



Employment Practices Liability Consultant (EPLiC)

SEYFARTH SHAW ANNUAL WORKPLACE CLASS ACTION LITIGATION REPORT FOR 2021

By Sean Jordan, CPCU, MLIS, RPLU

For the eleventh consecutive year, we are pleased to offer a short summary of (now in its 17th edition) the *Seyfarth Shaw Annual Workplace Class Action Litigation Report 2021*. (Read the [2020](#), [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. The *Report* is the *only* publication of its kind in the United States.

Gerald L. Maatman 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's work in this area has been profiled in *the Wall Street Journal*, *The Economist*, and *Time* magazine. He has been selected for 5 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, 850-plus-page 2021 *Seyfarth Shaw Annual Workplace Class Action Litigation Report* insightfully examines and analyzes a massive array of class action case decisions. In addition, the federal cases examined in the *Report* are indexed by federal circuit—an invaluable feature that further enhances the *Report's* utility. The *Report* is also available in e-Book format and is fully searchable.

The following is a synopsis of the 17th *Seyfarth Shaw 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 2020, addresses key developments in workplace class action litigation in 2020, and assesses the implications these developments will have on litigation in 2021 and beyond for employers.

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- ◆ **Significant class action settlements in 2020.** This section analyzes 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, 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 *Seyfarth Shaw Annual Workplace Class Action Litigation Report* analyzes CAFA-related cases.

- ◆ **Other federal rulings affecting the defense of workplace class action litigation.** Throughout 2020, federal courts issued key rulings in class action lawsuits and on Rule 23 issues, which significantly affect 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.

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These sections highlight some of the *Report’s* most noteworthy contents.

Five Key Trends in Workplace Class Actions during 2020

The *Report* notes five important developments in class actions during 2020. They are as follows.

- 1. COVID-19’s impact extended to the legal system and workplace class actions.** Employers took actions like moving their workers to teleworking arrangements, laying off or furloughing workers, and halting

operations. The plaintiffs' bar brought class actions throughout the pandemic for claims like layoffs causing a disparate impact on protected groups, failure to comply with the Worker Adjustment and Retraining Notification (WARN) Act, failure to pay minimum wage or overtime, failure to reimburse expenses, failure to provide pandemic-related leave, and failure to protect workers. These workplace class actions will only continue to evolve as the pandemic response does.

- 2. Change came from all directions.** Contrasting many probusiness precedents taking hold in 2020, voters elected Joe Biden for the next president of the United States, setting in motion an incoming expansion of worker rights. One potential change could be legislative efforts to reverse the impact of the *Epic Systems* ruling that upheld the enforceability of arbitration agreements. Other likely changes could be increased regulation, renewed enforcement efforts, and agency changes aimed at overturning certain Trump administration rules.
- 3. Somewhat surprisingly, the aggregate monetary value of workplace class action settlements increased in 2020.** Settlement numbers went up, and the plaintiffs' bar and government enforcement actions monetized claims at higher rates. Case filings were converted into meaningful settlement amounts at a rate higher than the past 2 years. The top 10 settlements in a variety of employment-related class actions totaled \$1.58 billion in 2020, compared with \$1.34 billion in 2019 and \$1.32 billion in 2018, with both of those years representing a major decrease from the \$2.72 billion secured in 2017. The monetary value of the top 10 private plaintiff settlements in 2020 skyrocketed to \$422.68 million, compared to \$137.35

million in 2019 and \$216.09 million in 2018. Government enforcement litigation settlements also substantially increased to \$241 million, compared to \$57.52 million in 2019 and \$126.70 million in 2018. ERI-SA class actions saw a slight increase to \$380.10 million, as compared to \$376.35 million in 2019 and \$313.4 million in 2018. The only areas of decline were private-plaintiff wage and hour and statutory class action settlements. The top 10 wage and hour settlements garnered \$294.60 million in 2020, compared to \$449.05 million in 2019 and \$253.50 million in 2018, and the top 10 statutory settlements garnered \$244.55 million in 2020, compared to \$319.65 million in 2019 and \$411.15 million in 2018.

