



2023
FLSA Litigation
Metrics & Trends



As the FLSA landscape continues to evolve, Seyfarth's national Wage and Hour Litigation practice group is pleased to share our observations and analysis of the 2023 FLSA litigation trends as well as our forward-looking predictions for 2024.

Wage and hour litigation and enforcement actions continued as a hot-button concern in 2023, as plaintiffs' lawyers advanced novel and creative claims and Supreme Court and appellate-level battles took place over long-accepted standards—for exempt status, collective action certification, and the arbitrability of certain wage and hour cases. And pay laws remained in flux, as local, state, and federal legislatures and agencies quarreled over everything from minimum wages, to questions of who is an employee and who not, and—further—to rules around the disclosure and frequency of employee pay.

Remarkably, against this backdrop, the number of cases filed nationally under the FLSA reduced marginally compared to 2022, falling to its lowest since the peak in 2015.

For 2024, we predict that the mix of wage and hour litigation and enforcement actions will remain varied. With ongoing government rulemaking on various regulations, and especially given that 2024 is an election year, when candidates on both sides will use wages as a lightning rod, we also speculate that we will see another increase to the number of suits filed nationally.

8 Key Trends

In 2023, there were approximately 5,996 FLSA lawsuits filed across the country, approximately 2,689 of which were designated by court coding as collective actions.



Suit Spikes



**10-Year
Timeline**



**US District
Court Trends**



Hot States



**Industries
Impacted**



**2023 Case
Life Timeline**



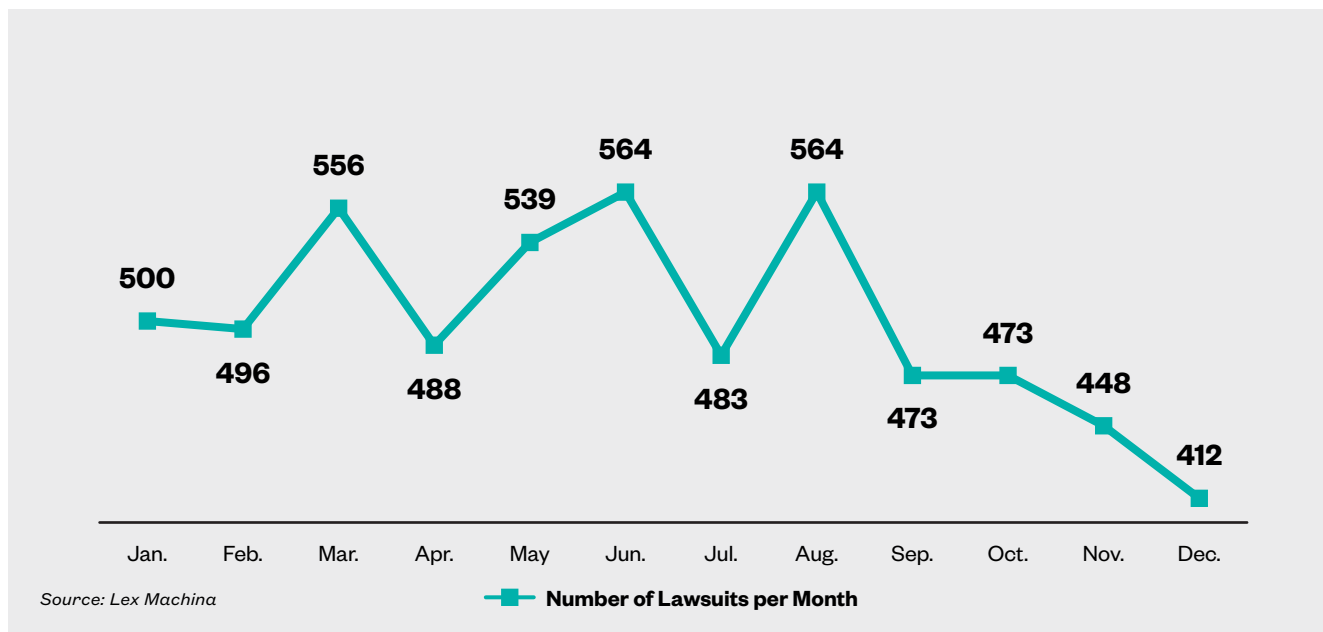
**Settlement
and Damages**



California

1 Suit Spikes

Although there may be no clear rhyme or reason behind the flow of FLSA cases filed on the federal dockets, the numbers clearly surge through the first three quarters and fall off during the fourth. The trendline in 2022 was similar to that in 2023, suggesting that—at a macro level—the plaintiffs’ wage and hour bar tends to slow down, even if just a bit, at the end of a calendar year.

