



# Employment Practices Liability Consultant (EPLiC)

## SEYFARTH SHAW WORKPLACE CLASS ACTION LITIGATION REPORT FOR 2020

*By Sean Jordan, CPCU, MLIS, RPLU*

For the tenth consecutive year, we are pleased to offer a short summary of (now in its 16th edition) Seyfarth Shaw's *Workplace Class Action Litigation Report 2020*. (Read the [2019](#), [2018](#), [2017](#), [2016](#), [2015](#), [2014](#), [2013](#), [2012](#), and [2011](#) overviews.)

The *Report* is a must-have resource for legal research and in-depth analysis of employment-related class action litigation. Anyone who practices in this area, whether as a corporate counsel, a private attorney, a business executive, a risk manager, an underwriter, a consultant, or a broker, cannot afford to be without it. Importantly, the *Report* is the only publication of its kind in the United States. It is the sole compendium that analyzes workplace class actions from "A to Z." In short, it is "the bible" for class action legal practitioners, corporate counsel, employment practices liability insurers, and anyone who works in related areas.

Gerald L. Atman Jr., a partner with Seyfarth Shaw LLP, compiles and edits the *Report*. Mr. Maatman's practice focuses on defending

employers involved in employment-related class actions and in Equal Employment Opportunity Commission (EEOC) pattern or practice cases. He is cochair of the firm's Class Action Defense Group and authors the firm's [class action blog](#). Mr. Maatman pioneered the process of conducting employment practices audits to assist employers in structuring effective and practical personnel policies and protocols. His work in this area has been profiled in the *Wall Street Journal*, *The Economist*, and *Time* magazine. He has been selected for 4 years running by Law360 as one of the top 4 employment lawyers in the United States.

### A Brief Overview of What's Inside

The encyclopedic, 790-page 2020 Annual *Workplace Class Action Litigation Report* insightfully examines and analyzes a massive array of class action case decisions. In addition, all of the federal cases examined in the *Report* are indexed by federal circuit—an invaluable feature that further enhances the report's utility.

This article appeared in the Spring 2020 issue of *EPLiC*. Copyright 2020 by [International Risk Management Institute, Inc.](#), 12222 Merit Dr., Suite 1600, Dallas, Texas 75251-2266, 972-960-7693, <https://www.IRMI.com>. All rights reserved. ISSN: 1529-840X. This material may be quoted or reproduced only with written permission from the publisher. The opinions expressed in *EPLiC* are those of the individual authors. Nothing published in *EPLiC* is to be construed as legal, accounting, or professional advice. If such advice is required, the services of a competent professional should be sought.

The following is a synopsis of the 16th annual *Workplace Class Action Litigation Report*.

- ◆ **Overview of the year in workplace class action litigation.** This section summarizes the key legal and procedural trends that emerged in 2019, addresses key developments in workplace class action litigation in 2019, and assesses the implications these developments will have on litigation in 2020 and beyond.
- ◆ **Significant class action settlements in 2019.** This section lists the top 10 settlements in (a) private plaintiff employment discrimination lawsuits, (b) private plaintiff wage and hour class actions, (c) private plaintiff Employee Retirement Income Security Act (ERISA) of 1974 actions, (d) private plaintiff statutory workplace class actions, (e) government-initiated enforcement actions and pattern or practice suits, and (f) the top 10 injunctive relief rulings issued by various courts that were a part of certain class action settlements. Items (a), (b), (c), (d), and (e) are reproduced later in this article.
- ◆ **Significant federal employment discrimination class action and EEOC pattern or practice rulings.** This section of the *Report* analyzes discrimination class action cases brought under (a) Title VII of the Civil Rights Act of 1964 and (b) “pattern or practice” enforcement actions brought by the EEOC.
- ◆ **Significant collective action rulings under the Age Discrimination in Employment Act, the Fair Labor Standards Act (FLSA), and ERISA.** Cases brought under these federal statutes constitute a substantial portion of all employment-related class action litigation. Therefore, court interpretations of these statutes are important for future cases and understanding corporate risks on the workplace front.
- ◆ **Significant state law class action rulings.** These rulings are significant because, during

the past several years, plaintiffs’ attorneys have been increasingly resorting to state courts as a forum for pursuing employment-related class action litigation.

