

# **Book Launch Event For The 18th Annual Workplace Class Action Litigation Report**

**Chicago, Illinois  
February 1, 2022**



# Legal Disclaimer

This presentation has been prepared by Seyfarth Shaw LLP for informational purposes only. The material discussed during this webinar should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The content is intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have.

## **Seyfarth Shaw LLP**

"Seyfarth" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership).

# Introduction – Our Moderator

---



**Laura Maechtlen**  
Partner/Chair of L & E  
Seyfarth Shaw LLP



# Today's Speakers

---



**Gerald L. Maatman, Jr.**  
Partner  
Seyfarth Shaw LLP



**Paige Smith**  
Labor & Employment Reporter  
Bloomberg Law



# Workplace Class Action Litigation Report Media Coverage

Forbes

## Workplace Class Action Settlements Set New Record In 2021: Report

LAW360<sup>®</sup> Employment Authority

Analysis

## Employment Class Settlements Soared In 2021, Report Says

FOX BUSINESS



CORPORATECOUNSEL

## Workplace Class Action Settlements Hit Record \$3.6B in 2021

"The cases decided in 2021 foreshadow the direction of class action litigation in the coming year," report author Gerald Maatman Jr. said.

businesswire  
A BERKSHIRE HATHAWAY COMPANY

## Seyfarth's 18th Annual Workplace Class Action Report: 2021 Spikes Highest Settlement Numbers In Report's History

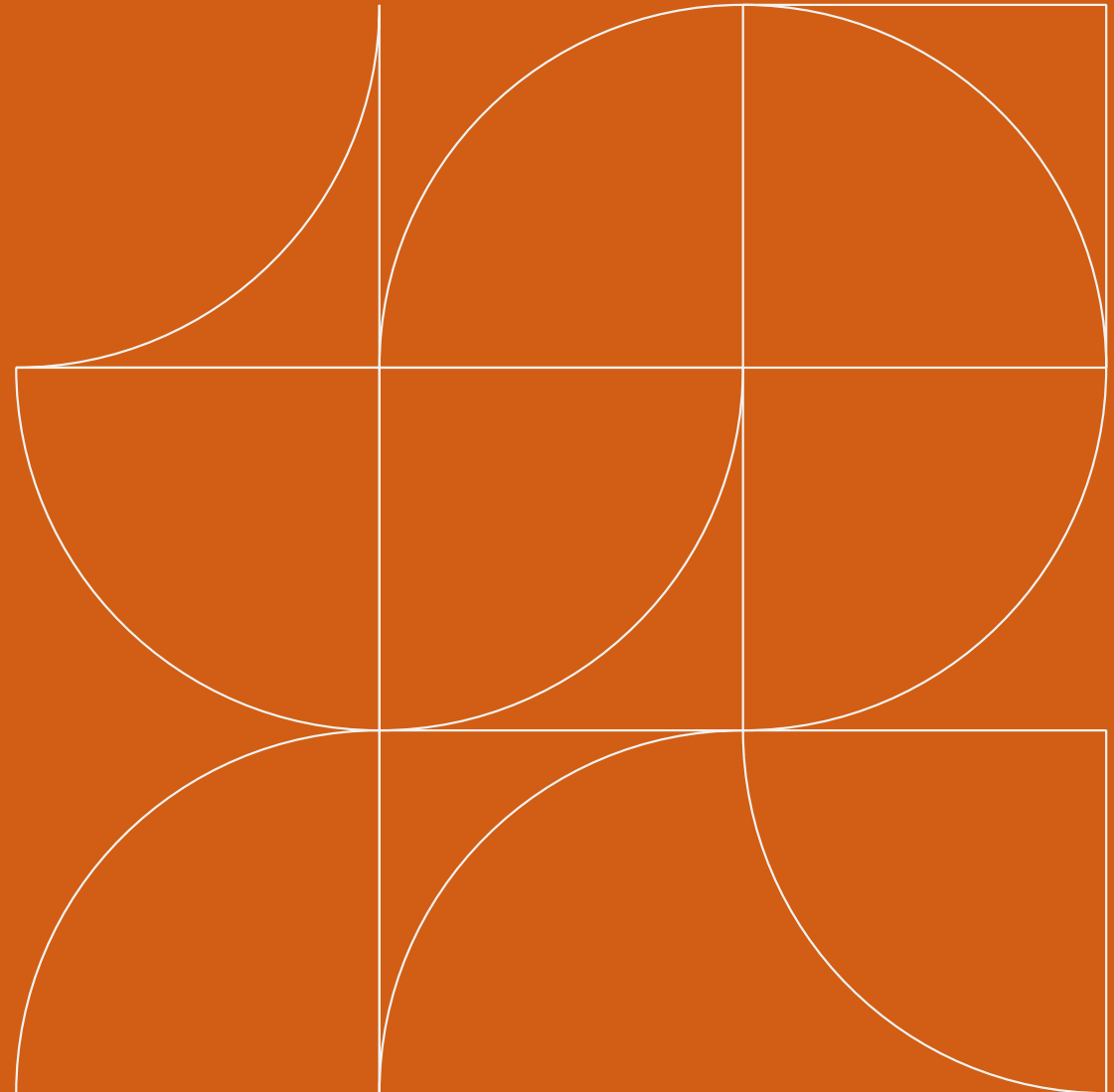
# **Paige Smith Presentation**

**thank  
you**

**Paige Smith  
Reporter  
Bloomberg Law**

# Book Launch For 18th Annual Workplace Class Action Litigation Report

Gerald L. Maatman, Jr.  
February 1, 2022





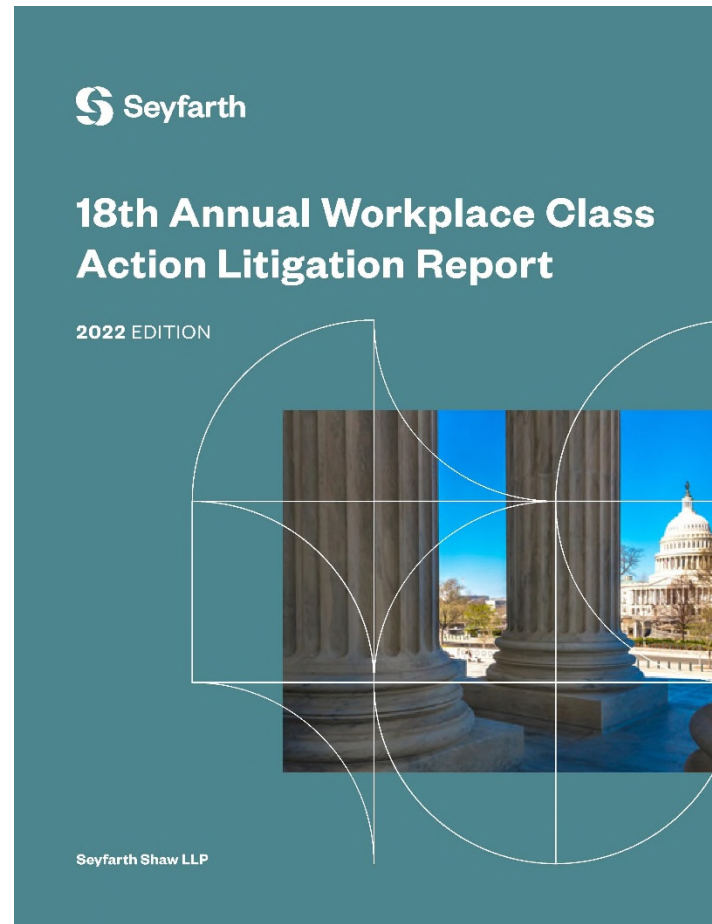
# Key Trends In Workplace Class Action Litigation In 2021

---

- 01** Class Action Settlement Trends
- 02** Class Certification Trends
- 03** Government Administrative And Enforcement Trends
- 04** The Continuing Impact Of COVID-19
- 05** The Continuing Impact Of Arbitration

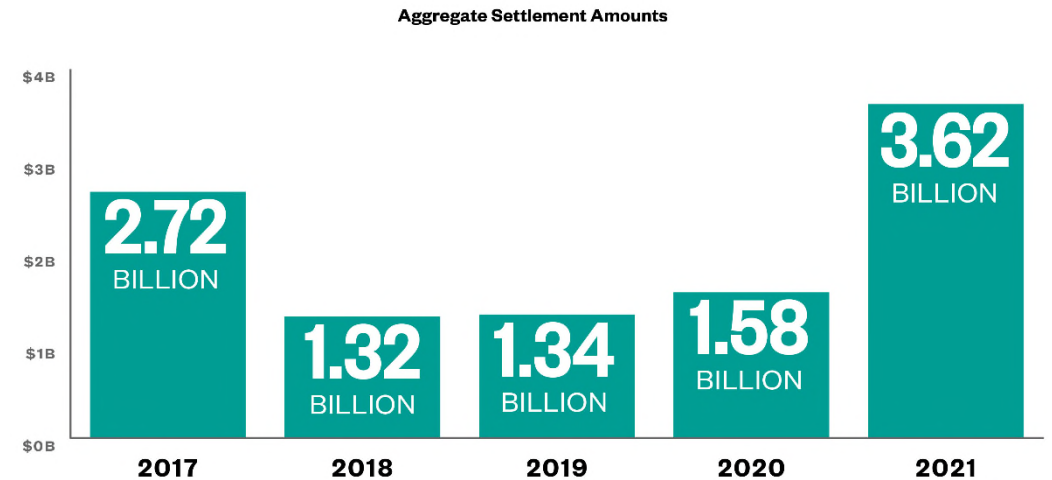
# Trend 1: Class Action Settlement Trends

