

FP FLASH SURVEY REVEALS: WEST COAST WORKPLACE LITIGATION EXPLOSION MAY SOON SPREAD ACROSS COUNTRY

Insights

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West coast employers have been dealing with a new era of workplace litigation since the start of the pandemic, one that features increased claims, higher settlement demands, and more aggressive plaintiffs' counsel – and if past trends hold true, businesses across the country may soon also face the same fate. That's according to the results from the most recent FP Flash Survey, where nearly 350 employers across the country provided their insights to Fisher Phillips from March 10 to 18. Also notable from the survey: employers in the retail, hospitality, healthcare, and staffing fields have been more acutely impacted by what some fear may be the "new normal" in workplace litigation. [You can click through here to comb through the detailed findings on your own](#), but this Insight will summarize the five most intriguing conclusions gleaned from the survey results.

1. West Coast Employers Have Borne the Brunt of the Litigation Explosion

While only 28% of employers across the country reported an increase in the number of workplace-related lawsuits since the pandemic started, that figure nearly doubles to 43% when focused just at employers on the west coast. In fact, almost 20% of those businesses in the Pacific area (mainly California, Washington, and Oregon) noted a "significant" increase in the claims faced over the past two years.

Similar figures emerge when examining the amount of compensation sought in employment-related filings and settlement demands. Just a little over one in four (28%)

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report having experienced a mild-to-significant increase in the amounts sought by plaintiffs, but 39% of employers on the west coast have seen such a spike.

Meanwhile, only 21% of Midwest employers reported an increase in the number of claims filed, and that number declines even further for those in the South (18%), Atlantic (17%), and Mountain (16%) areas. But that's not to say that employers in these locations will be spared from the onslaught. "With increased protections of employee rights under both state and federal laws – not to mention state and federal legislation to limit the enforceability of arbitration agreements – employers across the country should be prepared for more lawsuits over the next few years," says Kristen Nesbit, a Fisher Phillips partner based in Los Angeles who regularly litigates employment matters on the west coast and across the country. "These will include harassment and retaliation claims based on sex and disability, and wage claims as a result of decisions that employers made over the last few years due to COVID layoffs, remote work, and vaccine mandates."

2. List of Industries Experiencing Litigation Boom Includes Usual Suspects – and Some Surprises

It will probably come as little surprise that employers in the retail, hospitality, and healthcare sectors are in the top five when it comes to examining which specific businesses have felt the litigation boom described above. Nearly half of retailers (46%) and hospitality employers (45%), and more than a third of healthcare organizations (37%), have seen an increase in workplace-related lawsuits since the start of the pandemic. While it's been a particularly difficult two years for these businesses, these findings show that their pain has been compounded by employment-related court battles.

Adding further insult to injury is that the amount sought in lawsuits and demands against employers in these industries. An astounding 56% of hospitality businesses reported seeing an increase in the amount of compensation demanded in workplace-related disputes, and those in the retail (46%) and healthcare (37%) spaces have faced a similar fate.

But also dealing with an increase in employment litigation are industries that you might not expect to see in the top

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five. 44% of staffing/PEO businesses report an increased number of claims and higher compensation demands, as have 40% of businesses in the technology sector. "Some PEOs reported a decline in the quantity of EPLI claims during the pandemic. That trend appears to have reversed in recent months, perhaps due to courts resuming normal operations," says John Polson, an Irvine-based Fisher Phillips partner and Management Committee member who co-chairs the firm's Staffing and PEO Industry Group.

3. Plaintiffs' Counsel Have Gotten Even More Aggressive on West Coast and in Claims Against Certain Industries

A disturbing fact of life since the start of the pandemic has been the increase in the number of news reports and social media videos depicting people acting out in public – on airplanes, at the grocery store, in parking lots. But the FP Flash Survey reveals that this level of vitriol has unfortunately also reached the world of workplace litigation. 29% of employers have seen an increase in the level of aggression from plaintiffs' attorneys in workplace lawsuits since the pandemic started, including 40% of businesses on the west coast. "We are seeing unreasonably aggressive demands and irrational positions being taken by plaintiffs' attorneys in litigation," says Danielle Moore, an FP partner based out of San Diego who has a heavy docket of west coast litigation. "It's been disappointing and frustrating to also see an increase in the overall complete lack of professionalism and civility that has traditionally been expected amongst professionals and required by the rules of court."