- ◆ **Rulings on the Class Action Fairness Act (CAFA).** This law facilitates removal of class actions from state court to federal court. In addition, the CAFA regulates the selection of class counsel, tightens control of attorneys’ fees awarded to class counsel, toughens pleading standards, reduces the ability of class counsel to dictate the choice of forum, facilitates interlocutory appeals of class certification rulings, and regulates settlements of class actions. Given these profound effects on underlying case strategy and the structuring of class actions, the annual *Workplace Class Action Litigation Report* analyzes CAFA-related cases.
- ◆ **Other federal rulings affecting the defense of workplace class action litigation.** Throughout 2019, federal courts issued key rulings in class action lawsuits and on Rule 23 issues, which significantly impact the defense of workplace actions. As the plaintiffs’ class action bar has pressed new theories, and the nature of claim allegations continues to morph, these rulings are important in formulating effective defense strategies for workplace class actions.

To obtain a free copy of  
**THE SEYFARTH SHAW  
ANNUAL WORKPLACE CLASS ACTION  
LITIGATION REPORT  
2019 Edition**

Send an email to:  
[gmaatman@seyfarth.com](mailto:gmaatman@seyfarth.com)

Check out Seyfarth Shaw’s  
[Class Action Blog](#)

The following sections highlight some of the *Report's* most noteworthy contents.

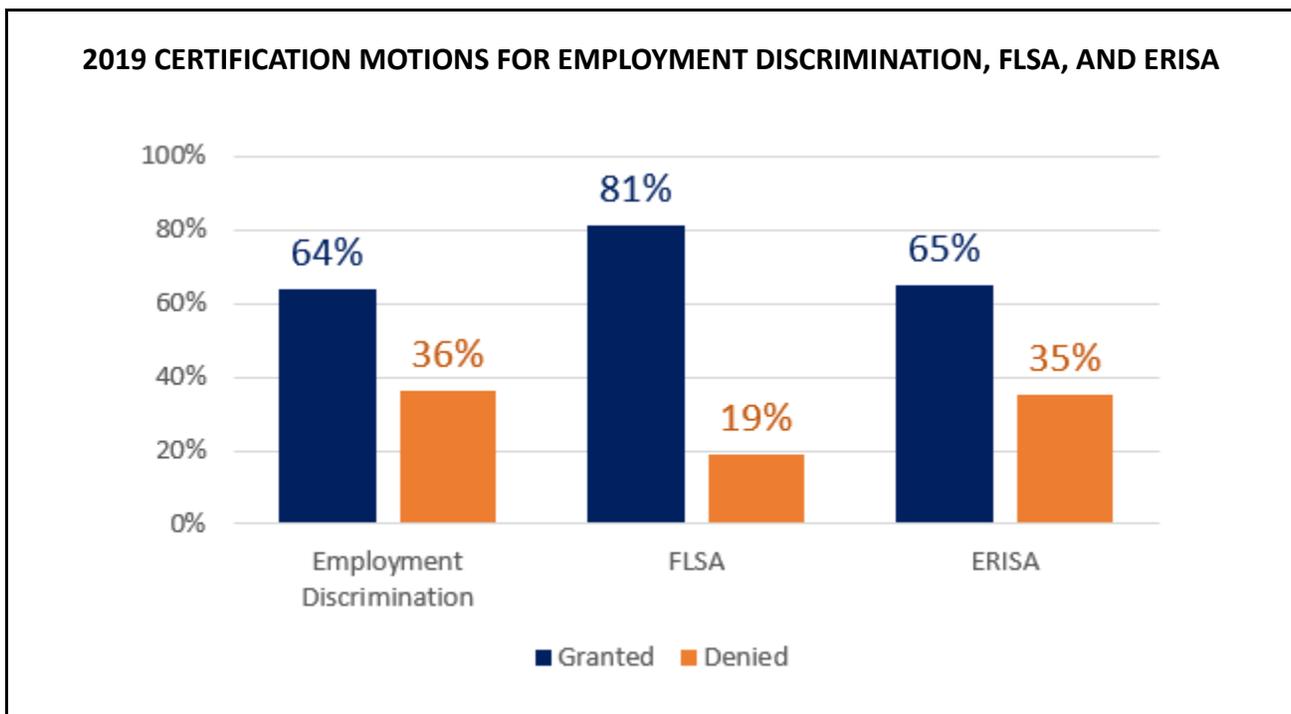
### Five Key Trends in Workplace Class Actions during 2019

The *Report* notes five important developments in class actions during 2019. They are as follows.

