



Employment Practices Liability Consultant (EPLiC)

SEYFARTH SHAW ANNUAL WORKPLACE CLASS ACTION LITIGATION REPORT FOR 2022

By Sean Jordan, CPCU, MLIS, RPLU

For the 12th consecutive year, we are pleased to offer a short summary of (now in its 18th edition) the *Seyfarth Shaw Annual Workplace Class Action Litigation Report 2022*. (Read the [2021](#), [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. It has been cited in briefs to the US Supreme Court and is considered “the Bible” on class action issues that arise in the workplace.

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 6 of the last 8 years as one of the top 4 employment lawyers in the United States by Law 360.

A Brief Overview of What’s Inside

The encyclopedic, 825-page 2022 *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 18th *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 2021, addresses key developments in workplace class action litigation

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in 2021, and assesses the implications these developments will have on litigation in 2022 and beyond for employers.

- **Significant class action settlements in 2021.** 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 (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 *Seyfarth Shaw Annual Workplace Class Action Litigation Report* analyzes CAFA-related cases.

- **Other federal rulings affecting the defense of workplace class action litigation.** Throughout 2021, 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 2021

The *Report* notes five important developments in class actions during 2021. They are as follows.

1. **Aggregate monetary value of workplace class action settlements exploded to an all-time high.** Claims were monetarized at the

highest values the *Report* has ever tracked, despite expectations that the pandemic may slow down the pace of settlements. Settlements had previously reached a high point in 2017 before temporarily plummeting and then beginning a slow rise back up. In 2021, the top 10 settlements in various employment-related class action categories surpassed \$3.62 billion, compared to \$1.58 billion in 2020. The top 10 wage and hour class action settlements increased particularly dramatically, from \$294.6 million in 2020 to \$641.3 million in 2021. The top 10 ERISA class action settlements also more than doubled from 2020, all the way up to \$837.3 million in 2021. In fact, the only areas of decline were private-plaintiff employment discrimination and government enforcement action settlements.

- 2. Wage and hour remained a sweet spot at both the certification and decertification stages.** Workers certified more wage and hour class and collective actions in 2021 than in any other area of workplace law. The plaintiffs' bar kept up a high rate of success on first-stage conditional certification motions in 2021 and improved in terms of second-stage decertification motions. Plaintiffs won about 81 percent of FLSA wage and hour conditional certification rulings in 2021. Plaintiffs lost about 53 percent of second-stage decertification motions. These numbers are expected to tilt even more in favor of plaintiffs in 2022, given a more employee-friendly US Department of Labor (DOL).
- 3. White House changes led to reversals in administrative agendas.** The Biden administration's enforcement authorities eliminated some pro-business rules from the Trump administration, expanding worker rights in the process. The DOL withdrew tip credit, joint employer, and independent contractor rules in particular. Furthermore, the chair of the EEOC shifted with President Biden's inauguration. However, other agencies continue to

operate under Trump-appointed majorities and have been slower to see change. When the rest of the EEOC's leadership shifts away from Trump-appointed commissioners in mid-2022, look out for a significant shift in the EEOC's enforcement programs.

- 4. COVID-19 class actions became more pervasive.** These class actions reached across to new industries and created new challenges. "Return-to-work" or "hybrid" work arrangements prompted vaccine and/or test mandates, fueling employers to take action regarding health screenings, temperature checks, and vaccination policies. Predictably, this led to a rise in class actions over these policies. The scope of agency rule-making was challenged in the process with mixed results in the courts. Overall, employers are being challenged on a number of discrimination (disability and religious) and retaliation fronts, but courts are granting a high number of motions to dismiss for these types of cases. These cases will continue to expand and evolve in 2022.
- 5. Workplace arbitration programs continue to influence class action litigation.** The plaintiffs' bar continues to try to find ways to work around such claims. This trend continues to be aided by the 2018 *Epic Systems* ruling. More than half of nonunion, private-sector employers and more than two-thirds of large employers have adopted mandatory arbitration agreements. This has led to more front-end attacks on proposed class and collective actions and the defense bar's attempts to divert proceedings into individual arbitrations. Last year, the plaintiffs' bar continued to shift efforts toward claims more likely to be immune from such programs or toward populations less likely to have entered into agreements with defendants. Furthermore, new legislation is being backed by worker advocates that would change federal law to ban mandatory arbitration agreements for different types of disputes.

VALUE OF TOP 10 EMPLOYMENT DISCRIMINATION CLASS ACTION SETTLEMENTS



Source: Seyfarth Shaw Annual Workplace Class Action Litigation Report 2022

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 2021 totaled \$323.45 million, which represented a decrease from 2020, during which the total was \$422.68 million.