---



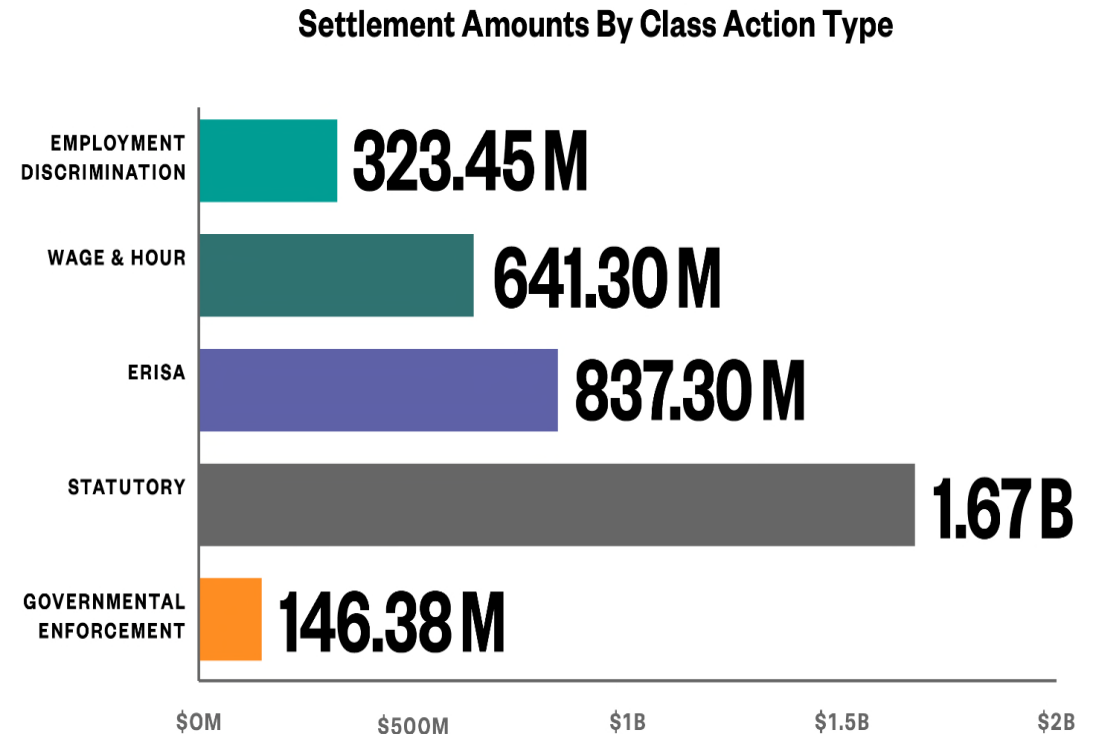
# Trend 1: Class Action Settlement Trends

- The settlement numbers in 2021 were off the chart
- What does this mean for employers in practical terms?



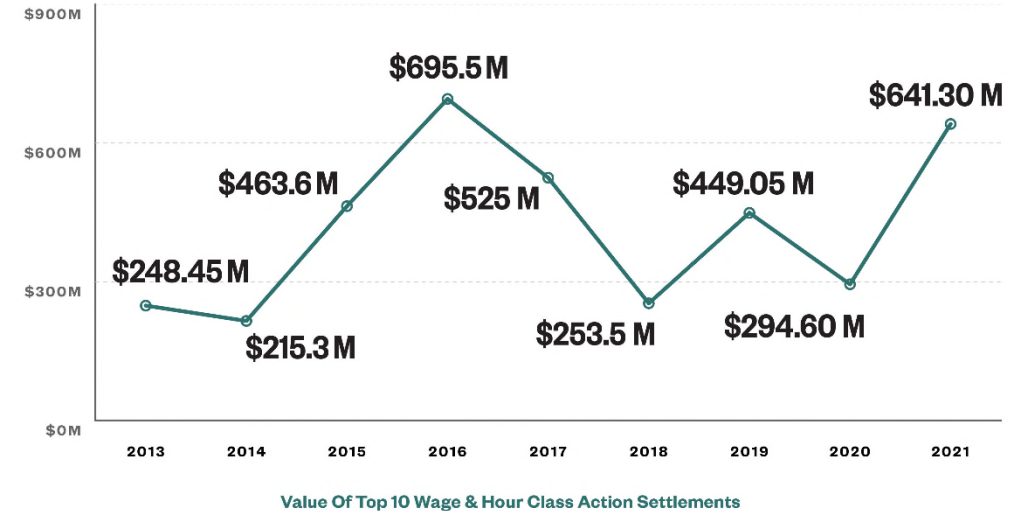
# Trend 1: Class Action Settlement Trends

- The top ten settlements per area
- Wage & hour and ERISA class action settlements more than doubled from the year before
- Settlements for statutory claims increased ten-fold
- Employment discrimination and government enforcement claims were slightly down



