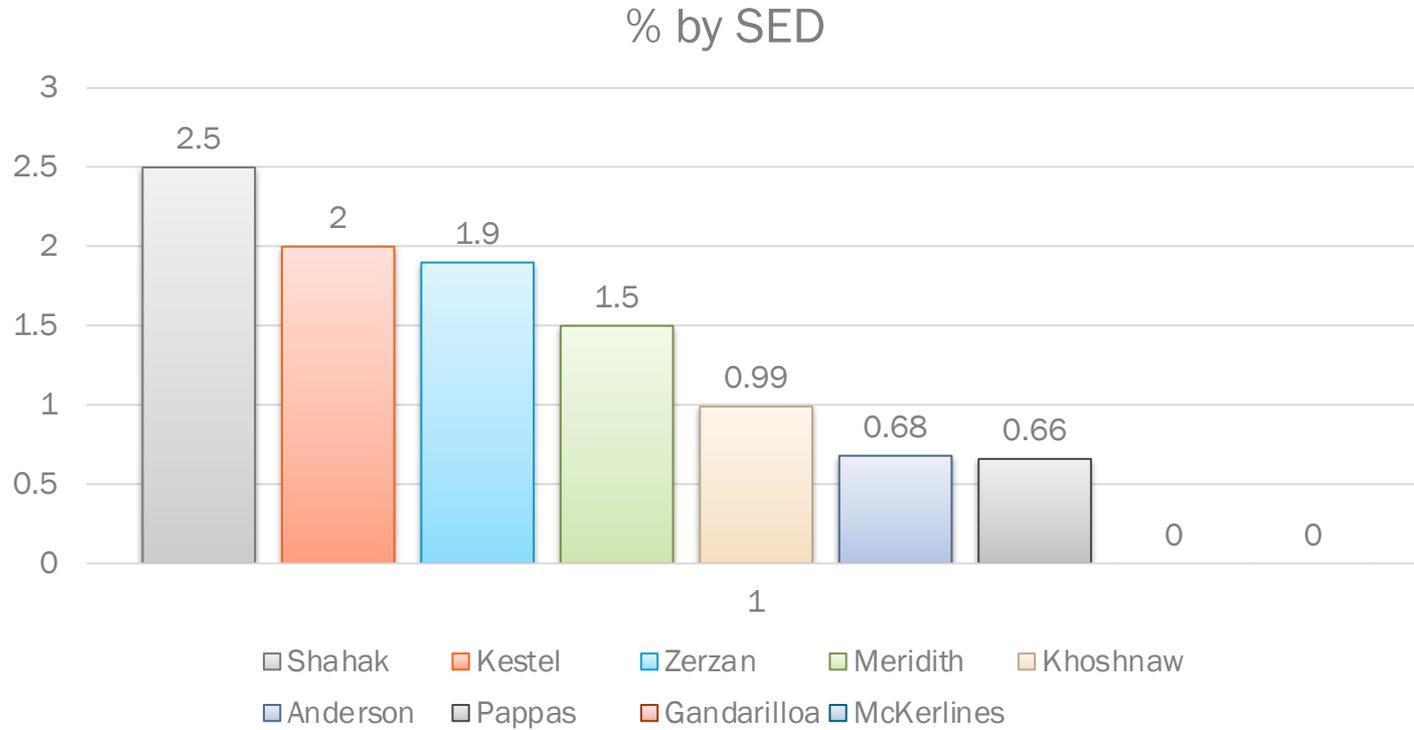
Chart Title



INVESTIGATORS FINDING SED MORE THAN 2.8% OF TIME



INVESTIGATORS FINDING SED LESS THAN 2.8% OF TIME



INVESTIGATORS FINDING SED LESS THAN 2.8% OF TIME; INCLUDING NUMBER OF CLAIMS INVESTIGATED

Shahak (8 of 326 claims)	2.50%
Kestel (10 of 490 claims)	2.00%
Zerzan (11 of 592 claims)	1.90%
Meridith (10 of 649 claims)	1.50%
Khoshnaw (7 of 703 claims)	0.99%
Anderson (1 145 claims)	0.68%
Pappas (4 of 606 claims)	0.66%
Gandarilloa (0 of 131 claims)	0.00%
McKerlines (0 of 187 claims)	0.00%

CONCLUSIONS

1. Chances of SED is very low for all claims;
 2. Chances of SED are better for disability and WB than for retal, age and sex;
 3. WB retaliation has higher SED than non whistleblower retaliation;
 4. Chances of SED are low for sex orientation, and very low for age claims;
 5. Who your investigator is matters;
 6. FHA claims are twice as successful in getting SED as employment claims.
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