

# Labor and employment class actions increase by 10%

By Brendan N. Gooley, Esq., Carlton Fields P.A.

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The 2024 Carlton Fields Class Action Survey has revealed that labor and employment class actions jumped approximately 10% in the last year. Nearly four out of five companies surveyed reported that they faced a labor and employment class action in the last five years. Even worse for these employers, survey respondents reported that labor and employment class actions account for the largest component of defense spending on class actions and that they expect such actions to continue to rise.

Now in its 13th year, the 2024 Carlton Fields Class Action Survey results were compiled from 332 interviews with general counsel, chief legal officers, and direct reports to general counsel.

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Surveyed companies had an average annual revenue of \$21.7 billion and a median annual revenue of \$16.1 billion. They operate in more than 25 industries, including banking and financial services, consumer goods, energy, high tech, insurance, manufacturing, pharmaceuticals, professional services, and retail trade. The data collected presents a snapshot of the ways in which leading corporate legal departments identify, measure, and manage class action risk. 2024 Class Action Survey | Carlton Fields (<https://bit.ly/3Vp6V9n>).

## The number of labor and employment class actions rises sharply

The number of labor and employment class actions rose again last year with a sharp jump.

This continues a trend. In 2020, labor and employment class actions comprised 22.5% of class actions against survey respondents. In 2021, that number rose just over 3% to 25.6%. In 2022, that number jumped 8% to 33.6%, or one out of every three class actions in a company's docket. In 2023, the number increased an astounding 9.8% to 43.4%.

In other words, over the course of four years, labor and employment class actions went from under a quarter of all class actions to nearly

half of all class actions among those surveyed. The number of companies that reported facing at least one labor and employment class action in the last five years increased again from 75% in 2022 to 80% in 2023.

Unsurprisingly given these trends, several respondents who were surveyed this year indicated that they expect labor and employment class actions to continue to rise in the coming years.

Spending on labor and employment class actions followed the growth in the docket, with defense costs for these class actions accounting for 38.9% of class action spending in 2023. The next highest category — consumer fraud class actions — accounted for just 18.9% of spending. That figure is up about 4% from the prior year, when spending on labor and employment class actions was 34.8%.

## Well-known factors led to rise

Survey respondents reported that a variety of factors are contributing to the rise in labor and employment class actions. First, they point to increases in workforce activism. For example, unionization efforts are occurring at a higher rate than they have in decades. Additionally, employers report litigation risk from employees' dissatisfaction with hybrid work policies.

Second, companies also reported increases in discrimination claims, which are well known to corporate counsel. Third, respondents reported significant increases in wage and hour claims, which likely reflects increased dissatisfaction with pay.

Finally, one factor that is likely *not* contributing to the rise in labor and employment class actions is the COVID-19 pandemic and fallout from the pandemic. Although a number of companies continue to face class actions related to the pandemic, the number of survey respondents facing such class actions has declined significantly since 2021 (despite a 1% increase in 2023). That means that the increase in traditional labor and employment actions is likely actually larger than it seems because the numbers of such class actions are increasing even though the number of COVID-19 labor and employment class actions has been decreasing significantly.

## What does the rest of 2024 hold?

It seems inevitable that labor and employment class actions will continue to rise, as will spending on labor and employment class actions. While something has to break at some point, the data shows a strong increase that seems unlikely to abate in the near future.

## What can employers do?

The 2024 Class Action Survey revealed that relatively few companies use arbitration clauses and class action waivers. For example, only 32.4% of survey respondents reported using mandatory arbitration clauses in employment agreements. Even fewer employers — less than a quarter — reported using class action waivers in employment agreements.

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A number of interview respondents cited good reasons for not using such provisions, including regulatory scrutiny. Several jurisdictions have banned such provisions or have taken aggressive action to limit their use. But employers in more employer-friendly jurisdictions may want to consider such measures.

## About the author



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Because wage and hour class actions appear to be on the rise and a major component of the rise in labor and employment class actions, employers would be well advised to review or even internally audit (in a privileged manner) policies, practices, and processes that may lead to wage and hour claims. Do any states that the employer operates in require meal breaks? Are the company's policies consistent with that requirement? What procedures does the company have in place to make sure that policy and the law are complied with?

Employers might also consider training supervisory personnel about the significant legal risks associated with actions they may think are innocuous, like asking subordinates to work through lunch during busy periods.

Companies might also consider adding in-house attorneys to mount a more robust preventative approach to identify potential problems before they become class action lawsuits. The 2024 Class Action Survey revealed that a number of companies have added in-house attorneys to address class actions and that in-house attorneys are devoting more time to addressing class actions.

The best defense involves not only a robust response to class actions when they inevitably arise, however. It also includes proactive measures that in-house attorneys are uniquely positioned to address in a privileged manner that will ideally head off class actions or at least make them significantly less likely to succeed. Having in-house counsel train supervisors and review policies regarding wage and hour laws and risks provides an example.

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