**1. The plaintiffs' bar had its highest ever success rate in class certification motions for ERISA, wage and hour, and employment discrimination class actions.** Lawyers continue to craft class certification theories to counter stringent Rule 23 certification requirements. Regarding wage and hour and ERISA class actions, the plaintiffs' bar did especially well in securing class certification rulings in federal court. Overall, the plaintiffs' bar won a higher percentage of first-stage conditional certification motions in 2019, compared with prior years, but employers actually won a higher percentage of subsequent decertification motions.

**2. Recent rulings of the US Supreme Court have had a substantial impact on class action litigation.** As a result of accepting more cases for review, the Supreme Court has had a higher number of rulings that have had significant impacts on the class action and government enforcement landscape. Among several probusiness decisions, the rulings in *Lamps Plus v. Lewis* and *Nutraceutical Corp. v. Lambert* showed constructionist readings of statutes and class action procedures.

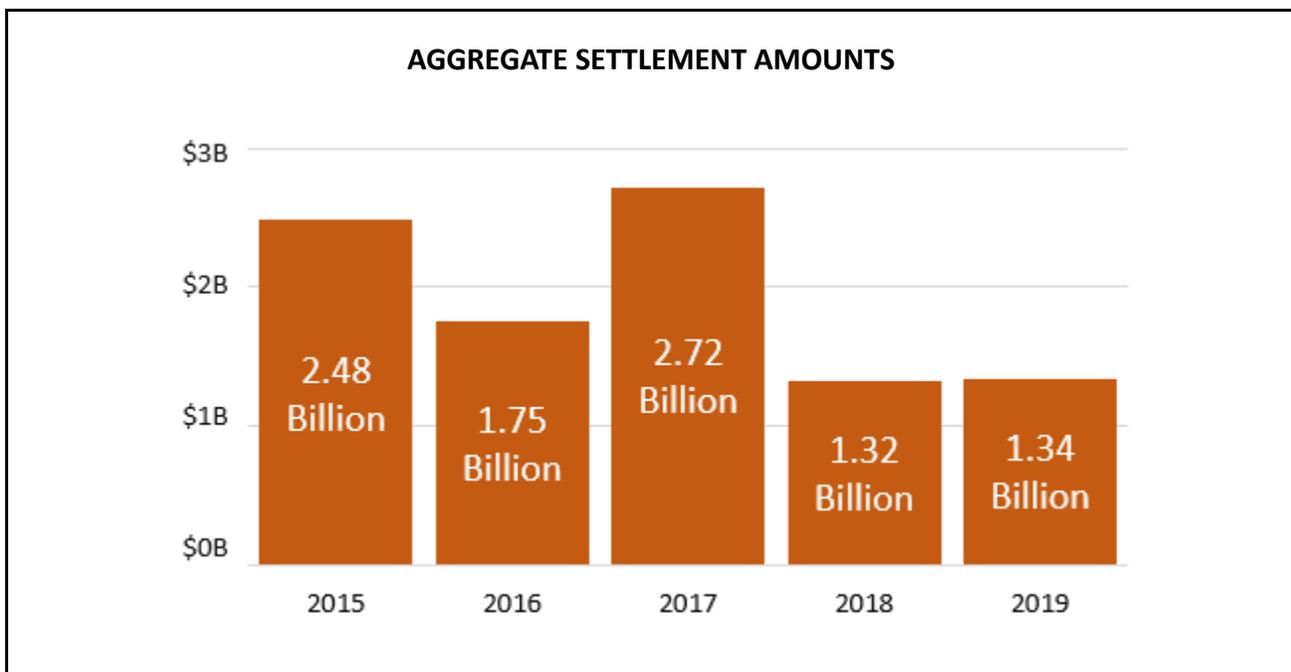
**3. While filings and settlements of government enforcement litigation in 2019 did not reflect what some expected to be a head-snapping pivot to a probusiness viewpoint of the Trump administration, some enforcement numbers continue to trend downward.** The EEOC brought 149 lawsuits in 2019 as compared to 199 lawsuits in 2018 and 184 lawsuits in 2017. The settlement value of the top 10 settlements in government enforcement cases also decreased dramatically—from \$126.7 million in 2018 to \$57.52 million in 2019.