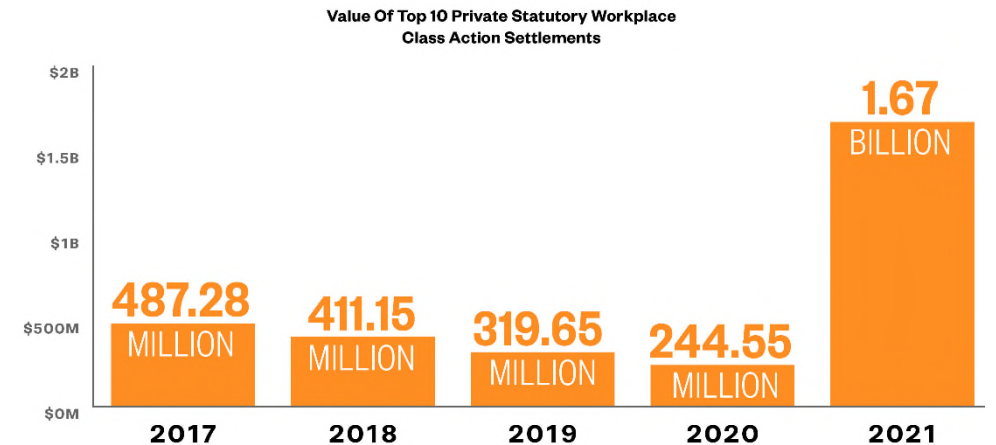
# Trend 1: Class Action Settlement Trends

- Wage & hour class and collective actions remain the #1 threat for employers
- Over the past 5 years, the average for the top 10 payouts has been \$537.43 million per year
- Over the past 7 years, the total amount paid for the top 10 settlements has topped \$3.25 billion



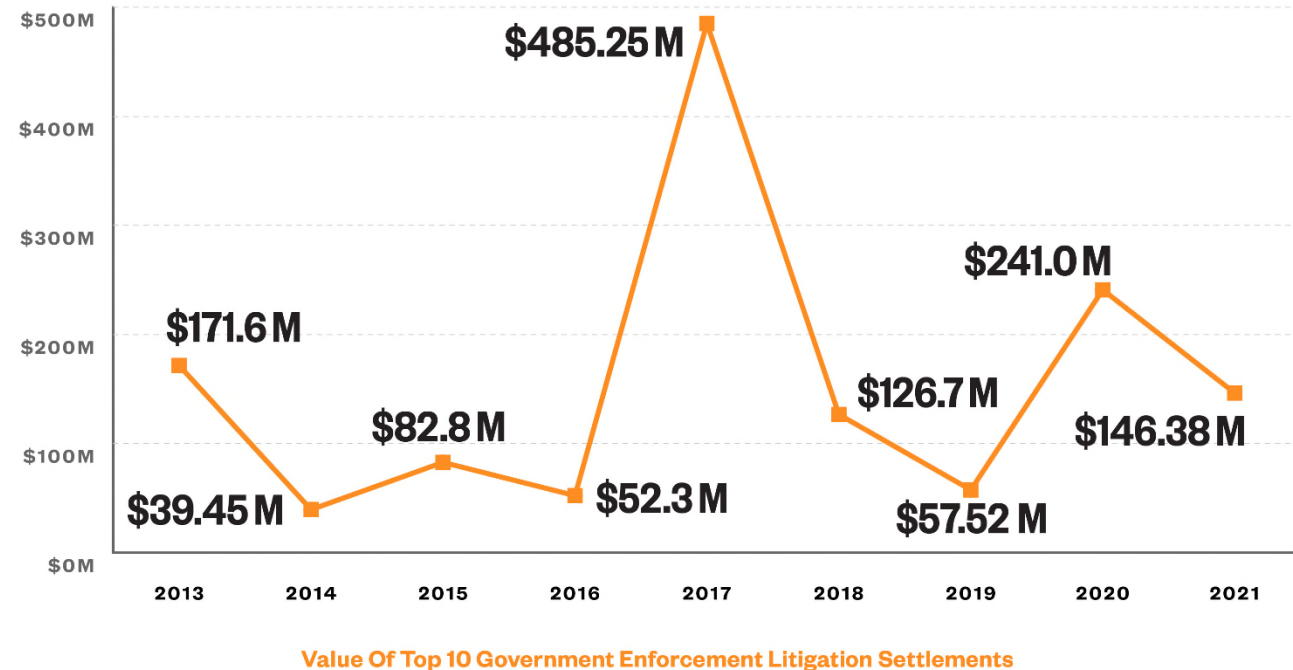
# Trend 1: Class Action Settlement Trends

- Statutory class action claims have exploded
- The impact of the migration of skilled plaintiffs class action lawyers expanding into additional areas
- Massive powder-keg of exposure