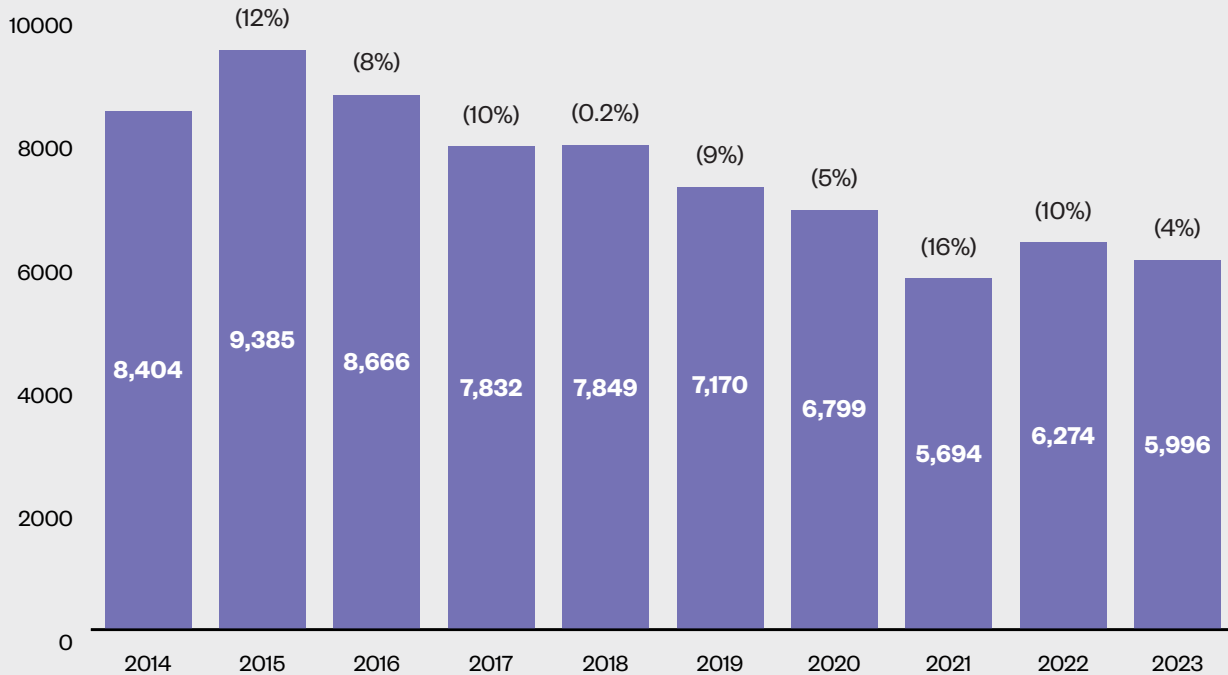


② 10-Year Timeline

Since a peak in 2015, we have generally seen a downward trend in annual FLSA filings. In 2021, we saw this number greatly suppressed. Although we wondered if the uptick in 2022 represented the start of a new, upward trend—2023 dispelled that theory. In 2023, FLSA filings dipped back down to 5,532, right on par with 2021 filings. In sum, 2023 filings are down approximately 20% versus 2019, and the downward trend is back on.