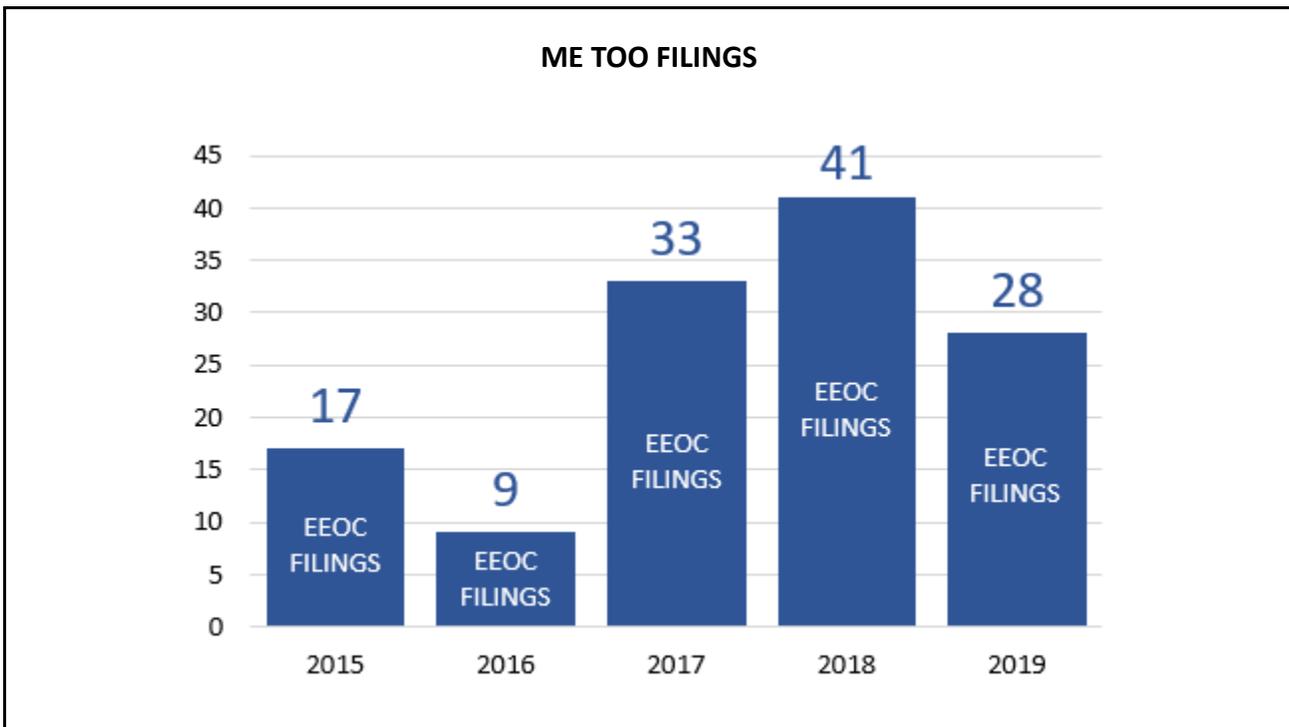


As 2020 opens, it appears that the content and scope of enforcement litigation undertaken by the Department of Labor (DOL) and the EEOC in the Trump administration will continue to tilt away from the pro-employee/anti-big business mindset of the previous administration. Trump appointees at the DOL and the EEOC are slowly but surely “peeling back” on positions previously advocated under the Obama administration. As a result, it appears inevitable that the volume of government enforcement litigation and value of settlement numbers from those cases will decrease in 2020.