#	Amount	Defendant
1.	\$100 million	Riot Games Inc.
2.	\$90 million	Wexner
3.	\$44 million	Federal Aviation Administration
4.	\$34 million	Edward D. Jones & Co.
5.	\$14 million	Wal-Mart, Inc.
6.	\$12 million	PricewaterhouseCoopers LLP
7.	\$10 million	KPMG LLP
8.	\$8 million	Prince George's County
9.	\$7.75 million	Western Digital Corp.
10.	\$3.7 million	Syracuse University

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 2021 was \$641.3 million. This was more than double the value of the top settlements in 2020, which totaled \$294.6 million.

#	Amount	Defendant
1.	\$160 million	United States
2.	\$140 million	ABM Industries
3.	\$100 million	DoorDash
4.	\$95 million	Wells Fargo Bank, N.A.
5.	\$31.5 million	The TJX Co, Inc.
6.	\$30 million	XPO Logistics Cartage, LLP
7.	\$30 million	Apple Inc.
8.	\$22 million	JCK Legacy Co.
9.	\$17 million	Humana, Inc.
10.	\$15.8 million	Matco Tools Corp.

VALUE OF TOP 10 PRIVATE WAGE AND HOUR CLASS ACTION SETTLEMENTS



Source: Seyfarth Shaw Annual Workplace Class Action Litigation Report 2022

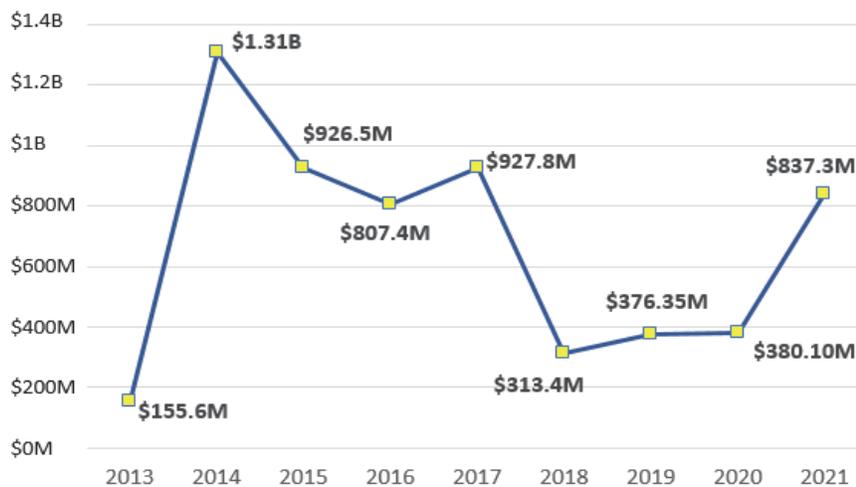
Top 10 Settlements in Private Plaintiff ERISA Class Actions

For ERISA class actions, the monetary value of the top 10 private settlements entered into or paid in 2021 totaled \$837.3 million. This was

more than double the 2020 figure, when the total monetary value of the top 10 private settlements was \$380.1 million.

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

VALUE OF TOP 10 ERISA CLASS ACTION SETTLEMENTS



Source: Seyfarth Shaw Annual Workplace Class Action Litigation Report 2022

#	Amount	Defendant
1.	\$300 million	Walgreen Co.
2.	\$154 million	Exela Enterprise Solutions, Inc.
3.	\$100 million	Dignity Health
4.	\$79 million	Ruane, Cunniff & Goldfarb, Inc.
5.	\$60 million	Raytheon Co.
6.	\$39.2 million	Reliance Trust Co.
7.	\$30 million	Prospect Chartercare, LLC
8.	\$28.5 million	FMR LLC
9.	\$25 million	OSF HealthCare System
10.	\$21.6 million	WAWA, Inc.

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 Worker Adjustment and Retraining Notification Act

The top 10 settlements in this category increased dramatically in 2021, from \$219.93 million in 2020 to \$1.67 billion last year. The largest settlements involved biometric privacy lawsuits and sexual misconduct.

