

FP COVID-19 EMPLOYMENT LITIGATION TRACKER REVEALS 43% EXPLOSION OF WORKPLACE CLAIMS IN JUNE

Insights
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Nearly half of all COVID-19-related workplace lawsuits that have been initiated between employees and employers were filed in the past month, according to data collected by the [Fisher Phillips COVID-19 Employment Litigation Tracker](#). Of the 283 COVID-19-related lawsuits filed in federal and state courts through June 30, 122 of them – or 43% – were filed in the month of June, demonstrating an exponential increase in the number of claims involving disputes between workers and employers. Digging deeper in this data, we have identified a number of key takeaways for employers, including potential vulnerabilities that smart employers should proactively address before they turn into costly lawsuits.

1. Case Filings Are Increasing At An Exponential Rate

Fisher Phillips has been tracking federal and state cases that have been filed as a direct result of the COVID-19 pandemic across the country, focusing on traditional employee vs. employer cases. Because of the inherent limitations in tracking such cases in every courthouse in the country, the information gathered should be considered a comprehensive, but not exhaustive, dataset. However, the data reveals definitive trends and offers a glimpse into the landscape faced by employers at the current time.

Most starkly revealed is the explosion in claims filed in the most recent month. Of the 283 COVID-19 lawsuits tracked by Fisher Phillips, 122 of them were filed in June, which represents 43% of all known lawsuits. This is a 30%

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increase from the 94 cases filed in May, and a 103% increase from the 60 cases filed in April.

2. Class Actions Are Also Rising Steadily

Individual lawsuits filed by a single disgruntled employee (or ex-employee) are not the only kinds of COVID-19-related claims we are seeing across the country. There has been a steady increase in the number of class action lawsuits filed as well. 41 such class action claims have been filed against employers since the beginning of the pandemic, with 16 of them having been filed in June – and six filed in the last week of June alone. This is an increase of 65% in class actions filed through May 2020.

3. Discrimination And Work-From-Home/Leave Claims Dominate The Docket

The two types of COVID-19 claims that have been filed most frequently are employment discrimination claims and work-from-home/leave claims. Of the 63 pandemic-related discrimination claims, many of them sound like classic workplace disputes wrapped in a COVID-19 context. Some examples include a gender discrimination claim where a pregnant woman claims she was furloughed due to the pandemic but was replaced by a non-pregnant individual; a disability discrimination claim where an employee was forced to reveal a multiple sclerosis diagnosis to justify accommodation requests and was then subsequently terminated; a sexual harassment claim where the employee claims the employer used the pandemic as a cover story to terminate her employment while the real reason was that she refused her boss's sexual advances; and a worker who was sent home with flu-like symptoms but still terminated even after he presented a negative COVID-19 test result.

Close behind are work-from-home/employee leave claims, with 62 such lawsuits on dockets across the country as of June 30. The stories behind these lawsuits are generally consistent: a worker claims to not receive time off from work despite a legitimate need for such leave, usually because of the Families First Coronavirus Response Act (FFCRA), and often indicates that a request to work from home was denied. The employees have myriad reasons for wanting to work from home or take time off work, whether it is their own vulnerable status due to medical condition or age, their caring for a close family member with a vulnerable condition, a possible diagnosis with COVID-19 or an



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instruction to self-quarantine for a period of time, or a childcare issue or similar family arrangement.

Rounding out the top five classifications of COVID-19-related claims:

- Employment Discrimination: 63
- Work-From-Home/Employee Leave: 62
- Retaliation: 41
- Unsafe Working Conditions/Lack of PPE: 26
- Wage and Hour: 20

This data is a stark reminder for employers that typical best practices cannot be ignored simply because we are operating in unprecedented times. You need to continue to train your managers so they have a solid understanding of their responsibilities and employee rights. They need to coordinate with human resources personnel and your legal department as necessary when it comes to key personnel actions such as discipline and terminations. Documentation and consistent treatment of workers remains of paramount importance.

Meanwhile, the pandemic has created an entirely new set of compliance challenges with the implementation of an emergency paid leave system and an emergency family leave requirement, not to mention the dozens of additional requirements created by state and other local governments. Given that there are so many lawsuits focused on the alleged incorrect application of these laws, your company would be well served by ensuring your front-line managers and human resources personnel are well versed in all of the new leave law requirements.

4. Class Actions Are Focused On Safety Concerns And Wages

Meanwhile, an entirely different subset of claims account for the majority of class actions filed against employers. The two most common types of workplace class action claims filed against employers include allegations of unsafe working conditions (eight), and wage and hour concerns (seven).

The safety-related class actions usually involve a class of

workers alleging that their employer failed to install safety protocols, policies, or other safeguards to prevent them from contracting COVID-19 at work. Several of these claims allege that the employer failed to offer them necessary personal protective equipment (PPE), or if such protection was provided, that the employer failed to train them on proper PPE usage or reimburse them for their own purchases.

To date, the wage and hour class action claims have mostly related to workers alleging they were not compensated for overtime, emergency comp time, on-call time, or extra time necessitated by pandemic conditions. Two of the seven wage and hour class claims filed to date involve allegations that an employer altogether failed to pay a group of workers because of a business shutdown related to COVID-19.

The safety of your workforce and visitors to your business premises is of critical importance during this time – and these early class actions demonstrate that employees are aware of their rights. If you haven't yet developed and communicated a comprehensive safety plan as your employees return to the workplace, you should make this a priority. The same holds true when it comes to your compensation obligations. You need to ensure that your organization understands all of the varying wage and hour responsibilities that might come into play during turbulent times.

5. California, Florida, And New York Are Havens For COVID-19 Claims

It should come as no surprise that the states seeing the most action when it comes to COVID-19-related workplace litigation are the same states that typically see the most employment-related lawsuits. California leads the way in the number of overall lawsuits filed, as the 47 filed there through June 30 far outpace the state with the second-highest number of claims (Florida, with 32). The remainder of the top five include:

- California: 47
- Florida: 32
- New Jersey: 31
- New York: 21
- Texas: 19

California and Florida are also ranked one-two when it comes to the number of COVID-19 class action workplace lawsuits filed through June 30, with New York also joining as the only other state in the top four of both lists:

- California: 11
- Florida: 8
- Illinois: 6
- New York: 4

Employers in California, Florida, and New York are no strangers to employment-related litigation. However, just because your company has already developed a standard strategy to deal with worker lawsuits doesn't mean you should feel comfortable sticking to your normal playbook. You need to adapt all aspects of your organization to the challenges raised by the current state of uncertainty, and this includes your employment compliance efforts and litigation defense posture. If you have operations in any of the states listed above, you should coordinate with your employment counsel to determine whether you should implement additional steps to proactively address the current climate. And regardless of your location, you should regularly check the [Fisher Phillips COVID-19 Employment Litigation Tracker](#) to determine which states are seeing the most new claims on a weekly basis.

THIRSTY FOR MORE DATA?

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions section](#) also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney. You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.