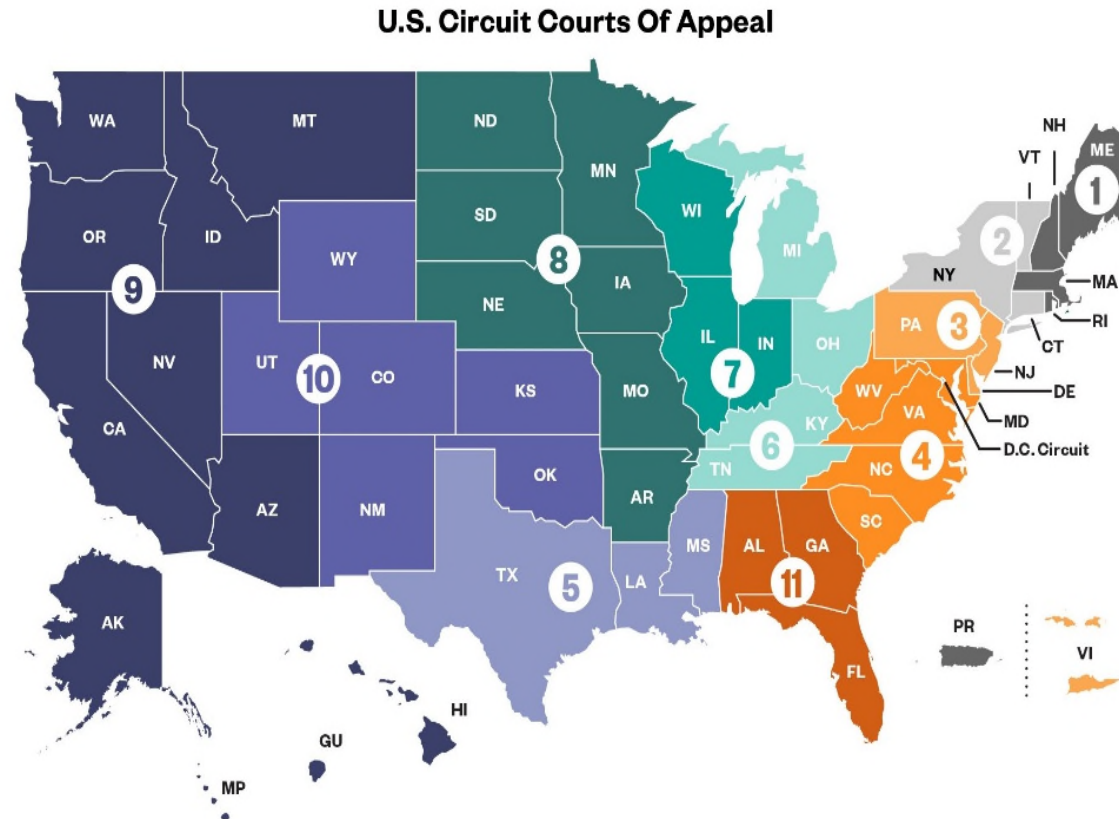


# Trend 1: Class Action Settlement Trends

- Government enforcement settlements follow a more nuanced pattern
- The “blue-to-red and red-to-blue” phenomenon
- Look for increases in 2022