FLSA Cases

12 months ending December 31

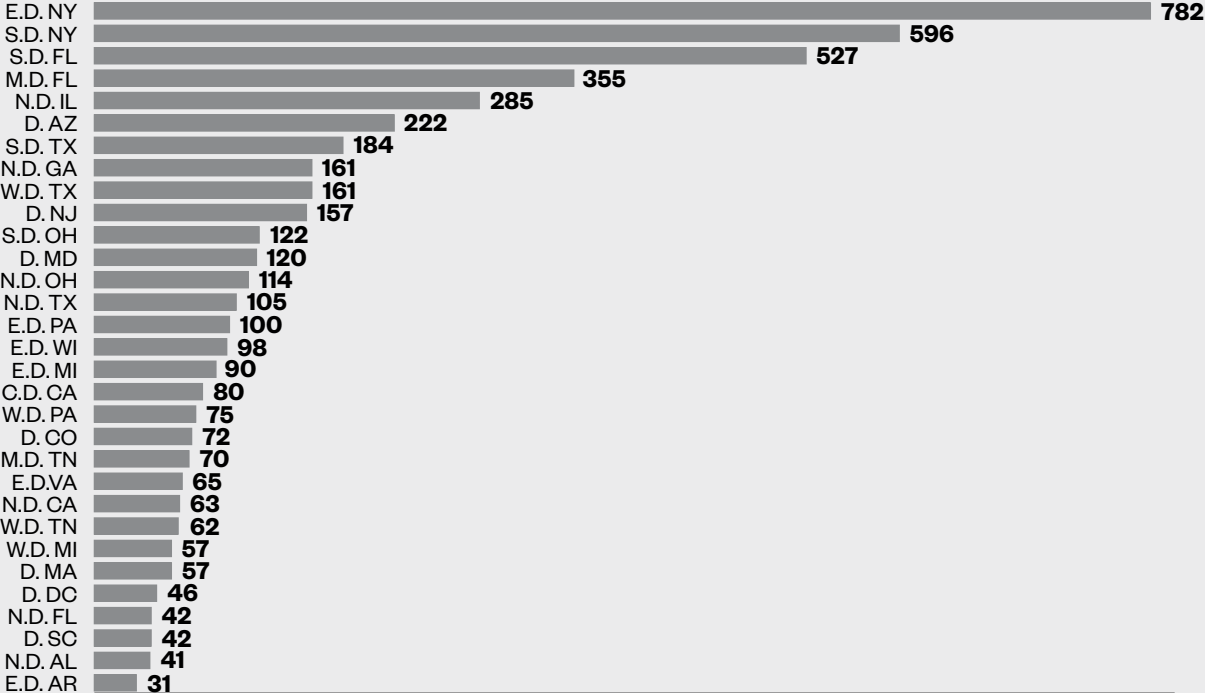


Source: Lex Machina

③ US District Court Trends

Courts in Eastern and Southern Districts of New York dominated the federal courts where plaintiffs brought suit against employers across industries. Of the nearly 6,000 suits, plaintiffs filed almost 1,400 in those two districts. As in 2022, these high numbers in New York, and similarly in Florida, derive not from spin-off litigation—cases filed after decertification or following the denial of conditional certification—but from single and multi-plaintiff, as well as putative collective action, complaints filed for the first time in federal court.

