

Insights, News & Events

# UNHAPPY ANNIVERSARY: ONE FULL YEAR OF COVID-19 WORKPLACE LITIGATION

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On a random Thursday last January in a nondescript state courthouse in north Texas, a union representing a group of airline pilots filed a workplace lawsuit seeking to halt flights to China. Their concern centered around an outbreak of the “Wuhan coronavirus,” a story that was beginning to garner some attention in the United States but still seemed like a very faraway problem. In fact, the name “COVID-19” hadn’t even been created, still several weeks away from being announced by the World Health Organization. No one could have predicted at the time that this simple lawsuit, filed on January 30, 2020, would be just the first of over 1,500 COVID-19-related workplace lawsuits that would be filed in the year to follow, and tracked by our [Fisher Phillips COVID-19 Employment Litigation Tracker](#).

One year later, on the anniversary of that first lawsuit, we introduce the results of a brand-new study by our firm – an analysis of the *status* of these filed lawsuits. What can we learn as we observe this very unhappy one-year anniversary?

## Vast Majority Of Cases Are Still Being Litigated

The most obvious piece of information we see from analyzing the status of the 1,500+ cases is that the vast majority of cases are still being litigated. Only 25% of

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cases filed in federal court have been closed, while only 4% of state court cases have been closed – once again demonstrating that federal court is a much better venue for the average employer-defendant.

### **CARES Act Cases Dismissed At A Staggering Rate**

Despite the fact that most cases remain active in the court system, a whopping 70% of cases filed under the CARES Act (related to the small business loan program and the PPP paycheck program) have already been closed since filing. This demonstrates the high standard necessary to sustain such a claim.

The only other two types of claims that have been resolved at above-average rates are wrongful discharge cases (35% closed) and WARN Act cases (30%). All other types of cases have dismissal rates below the average dismissal rate for federal court cases: unsafe workplace (23%), wage and hour (22%), non-compete and trade secrets (17%), remote work and leave conflicts (16%), breach of contract (14%), employment discrimination (10%), negligence and wrongful death (10%), retaliation and whistleblower (8%), and ERISA and benefits (0%).

### **Class Action Cases More Likely To Face Early Closure**

35% of pandemic-related class action matters have been closed to date, while only 15% of cases brought by individual plaintiffs have ended. This is most likely due to the fact that class action claims require a higher set of procedural barriers that need to be overcome – and that the costly nature of such claims could lead to earlier private settlements and resolutions.

### **Private Resolution Is Much More Common Than Court Action**

The inevitable question most readers would have at this point: what has led to the closures we have seen across these areas? It appears that, just as with typical workplace-related litigation, the most common reason for closure relates to private resolutions instead of

court-directed action. 77% of all closures have been prompted by the parties themselves. In most instances, this is due to the workers and employers reaching a private settlement of some sort, or the employer has convinced the plaintiffs' counsel that their case is lacking for some reason, or perhaps the plaintiff has dropped their claim for any number of reasons.

Meanwhile, 23% of claims have been closed due to a court-initiated action. They include the court granting a dispositive motion (such as a motion to dismiss, motion for summary judgment, or a similar "home run" motion), and in 2% of cases, because of default judgments being reached against the defendant-employer.

### **We'll Soon See The First Appeals Court Decisions**

Most employment law attorneys and savvy employers know that appeals court decisions are critical for setting best practices and establishing compliance protocols. And it appears that we'll soon have our first federal and state court appellate decisions to help guide employers through sticky pandemic-related issues. At the one-year mark of COVID-19 litigation, our data uncovered four employment law cases are pending on appeal:

- A Florida case against a cruise line, alleging a variety of discrimination, wage and hour, and other claims related to actions taken by the employer as a result of COVID-19, was ordered to arbitration by a federal court judge in October. The employees have appealed that decision to the 11th Circuit Court of Appeals.
- A sheriff's deputy in Florida published an opinion piece in a local newspaper criticizing the sheriff's response to the COVID-19 crisis as it related to his employees, and was thereafter suspended. His lawsuit seeking to overturn that discipline was dismissed in May, and he also filed an appeal to the 11th Circuit.

- A group of employees working for a distribution center in Brooklyn, New York filed a claim alleging workplace safety and wage and hour concerns related to the pandemic. After a federal court judge dismissed their claim in November, they filed an appeal to the 2nd Circuit Court of Appeals.
- A group of Lyft drivers filed suit in San Francisco alleging that the pandemic necessitated an emergency order granting them employee status so they could gain additional workplace safety and wage protections. A state court judge dismissed their case in April and the employees appealed that dismissal to a California appeals court.

We can expect to see these decisions, and a growing number of additional appellate court decisions, throughout 2021 – and beyond. These cases will help shape employers' policies and practices with respect to workplace law compliance.

### **Thirsty for More Data?**

For further information about COVID-19-related litigation being filed across the country, and to run your own analyses of our litigation data, you can visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#). 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.

### **Development Notes**

*This study, along with the FP [COVID-19 Employment Litigation Tracker](#) itself, was developed by the Fisher Phillips [Knowledge Management Department](#).*