**4. The monetary value of the overall aggregate workplace class action settlements increased slightly in 2019 but remains low compared to the last several years.** Contrary to the pattern of annual increases over the last decade, including all-time highs in 2017, the value of the largest workplace class action settlements dropped significantly in 2018 and

rebounded only slightly in 2019. ERISA and wage and hour settlements increased, while employment discrimination and other workplace statutory class actions saw large drop-offs. The top 10 settlements in a variety of employment-related class actions totaled \$1.34 billion in 2019, compared with \$1.32 billion in 2018, with both years representing a major decrease from the \$2.72 billion secured in 2017. However, wage and hour class action settlements increased nearly 50 percent compared with 2018 values (from \$253 million in 2018 to \$449.05 million in 2019). ERISA class action settlements also increased, from \$313.4 million in 2018 to \$376.35 million in 2019. On the other hand, the top employment discrimination class actions decreased from \$216 million in 2018 to \$139.2 million in 2019. Furthermore, government enforcement litigation decreased from \$126.7 million in 2018 to \$57.52 million in 2019.





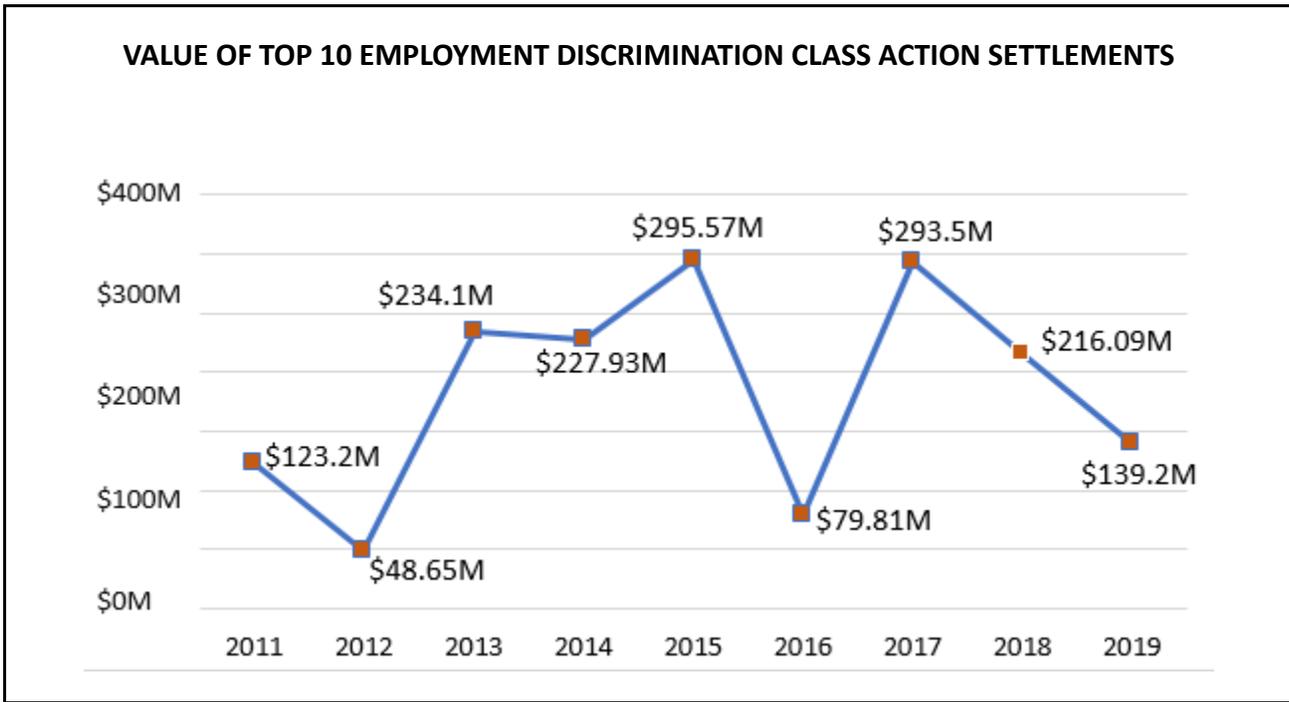
**5. The #MeToo movement continues to fuel workplace class action litigation.** Last year featured the settlement of several large sex harassment class action settlements partially stemming from the #MeToo movement. A closer look at the EEOC’s enforcement litigation activity in 2019 also shows a focus on #MeToo-related lawsuits. Twenty-eight of the EEOC’s sex discrimination filings in 2019 also included claims of sexual harassment, and 57 of the 84 Title VII lawsuits were based on gender discrimination allegations. Overall, though, these numbers represented a slight decrease compared to 2018. That being said, employers should expect this movement to maintain momentum going forward in 2020.