- 4. Government enforcement litigation slowed considerably.** The value of government enforcement settlements went up, but fewer lawsuits were brought in 2020 than any year in the past decade. The EEOC shifted away from systemic litigation as a priority, with several specific initiatives signaling this shift (including aims to improve the effectiveness of the conciliation process). The EEOC's systemic filings dropped from 17 in 2019 to 13 in 2020, and total filings also dropped from 149 in 2019 to 101 in 2020. The Trump-appointed leadership at the EEOC will remain in place until at least mid-2022.
- 5. More class and collective actions were certified in the wage and hour space than any other area of workplace law.** The overall number of rulings increased in 2020, and plaintiffs succeeded on first-stage motions at an unprecedented rate. Plaintiffs' odds of clearing decertification also remained at around 50/50. A worker-friendly Department of Labor (DOL) with the new administration will likely further this trend.

Top 10 Settlements in Private Plaintiff Employment Discrimination Class Action Lawsuits

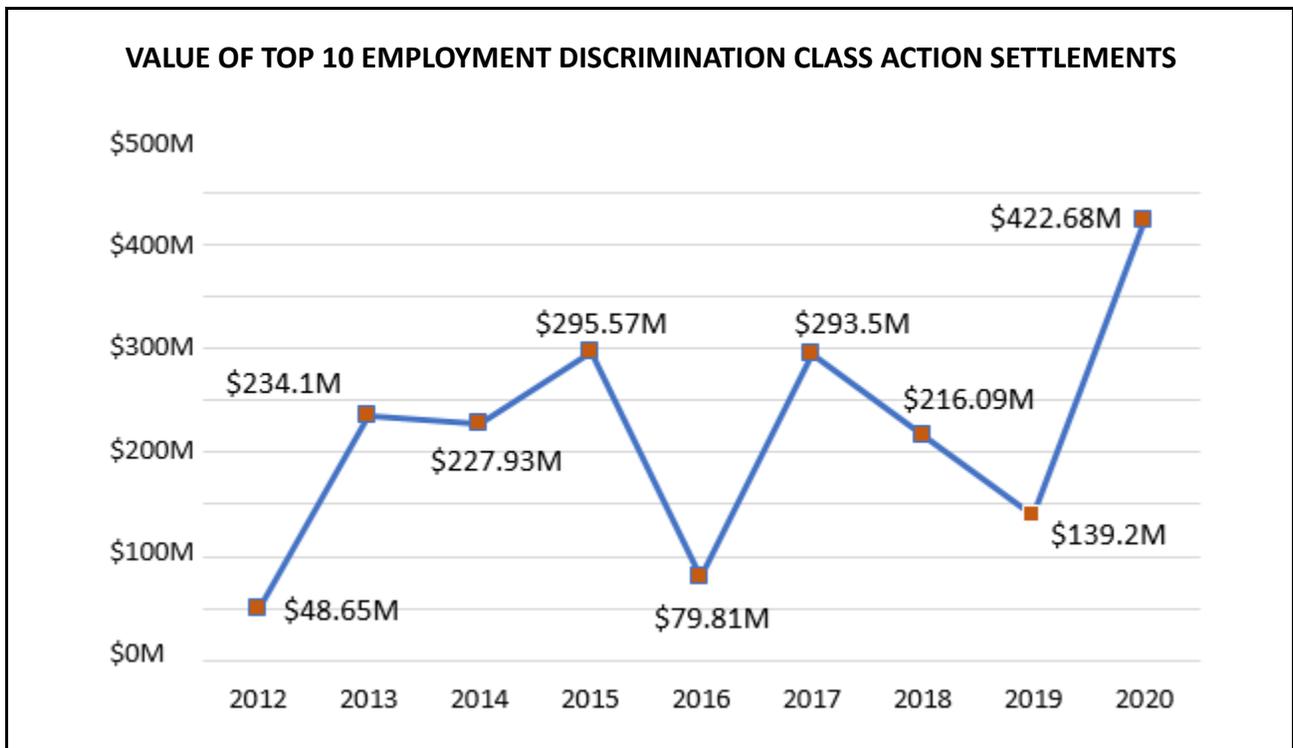
The monetary value of the top 10 private plaintiff lawsuits entered into or paid in 2020 totaled \$422.68 million, which represented a substantial increase from 2019, during which the total was \$139.2 million, and 2018, when the total was \$216.09 million.