US District Court Trends



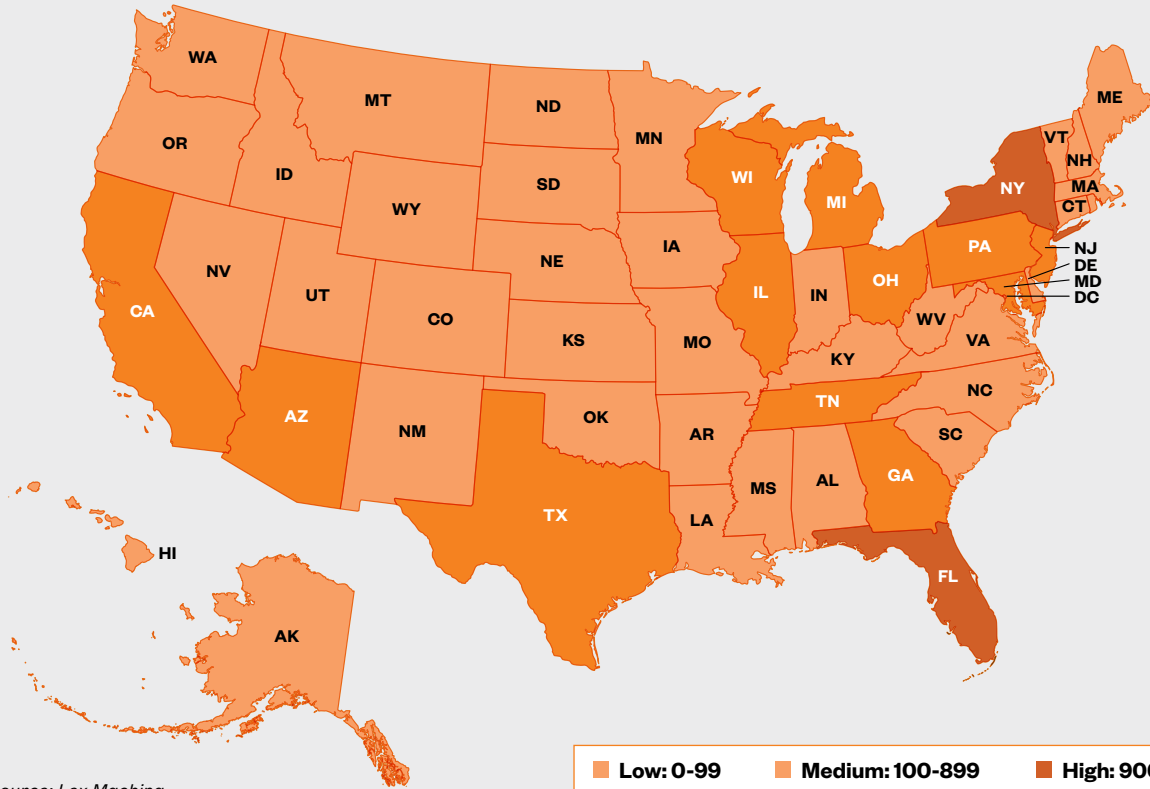
Source: Lex Machina

4 Hot States

Number of FLSA lawsuits filed by state.

Court Id	Total	Court Id	Total	Court Id	Total
Alaska	2	Louisiana	64	Ohio	236
Alabama	61	Massachusetts	57	Oklahoma	26
Arkansas	52	Maryland	120	Oregon	30
Arizona	222	Maine	3	Pennsylvania	205
California	197	Michigan	147	Puerto Rico	6
Colorado	72	Minnesota	26	Rhode Island	11
Connecticut	46	Missouri	50	South Carolina	42
Delaware	20	Mississippi	28	Tennessee	169
Florida	924	Montana	1	Texas	495
Georgia	196	North Carolina	66	Utah	26
Hawaii	6	North Dakota	4	Virginia	81
Iowa	11	Nebraska	4	Vermont	2
Idaho	10	New Hampshire	5	Washington	21
Illinois	331	New Jersey	157	Washington, DC	46
Indiana	72	New Mexico	23	Wisconsin	108
Kansas	23	Nevada	27	West Virginia	6
Kentucky	28	New York	1,427	Wyoming	0

FLSA Lawsuits Filed by State



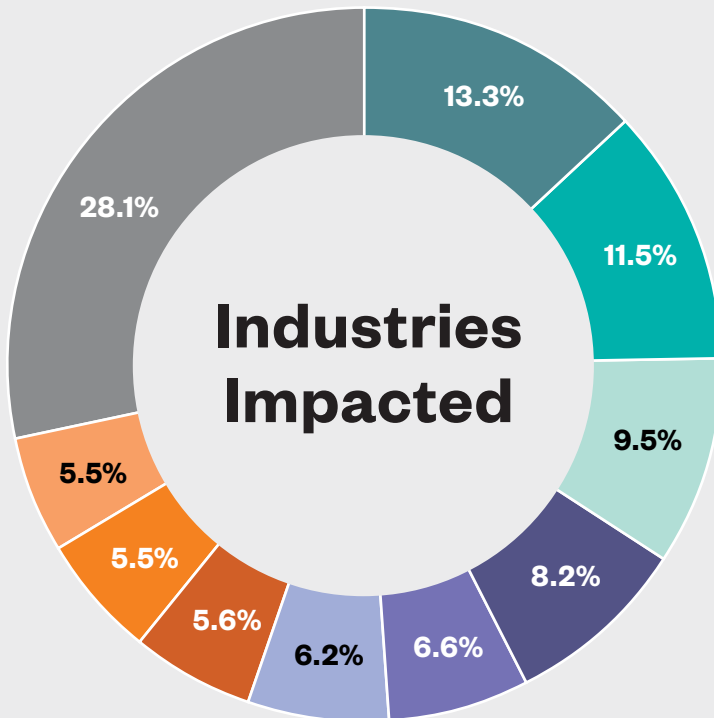
Source: Lex Machina

This map reflects only filings under the FLSA and does not include complaints alleging violations of state wage-hour law. California, for example, sees thousands of filings each year under its state wage-hour laws.

5 Industries Impacted

The top industries that these employees' advocates attacked:

Health Care:	13.3%
Business Services:	11.5%
Services:	9.5%
Retail:	8.2%
Construction:	6.6%
Leisure:	6.2%
Financial Services:	5.6%
Real Estate:	5.5%
Transportation:	5.5%
Other:	28.1%



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Source: Monitor Suite Fair Labor Standards Act Practice Area Report

⑥ 2023 Case Life Timeline

- Docket entries nationally indicate that 2,909 FLSA collective actions terminated in 2023.
- The courts ruled on conditional certification in 503 of those, taking a median average of 333, and as many as 491, days to reach that ruling.
- They issued orders on summary judgment in 211, taking a median average of 793, and up to 1,127 days from the lawsuits' initiation.
- 41 of the 2,909 went to trial.

