

# Executive Risk Update



## 2022 Workplace Class Actions

The number of employment-related class actions reached an all-time high in 2021, with settlements totaling more than \$3.62 billion, according to the 2022 edition of the Annual Workplace Class Action Litigation Report issued by Chicago-based Seyfarth Shaw LLP. While there was initial speculation that the COVID-19 pandemic would minimize the size and pace of these settlements, the opposite has occurred. In 2019, workplace class action settlements totaled \$1.32 billion, and in 2020, \$1.58 billion.

"In the face of ongoing pandemic challenges, 2021 produced the largest workplace class action settlement numbers in the 18-year history of our analyses," said Seyfarth partner and author of the annual report Gerald L. Maatman Jr. "The plaintiffs' bar capitalized on a recovering economy and aligned priorities with the new Biden Administration to secure a record financial haul in 2021."

This article discusses the workplace class action risks that business leaders face and key corporate employment litigation trends in 2022.

### Risks

Workplace class actions can be detrimental to a business and remain one of business leaders' top challenges. According to the report, the following are potential risks of workplace class actions:

- **Bankruptcy**—Class actions have the potential to bankrupt a company.
- **Eviscerated goodwill and market share**—A company with a threatened or ongoing class action may have to deal with the fallout from adverse publicity, including decreased goodwill and market share.
- **Copycat class actions**—As more workplace class action plaintiffs find success, there may be an increase in copycat class actions and follow-on claims.

As federal and state legislatures and administrative agencies add to the patchwork quilt of compliance challenges, workplace class actions become increasingly unpredictable.

### Key Employment Litigation Trends in 2022

As the plaintiffs' class action bar continues to evolve and adapt to changes in legislation, agency rulemaking and case law precedents, the following are key employment litigation trends for corporations in 2022:

- **Workplace class actions reach new heights**—Not only has the number of workplace class actions increased, but the value of the settlements has also increased, countering expectations that the pandemic would reduce the size and pace of settlements. The aggregate monetary value of employment-related class actions was at an all-time high in 2021, with settlements totaling \$3.62 billion.

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- **Government enforcement**—Under the Biden administration, several agencies—including the U.S. Department of Labor (DOL), the Office of Federal Contract Compliance Programs (OFCCP) and the U.S. Equal Employment Opportunity Commission (EEOC)—ramped up their litigation enforcement programs. This represented a reversal from the previous administration’s pro-business, hands-off approach to government-initiated investigations and lawsuits.
- **Wage and hour litigation**—Workers found the most class and collective actions success in 2021 with wage and hour litigation, with 81% of case filings being successful. As the DOL makes wage theft its enforcement priority, wage and hour litigation is expected to increase considerably.
- **COVID-19 impact**—The implementation of return-to-work programs and vaccine mandates in the fourth quarter of 2021 resulted in a record number of class actions filed by states, employee advocates, unions and employer groups.
- **Arbitration class action waiver defense**—Many factors fueled employment-related class action litigation in 2021, including the transition of presidential administrations, expansion of workers’ rights, increased regulation of businesses and aggressive enforcement of workplace laws. Now, arbitration class action waiver defense is increasingly under attack as advocates for workers and labor double-down on efforts to overturn agreements established by *Epic Systems v. Lewis*, 138 S.Ct. 1612 (2018).

### Conclusion

In 2022, many factors will influence employment-related litigation activity, including developing case law, case filing trends of the plaintiffs’ class action bar, the Biden administration’s labor and employment enforcement policies, and class certification rulings. For more information, contact us today.