

# Companies Report Rise in Labor and Employment Class Actions: Will the Trend Continue Through 2022?

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The number of labor and employment class actions increased last year as aggressive regulatory action and an increase in workplace safety claims, including claims related to the COVID-19 pandemic, fueled a rise in collective claims, including "follow-on" class actions, according to the *2022 Carlton Fields Class Action Survey*.

## An Increase From Last Year

In 2020, labor and employment class actions comprised 22.5% of all class actions managed by companies participating in our survey. In 2021, they rose just over 3 percentage points to 25.6%. Labor and employment class actions remain the largest category of class actions. In 2020, labor and employment actions were just ahead of consumer fraud class actions, but between the increase in labor and employment class actions and a decrease in consumer fraud class actions, labor and employment class actions now hold a more significant lead as the largest type of class action. Companies continue to report labor and employment class actions as one of the most concerning and costly categories of class claims. In addition to the costs directly associated with such claims (including defense and settlement costs), companies also report concern over indirect costs such as negative publicity and reputational harm.

## What's Behind This Increase?

Several factors likely contributed to the increase in labor and employment class actions. The pandemic very likely played a role, as many companies saw class actions related to workplace safety and vaccine issues. Wage and hour claims were also on the rise, potentially because of economic conditions including inflation and an employee-friendly job market, which may have made more

employees more confident in acting on grievances about their pay.

## The Silver Lining

There is, however, at least some good news. Some companies are reporting success in avoiding labor and employment class actions. In addition to resolving class actions and other disputes, businesses are also being proactive in taking corrective action and implementing policies and procedures to avoid class claims. Several businesses also continue to use arbitration clauses with class action waivers, but such waivers have faced increased scrutiny as of late.

## The Road Ahead

Companies expect labor and employment class actions to remain one of, if not the largest, category of class action claims. Spending and risk associated with these class claims are similarly expected to remain high. A number of factors will influence these claims in the coming year:

- Increased Regulatory Action:
  - It seems likely that we can expect the increase in regulatory actions, which can create follow-on class actions, to continue.
  - At the federal level, for example, the coming months are expected to be very active for the Equal Employment Opportunity Commission (EEOC).
  - Beginning in July, the EEOC will have a majority of its commissioners appointed by Democrats for the first time during the Biden administration.
  - Commentators speculate that the EEOC will use this new majority to enact significant changes at the EEOC, which will likely lead to new rules, additional enforcement, and, in all likelihood, follow-on class claims.
- The Economy (Including the Unemployment Rate):
  - While not exactly a science, intuition suggests that employees who are confident in their ability to find work elsewhere are more likely to challenge the pay and other practices of their employers by, among other things, asserting class claims.
  - When combined with beliefs that pay raises are not keeping pace with inflation and the cost of living, circumstances are ripe for more wage and hour claims.
  - Of course, that can change quickly, particularly with warning signs about the economy already emerging and the stock market in a significant dip.

- Politics:
  - Increased political activism associated with employee rights may also lead to an increase in claims, as employees try to flex newfound muscle.
  - The media has closely followed unionization efforts at major companies, for example, and this coverage may encourage employees to exercise legal rights such as attempting to bring class or collective actions over pay.
- COVID-19:
  - With any luck, the pandemic will finally wind down or, at the very least, will not require new actions that could result in new claims like vaccine mandates did.
  - That could decrease new claims, but that remains to be seen.

Whatever the future holds, it seems very likely that labor and employment class actions will remain a major source of class action litigation this year and for the foreseeable future. Wage and hour claims in particular may be poised for a significant increase. For more information on labor and employment and other class actions, visit <https://classactionsurvey.com> to obtain a copy of Carlton Fields' 11th Annual *Class Action Survey*. The *Carlton Fields Class Action Survey* summarizes recent developments and details best practices in class action management. This year's survey is based on interviews with general counsel and senior legal officers at more than 400 major corporations in more than 25 industries. The data collected presents a snapshot of the ways in which leading corporate legal departments identify, measure, and manage class action risk.

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