#	Amount	Defendant
1.	\$310 million	Alphabet Inc.
2.	\$41 million	Wynn Resorts Ltd.
3.	\$15.5 million	State of Florida, Department of Education
4.	\$14 million	Wal-Mart, Inc.
5.	\$14 million	Cook County, Illinois

	Amount	Defendant
6.	\$11.63 million	PricewaterhouseCoopers
7.	\$7.75 million	Western Digital Corp.
8.	\$3 million	Los Angeles Times Communications
9.	\$3 million	Pipefitters Association Local Union 597
10.	\$2.8 million	Raley's Family of Fine Stores

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 2020 was \$294.6 million. This was a sharp decline from the value of the top settlements in 2019, which totaled \$449.05 million.



#	Amount	Defendant
1.	\$78 million	Air Methods Corp.
2.	\$35 million	Wells Fargo & Co.
3.	\$31.5 million	The TJX Companies Inc.
4.	\$28 million	New Prime Inc.
5.	\$28 million	City of New York
6.	\$21 million	Aramark Corp.
7.	\$20 million	Burlington Coat Factory Warehouse Corp.
8.	\$18.6 million	C.R. England, Inc.
9.	\$18 million	Conagra Foods
10.	\$16.5 million	PAM Transportation Inc.

Top 10 Settlements in Private Plaintiff ERISA Class Actions

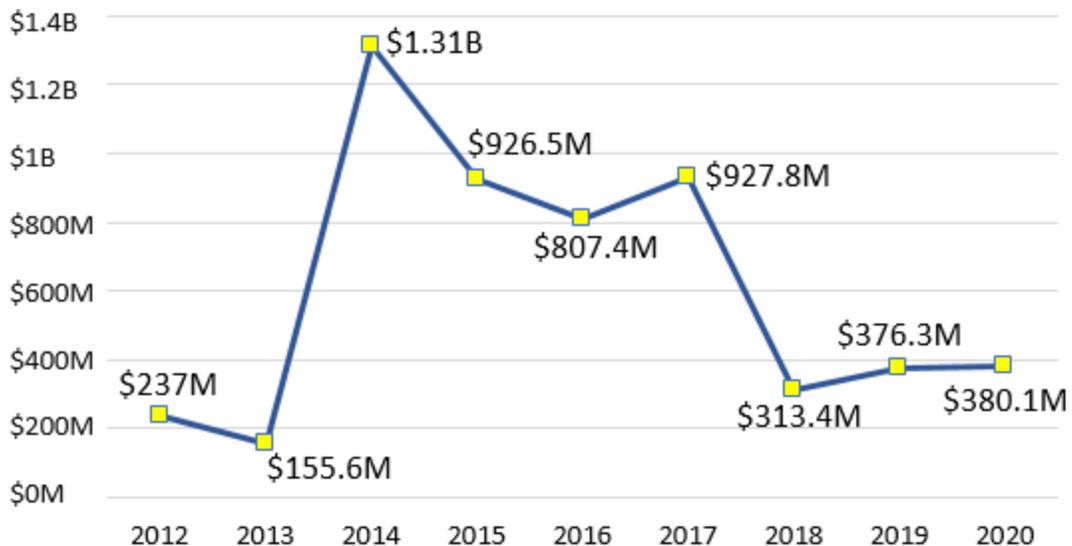
For ERISA class actions, the monetary value of the top 10 private settlements entered into or paid in 2020 totaled \$380.1 million. This was nearly identical to 2019, when the total

monetary value of the top 10 private settlements was \$376.35 million.