**Top 10 Settlements in Private Plaintiff Employment Discrimination Class Action Lawsuits**

The monetary value of the top 10 private plaintiff lawsuits entered into or paid in 2019 totaled \$139.2 million, which represented a

substantial decrease from 2018, during which the total was \$216.09 million, and 2017, when the total was \$293.5 million

#	Amount	Defendant
1.	\$41 million	Wynn Resorts Ltd.
2.	\$24 million	JPMorgan Chase Bank NA
3.	\$15.5 million	State of Florida, Department of Education
4.	\$14 million	Wal-Mart, Inc.
5.	\$11 million	Google, Inc.
6.	\$11 million	City of New York
7.	\$7.75 million	Western Digital Corp.
8.	\$6.2 million	Merck & Co.
9.	\$5 million	JPMorgan Chase Bank NA
10.	\$3.75 million	Sarbanand Farms, LLC



#	Amount	Defendant
1.	\$100 million	Wackenhut Inc.
2.	\$100 million	Swift Transportation Co.
3.	\$98.8 million	C.R. England, Inc.
4.	\$35 million	Wells Fargo & Co.
5.	\$26 million	McDonald's Restaurants of California, Inc.
6.	\$22.5 million	Pepperidge Farm, Inc.
7.	\$20 million	Uber Technologies, Inc.
8.	\$16.5 million	XPO Logistics, Inc.
9.	\$15.25 million	Tesoro Refining & Marketing Company
10.	\$15 million	Caremark

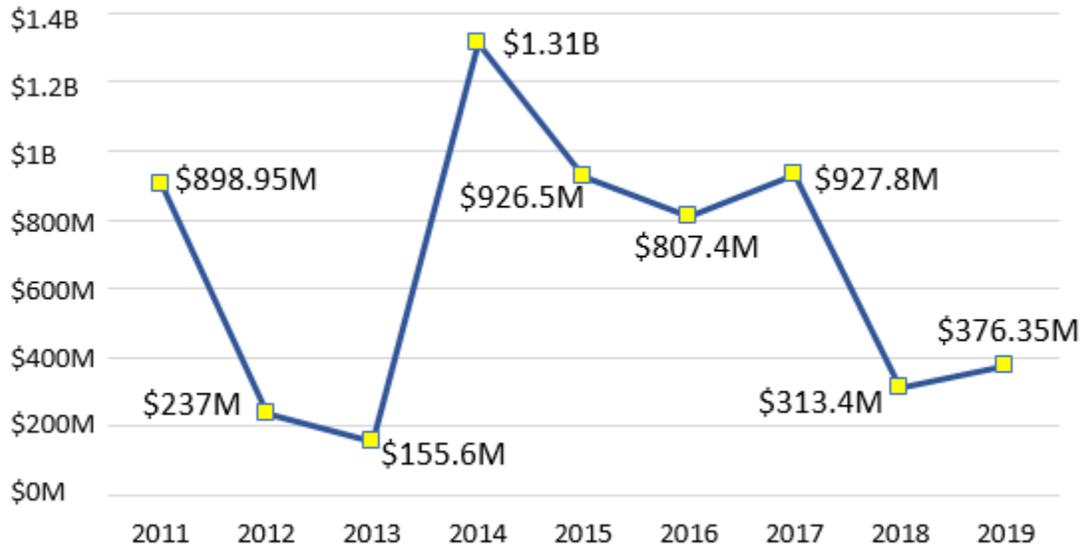
### Top 10 Settlements in Private Plaintiff Wage and Hour Class Action Lawsuits

The monetary value of the top 10 private plaintiff wage and hour class action settlements entered into or paid in 2019 was \$449.05 million. This was nearly double the value of the top settlements in 2018, which totaled \$253.5 million. The overall value of the top 10 wage and hour settlements also approached the 2017 total of \$574.49 million. Of the major categories of workplace class action settlements, wage and hour saw the largest increase over the past year.