# Trend 2: Class Certification Trends

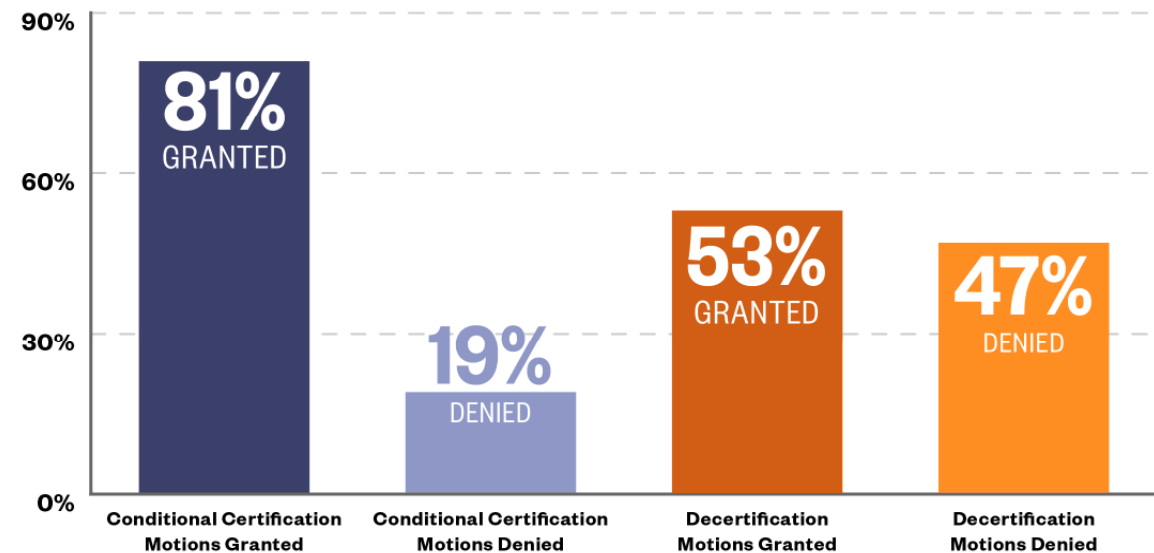




## Trend 2: Class Certification Trends

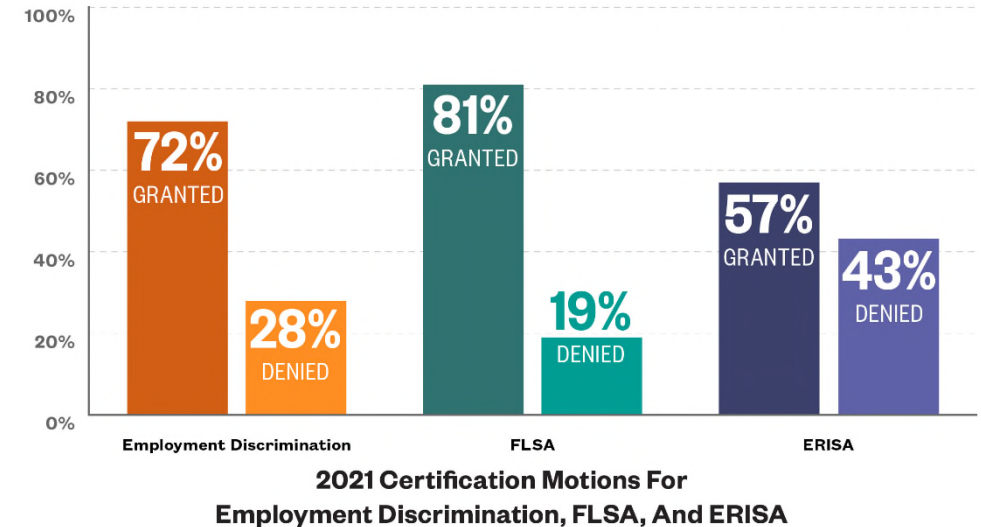
- The state of the union insofar as wage & hour class and collective actions are concerned
- At 81%, the plaintiffs' bar garnered success at the initial certification phase at the highest levels in 2 decades
- Venue, circuit precedents, and individual judicial assignments remain highly determinative on outcomes

**2021 FLSA Conditional Certification Motions  
And Decertification Motions**



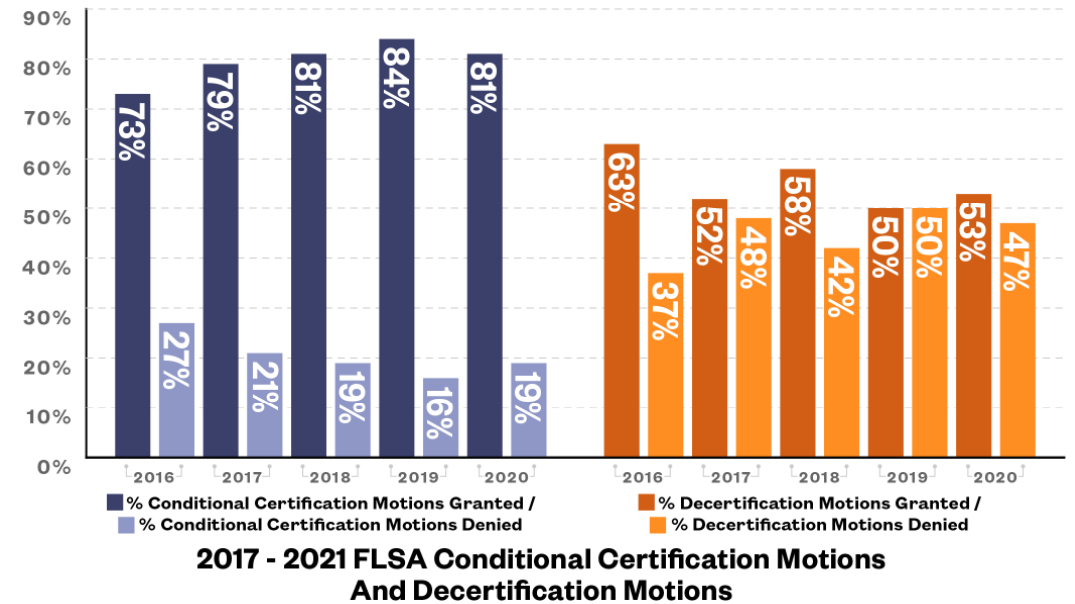
## Trend 2: Class Certification Trends

- Employment discrimination class actions – at 72% – were at the highest levels since 2011 (The “*Wal-Mart* effect”)
- ERISA class actions – at 57% – were flat as compared to the previous year