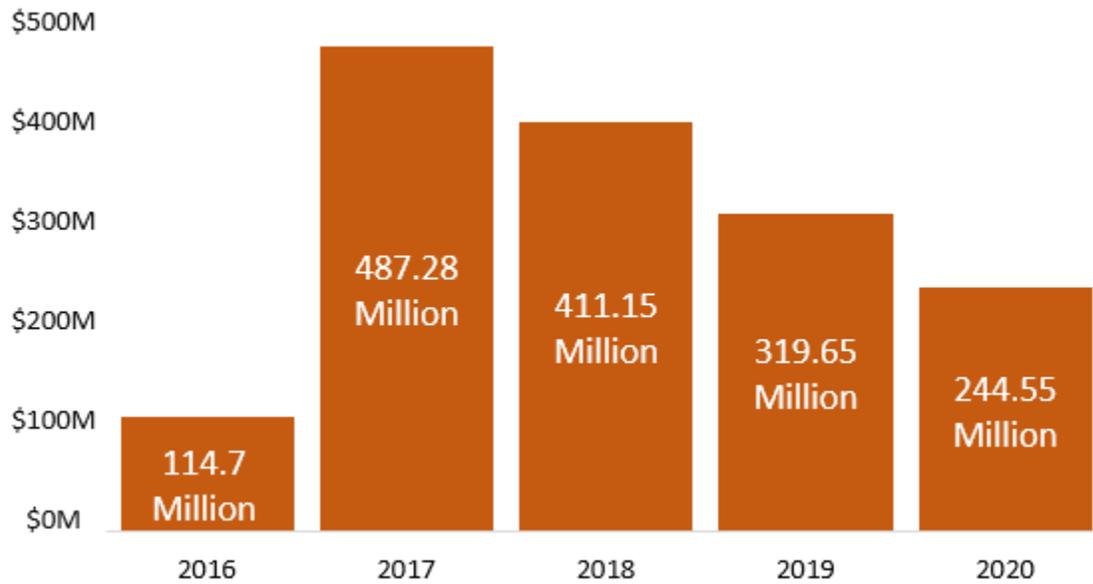
The largest ERISA class action settlements involved disputes over breaches of fiduciary duty and various theories of mismanagement.

#	Amount	Defendant
1.	\$79 million	Wells Fargo & Co.
2.	\$60.5 million	Raydon Corp.
3.	\$40 million	Reliance Trust Co.
4.	\$39.5 million	McKinsey & Co.
5.	\$30 million	Kelsy-Hayes Co.
6.	\$29 million	SunTrust Bank, Inc.
7.	\$28.5 million	FMR LLC
8.	\$27 million	The Board of Trustees of the American Operation of Musicians and Employers' Pension Fund
9.	\$25 million	OSF HealthCare System
10.	\$21.6 million	WAWA, Inc.

VALUE OF TOP 10 ERISA CLASS ACTION SETTLEMENTS



VALUE OF TOP 10 PRIVATE PLAINTIFF STATUTORY WORKPLACE CLASS ACTION SETTLEMENTS



Top 10 Settlements in Private Plaintiff Statutory Workplace Class Actions

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
- ◆ Workplace antitrust claims
- ◆ The Uniformed Services Employment and Reemployment Rights Act
- ◆ The WARN Act

The top 10 settlements in this category decreased in 2020, from \$319.65 million in 2019 to \$244.55 million. The largest settlements involved sexual misconduct, workplace injuries, and Title IX claims.

#	Amount	Defendant
1.	\$73 million	University of California
2.	\$52 million	Facebook, Inc.
3.	\$41 million	The Ohio State University
4.	\$25 million	ADP, LLC
5.	\$18 million	C.R. England, Inc.
6.	\$14 million	Dartmouth College
7.	\$9.25 million	University of Michigan
8.	\$5 million	Gruma Corp.
9.	\$4.1 million	Novatime Technology, Inc.
10.	\$3.2 million	CBC Restaurant Corp.

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

In 2020, the EEOC and the US DOL continued their previous pattern of aggressively litigating government enforcement actions, albeit with mixed results.