### Top 10 Settlements in Private Plaintiff ERISA Class Actions

For ERISA class actions, the monetary value of the top 10 private settlements entered into or paid in 2019 totaled \$376.35 million. This represented an increase from 2018, when the total monetary value of the top 10 private settlements was \$313.4 million. However, both of these years were a massive decrease from the \$927.8 million figure in 2017.

### VALUE OF TOP 10 ERISA CLASS ACTION SETTLEMENTS



#	Amount	Defendant
1.	\$80 million	Metropolitan Life Insurance Co.
2.	\$75 million	JP Morgan
3.	\$60 million	SSM Health
4.	\$55 million	ABB, Inc.
5.	\$24 million	Pension Committee of ATH Holding Company, LLC
6.	\$21.9 million	Deutsche Bank Americas Holding Corp.
7.	\$18.1 million	Massachusetts Institute of Technology
8.	\$14.5 million	Vanderbilt University
9.	\$14 million	The Johns Hopkins University
10.	\$13.85 million	Franklin Resources, Inc.

The largest ERISA class action settlements involved disputes over treating pension plans as “church plans” (i.e., ERISA-exempt plans), breaches of fiduciary duty, failures to make required contributions into retirement funds, and various theories of mismanagement involving benefit plans of universities.

### Top 10 Settlements in Private Plaintiff Statutory Workplace Class Actions

Of course, many class action lawsuits were brought against employers on grounds outside of employment discrimination, wage and hour, and ERISA. Examples of claims include the following.

- ◆ Breach of contract
- ◆ Workplace personal injuries
- ◆ The Fair Credit Reporting Act (FCRA)
- ◆ Workplace antitrust claims
- ◆ The Uniformed Services Employment and Reemployment Rights Act (USERRA)
- ◆ The Worker Adjustment and Retraining Notification Act

The top 10 settlements in this category decreased in 2019, from \$411.15 million in 2018 to \$319.65 million. The largest settlements involved workplace injuries, FCRA, USERRA, and workplace antitrust claims.

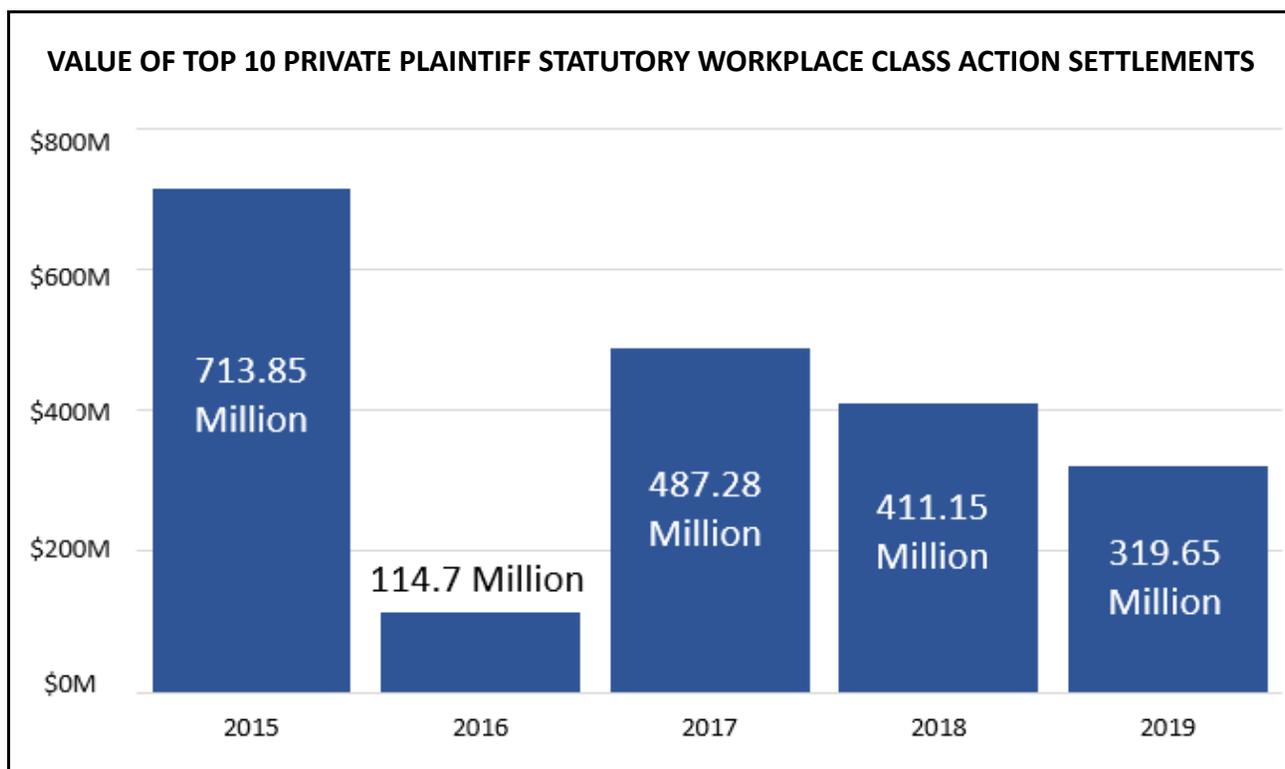
### Top 10 Settlements of Government-Initiated Enforcement Actions and Pattern or Practice Lawsuits