# Trend 2: Class Certification Trends

- The 5 year average in the wage & hour space
- Uptick in decertification success levels for employers (at 53% as compared to the previous year)
- The cost of moving for and securing decertification



# Trend 3: Government Administrative And Enforcement Trends

---



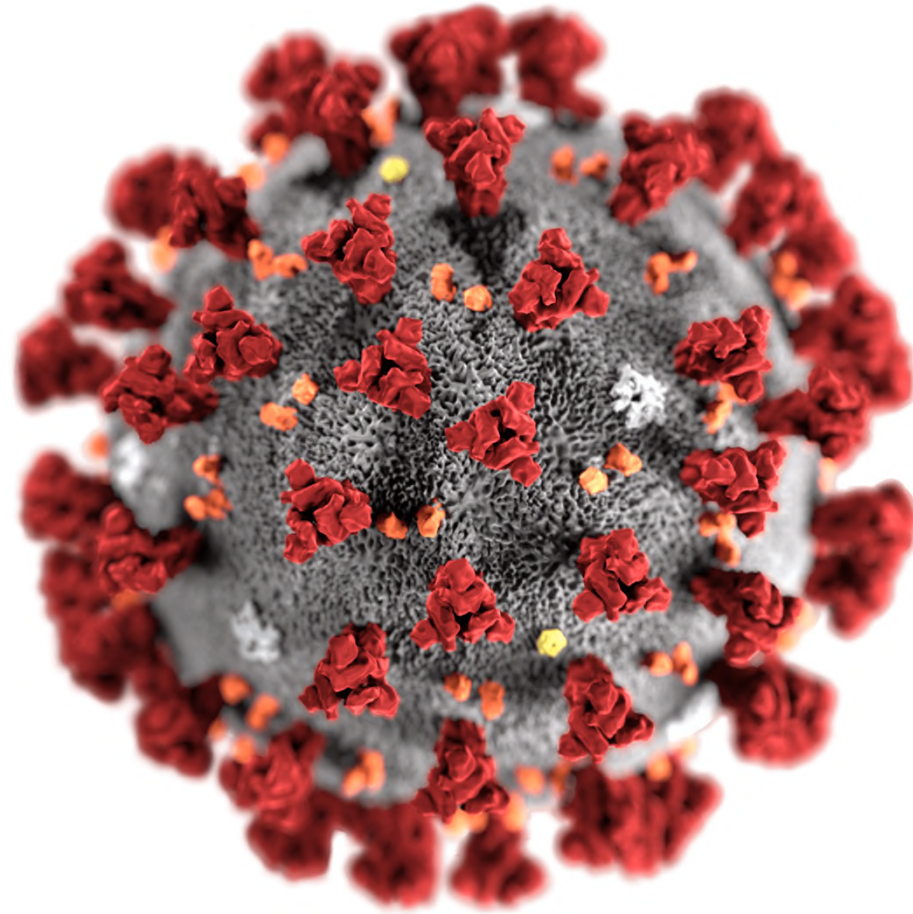
# Trend 3: Government Administrative And Enforcement Trends

---

- New agency personnel are now fully in place and championing the pro-worker, pro-labor policies of the Biden Administration
- Expect more regulation and more enforcement actions
- Inevitably, government enforcement litigation is posed to enter a ramp-up period