VALUE OF TOP 10 PRIVATE PLAINTIFF STATUTORY WORKPLACE CLASS ACTION SETTLEMENTS



Source: Seyfarth Shaw Annual Workplace Class Action Litigation Report 2022

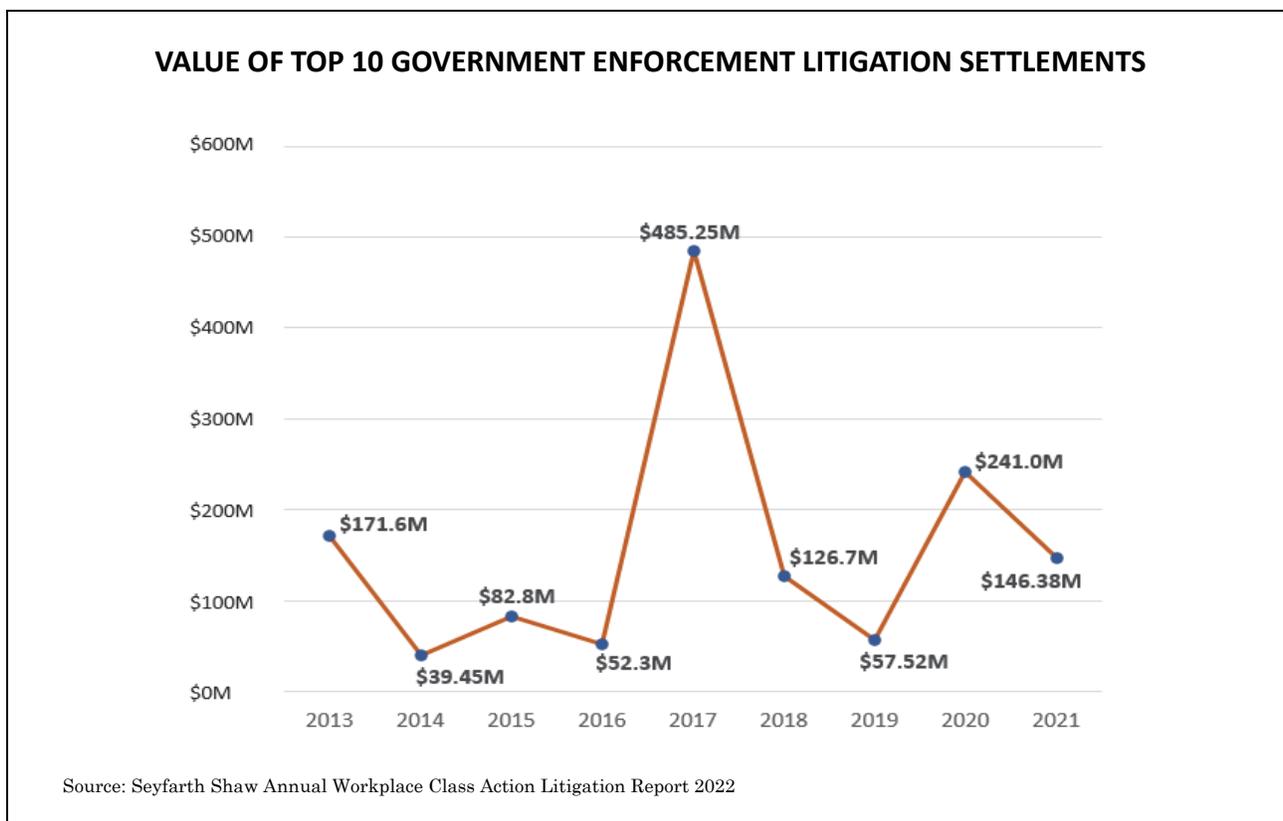
#	Amount	Defendant
1.	\$852 million	University of Southern California
2.	\$575 million	Sutter Health
3.	\$71.4 million	Columbia University
4.	\$52 million	Facebook, Inc.
5.	\$50 million	McDonald's USA, LLC
6.	\$29 million	Perdue Farms Inc.
7.	\$19 million	Duke University
8.	\$10 million	Wal-Mart Inc.
9.	\$6.8 million	Compass Group
10.	\$5.85 million	WAM Holdings d/b/a All-Star Management, Inc.

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

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

top 10 settlements entered into or paid in 2021 totaled \$146.38 million. This represents a major decline from 2020, when the total was \$241 million.

#	Amount	Defendant
1.	\$61.7 million	Amazon.com
2.	\$20 million	Glenn O. Hawbaker Inc.
3.	\$18 million	Activision Blizzard
4.	\$14 million	Facebook, Inc.
5.	\$8.5 million	Adat Shalom Board & Care Inc.
6.	\$6 million	United States
7.	\$5.5 million	JBS USA LLC
8.	\$5.3 million	DoorDash
9.	\$3.85 million	FIS Holdings Inc.
10.	\$3.525 million	Aerotek



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*, 2022 edition, is free!

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