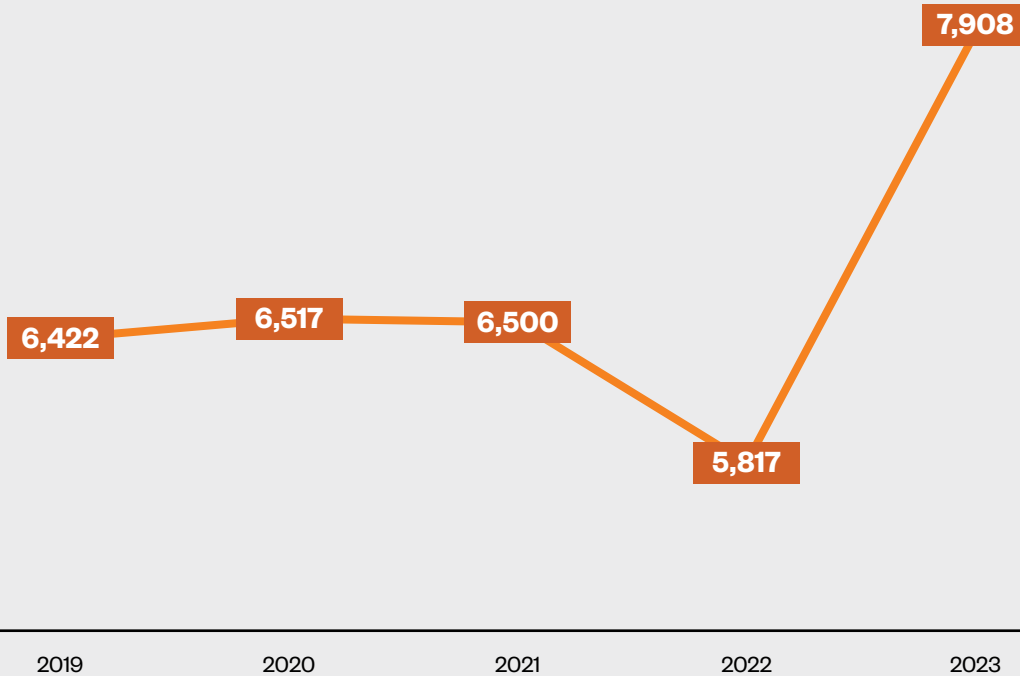
7 Settlement and Damages

In 2023, 423 FLSA collective actions settled in federal court with reported settlement values. Those settlements totaled \$493,571,392, for an average of \$1,166,835 per case. The largest FLSA collective settlement reached in 2023 was \$65,500,000. While the total amount of cases settling on a collective basis annually has stayed consistent over the past 3 years, the settlement values rose significantly in 2023. In 2022, 432 cases settled in federal court on a collective basis for a total of \$309,148,520; and in 2021, 424 cases settled in federal court on a collective basis for a total of \$286,071,727.

8 California

PAGA claims continue to remain prolific in California. The slight dip in 2022 is likely a result of the pro-employer SCOTUS decision in *Viking River* and uncertainty at the time about what *Adolph v. Uber* would say. The increase in 2023 is also not surprising, given that *Adolph* allowed PAGA claims to proceed even with arbitration agreements. We expect to continue to see more PAGA cases in the future and the numbers will continue to have an upward trajectory.

PAGA Notices 2019-2023



Source: California Dept. of Industrial Relations

About the Team

Seyfarth's national Wage and Hour Litigation Practice Group comprises more than 100 attorneys across our US domestic platform who devote a substantial amount of their practices to defending employers in state and federal pay-related litigation brought in individual plaintiff litigation, as class and collective actions, and through government enforcement. We also help employers develop practical compliance measures that ensure, to the greatest extent possible, a reduction in the risks caused by the threat of litigation and state and federal agency enforcement.

To learn more about our wage hour litigation capabilities, please visit our website at www.seyfarth.com/wagehourclassactions.

The dataset may not include every case filed, but rather is intended to reflect general trends and observations.

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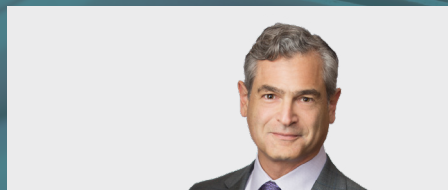


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