And the same grouping of industries that have faced a spike in claims and compensation demands has also faced a more aggressive plaintiffs' bar. By industry, the employers that have seen a mild-to-significant increase in the level of aggression from plaintiffs' attorneys in workplace claims includes:

- Staffing/PEO: 55%
- Retail: 54%
- Hospitality: 42%
- Technology: 40%

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Hospitality

PEO

FP Flash Survey Results



- Transportation: 38%
- Healthcare: 37%

4. Hospitality Sector and West Coast Employers Have Had to Dig Deep to Settle Workplace Claims

More than four in 10 employers in the hospitality space (42%) report that they have had to pay out increased settlements in order to resolve workplace disputes since the pandemic started. This figure leads any other industry, including manufacturing (29%), technology (27%), transportation (25%), and retail (23%). “The massive boom in litigation against hospitality employers can likely be traced to two factors,” says Andria Ryan, co-chair of the FP Hospitality Industry Group and partner in the Atlanta office. “The flood of ADA Title III accessibility lawsuits – which has not slowed at all – and the fallout from having to lay off, reduce, and furlough large numbers of employees at the start of the pandemic. ”

Just as with prior findings, it comes as no surprise that west coast employers also report the highest incidence of increased final settlement amounts in workplace claims. One in three employers on the west coast (34%) say they have had to pay out mild-to-significantly increased settlement amounts to resolve workplace disputes in the past two years, compared to a quarter of Atlantic-area employers (24%) and a far-fewer grouping of employers elsewhere (17% South, 15% Midwest, and 13% Mountain).

5. COVID-Related Claims Are Still Uncommon – Unless You’re in Healthcare or Retail

Finally, the FP Flash Survey revealed that just 10% of employers across the country have faced a COVID-19-related workplace lawsuit or demand. But these claims have disproportionately been filed against employers in the healthcare and the retail space. 21% of healthcare employers have had to defend a pandemic-related lawsuit or demand, more than double the national average, while 15% of retailers have faced such claims.

“I’m actually surprised this figure isn’t higher,” says Kevin Troutman, a Houston-based FP partner who co-chairs the firm’s Healthcare Industry Practice Group. “Healthcare employers have been in the eye of this storm since it began, and that trend shows no signs of changing.

Vaccination mandates led to an unprecedented number of requests for religious and medical accommodations, and disputes over those certainly led to a spike in claims. Moreover, widespread staffing shortages, evolving safety standards, and tight budgets tend to increase stress in an industry that was already under intense pressure. Such tensions and tough decisions are also fueling increased COVID-related litigation."

This lines up with the findings from our [FP COVID Litigation Tracker](#), one of the firm's innovative website features providing detailed statistics about pandemic-related litigation broken down by geography, company size, and industry. It shows that over 4,600 such claims have been filed to date, with over 20% of all claims across the country having been filed against healthcare employers.

And while employers in the Midwest (15%) and Pacific (14%) report the most COVID-19-related workplace law claims compared to other areas, these numbers don't necessarily jump off the page or demonstrate that employers in certain locations are more susceptible to such lawsuits. Instead, pandemic-related claims seem to be a national phenomenon more correlated to industry than geography.

Conclusion

[Again, you can click through here to comb through the detailed findings on your own.](#) We will monitor these developments and provide updates as warranted so make sure that you are subscribed to [Fisher Phillips' Insights](#) to get the most up-to-date information direct to your inbox. If you have further questions, contact your Fisher Phillips attorney or the authors of this Insight.