In 2019, the EEOC and the US DOL continued their previous pattern of aggressively litigating government enforcement actions, albeit with mixed results.

Based on figures for the US government’s 2019 fiscal year, the EEOC filed 144 new merits lawsuits, including 27 nonsystemic multiparty suits (i.e., those involving fewer than 20 employee-plaintiffs) and 17 systemic lawsuits (i.e., those involving 20 or more employee-plaintiffs). The 17 systemic lawsuits represented a major decrease compared with prior years, as the EEOC filed 45 such cases in 2018 and 30 such cases in 2017. In 2019, the EEOC obtained \$486 million in total recoveries for alleged discrimination victims through mediation, conciliation, and settlements, a decrease from the \$505 million it collected in 2018.

For all types of government-initiated enforcement actions, the monetary value of the top 10 settlements entered into or paid in 2019 totaled \$57.52 million. This represents a major

#	Amount	Defendant
1.	\$84.5 million	Regents of University of California
2.	\$70 million	CNN America, Inc.
3.	\$65.5 million	Interexchange, Inc.
4.	\$54.5 million	Duke University
5.	\$19 million	Southwest Airlines Co.
6.	\$14 million	Dartmouth College
7.	\$3.7 million	Global Radar Acquisition, LLC
8.	\$3.15 million	Genco I, Inc.
9.	\$3 million	CP OPCO, LLC
10.	\$2.3 million	Delta Air Lines, Inc.



decrease from 2018, when the total was \$125.8 million, and an even more massive decrease from the 2017 total of \$485.25 million.

### And this Is Just the Tip of the Iceberg

This article has provided only a brief sample of the depth and breadth of the information this authoritative, comprehensive report contains. No practitioner who deals with employment claims, whether as an underwriter, broker, risk manager, consultant, or attorney, should be without it. Even better, the Seyfarth Shaw annual *Workplace Class Action Litigation Report*, 2020 edition, is free!

#	Amount	Defendant
1.	\$9.995 million	Goldman Sachs & Co., LLC
2.	\$8.5 million	Sterling Infosystems, Inc.
3.	\$7 million	Dell Technologies
4.	\$6.25 million	AGL Industries, Inc.
5.	\$6 million	Dolgenercorp, LLC
6.	\$5 million	Intel Corp.
7.	\$4.9 million	Jacksonville Association of Firefighters, Local 122
8.	\$4.4 million	Uber Technologies, Inc.
9.	\$2.77 million	WSP USA Services, Inc.
10.	\$2.7 million	Crossmark, Inc.

**To obtain a free copy of**  
**THE SEYFARTH SHAW**  
**ANNUAL WORKPLACE CLASS ACTION**  
**LITIGATION REPORT**  
**2019 Edition**  
  
**Send an email to:**  
[gmaatman@seyfarth.com](mailto:gmaatman@seyfarth.com)  
  
**Check out Seyfarth Shaw's**  
[Class Action Blog](#)