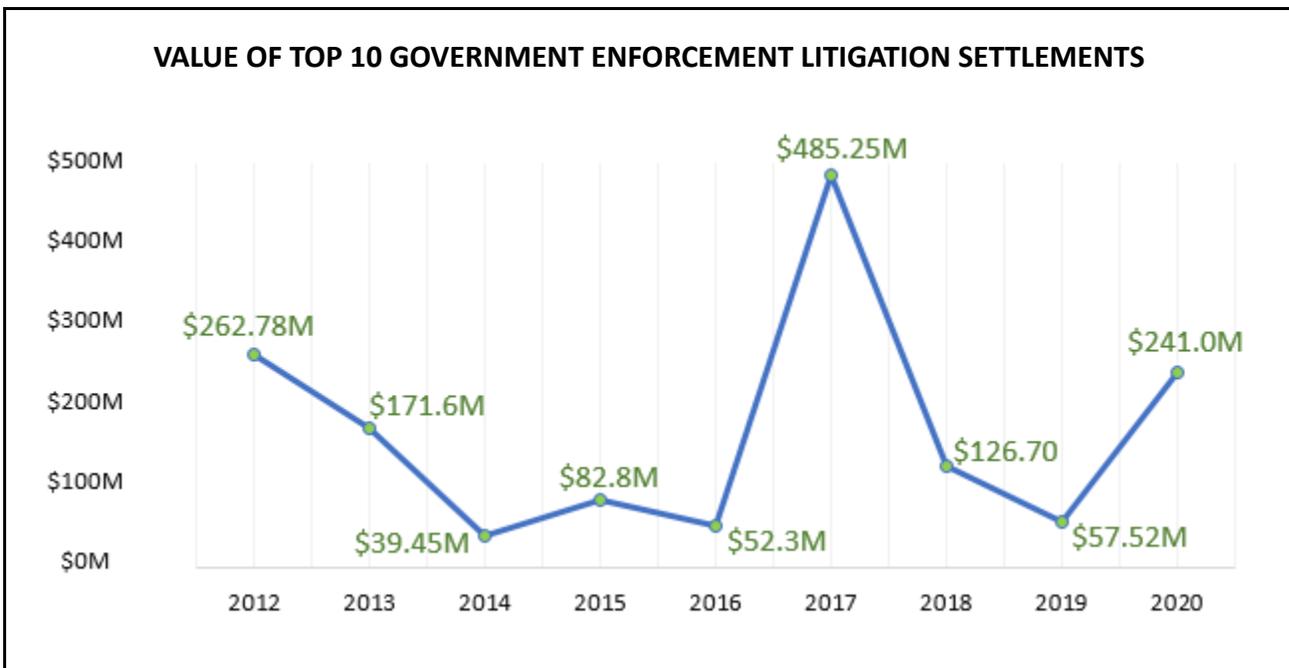
Based on figures for the US government’s 2020 fiscal year, the EEOC filed 94 new merits lawsuits and obtained a record \$535.4 million in total recoveries for alleged discrimination victims through mediation, conciliation, and settlements. Litigation recoveries increased to \$106 million, the highest in 16 years.

The DOL conducted a record number of wage compliance audits in 2020 but saw a sharp drop in back wages collected. It collected \$258 million in back pay in 2020, far less than the \$322 million in 2019. The number of employees who received back wages also dropped from about 314,000 to about 230,000, while the number of complaints received by the DOL Wage and Hour Division rose from just under 19,000 to more than 21,500.

For all types of government-initiated enforcement actions, the monetary value of the top 10

settlements entered into or paid in 2020 totaled \$241 million. This represents a major increase from 2019, when the total was \$57.52 million.

#	Amount	Defendant
1.	\$80 million	Wilmington Trust, N.A.
2.	\$76 million	CNN America, Inc.
3.	\$20.5 million	Jackson National Life Insurance Co.
4.	\$20 million	Wal-Mart, Inc.
5.	\$10 million	Jet Propulsion Laboratory
6.	\$9.8 million	JPMorgan Chase & Co.
7.	\$7.8 million	Wells Fargo Bank N.A.
8.	\$6.5 million	United Transportation Union
9.	\$5.4 million	Baltimore County
10.	\$5 million	Performance Foods



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*, 2021 edition, is free!

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