

Companies See Big Rise in Labor & Employment Class Actions and Defense Spending

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The *2023 Carlton Fields Class Action Survey* has revealed a significant increase in the number of labor and employment class action lawsuits and the amount companies are spending to defend those lawsuits. That is sobering news for employers and raises questions about what the class action landscape may look like for employers in the future.

Labor & Employment Class Actions by the Numbers

In 2020, labor and employment class actions comprised 22.5% of class actions against survey respondents. In 2021, that number rose just over 3 percentage points to 25.6%. In 2022, that number jumped to 33.6%. Almost 75% of companies surveyed reported facing at least one labor and employment class action in the last five years. That number was also up substantially from prior years. Perhaps more concerning for employers, in 2021, labor and employment class actions accounted for approximately 23.5% of the average class action budget. In 2022, that number jumped over 11 percentage points to 34.8%.

Employment Issues That Have Led to the Rise

The rise in labor and employment class actions is caused by a variety of factors, including a more employee-friendly regulatory atmosphere and economic environment that has emboldened employees and their counsel. Survey respondents cited wage and hour claims, a hotbed for collective actions, and general disgruntlement among employees, which is likely a side effect of the most employee-friendly market in decades, as factors that they believe are contributing to the rise in labor and employment class actions. Although the rise in labor and employment class actions over the past few years is likely tied in part to employment issues associated with COVID-19, the current jump seems to be fueled by other factors, given that the employment issues caused by the pandemic were most acute years ago and have in many ways resolved. The rise in costs associated with defending labor and employment class actions is unprecedented and may represent a

combination of these claims being more hotly contested and a reflection by companies that labor and employment class actions pose increased business risks. Employment claims were reported as posing more risk than in previous years, remaining the second-largest threat in today's environment.

What Does the Future Hold?

The growth of labor and employment class action claims (8% in the last year) seems almost unsustainable. But it seems likely that labor and employment class actions will remain at the forefront of class action litigation for the foreseeable future regardless of whether such actions continue to grow as a percentage of total open matters. Potential economic changes in the next year may affect the prevalence of labor and employment class actions. The current regulatory environment, however, seems unlikely to change much within that time (though it could change later).

Tips for Employers

There are tools employers can use to try to preempt at least some potential labor and employment class actions. Companies might consider, for example, conducting regular audits to ensure employees are properly classified, and adding class action waivers and mandatory arbitration provisions to select employment agreements. Such provisions can be effective in some circumstances but can also face regulatory and other legal hurdles depending on the jurisdiction involved. Employers may want to consider preemptive action despite these hurdles in light of the major rise in labor and employment class actions and spending on such actions.

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