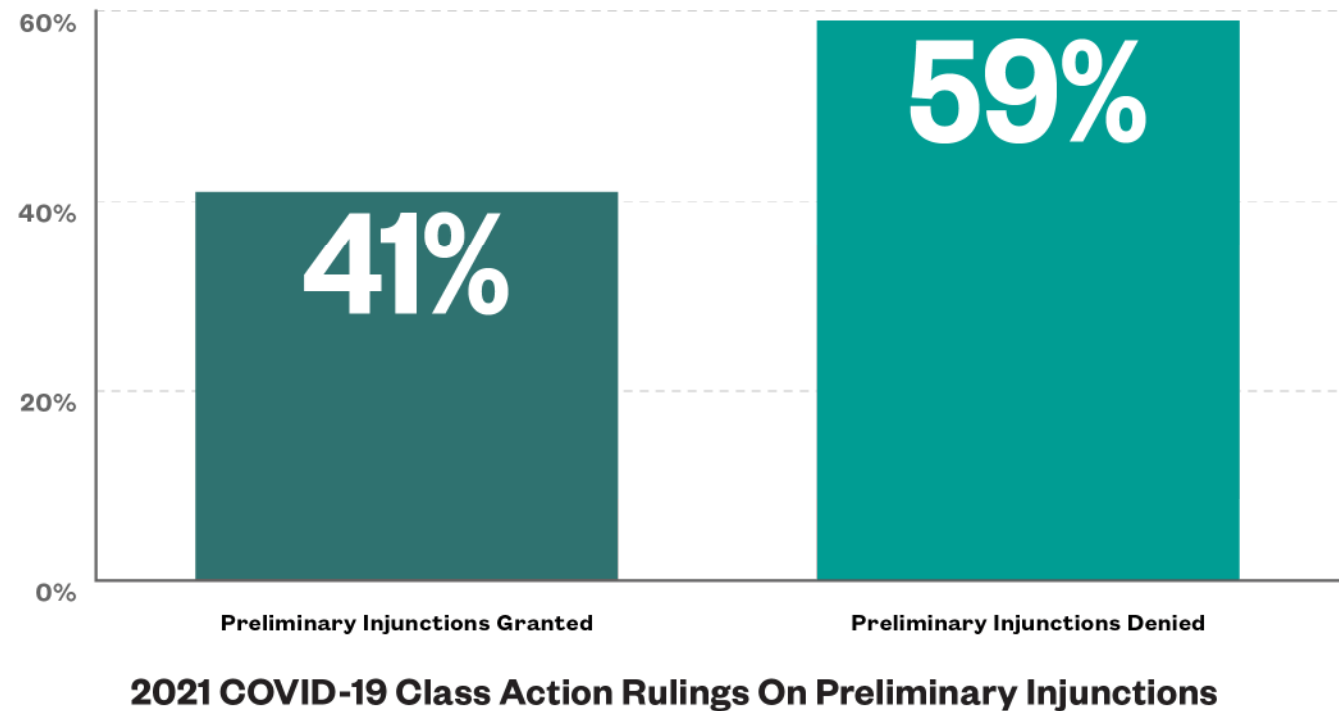
# Trend 4: The Continuing Impact Of COVID-19

---



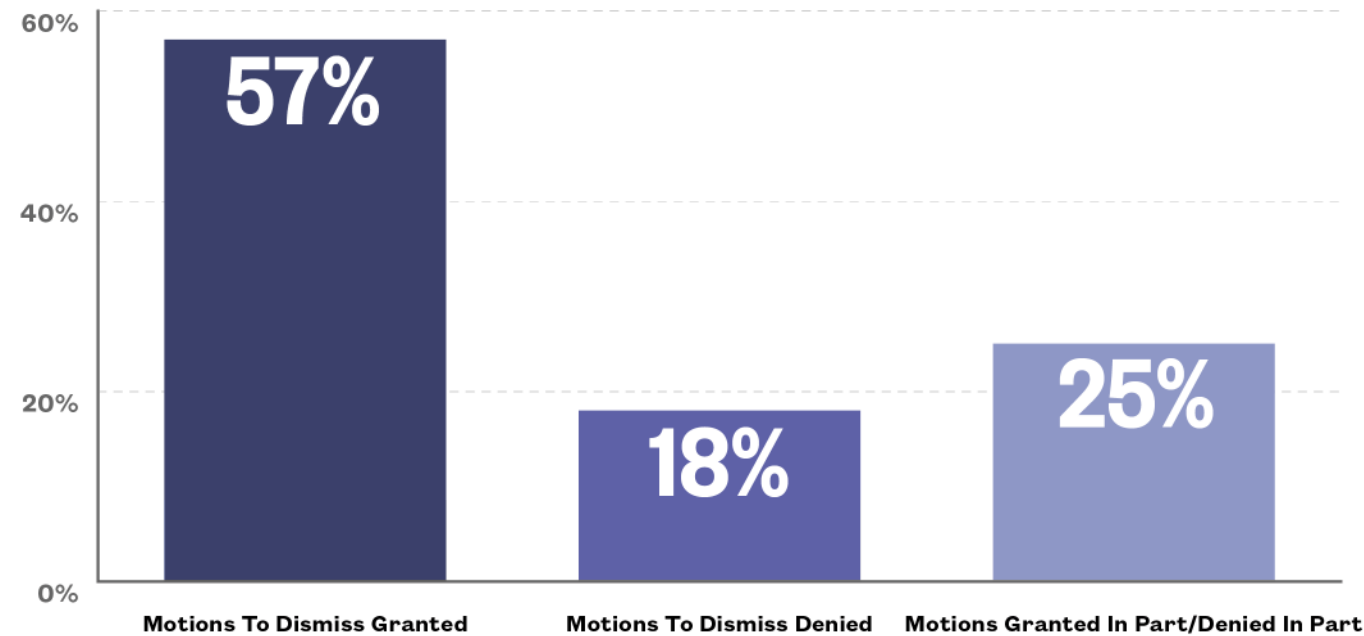
## Trend 4: The Continuing Impact Of COVID-19

- Success rates on seeking injunctive relief against COVID-19 policies is south of 50/50
- But these rates reflect flux and change, and a difficult legal terrain



# Trend 4: The Continuing Impact Of COVID-19

- Successful challenges by employees and unions against private employers have been limited



2021 COVID-19 Class Action Rulings On Motions To Dismiss



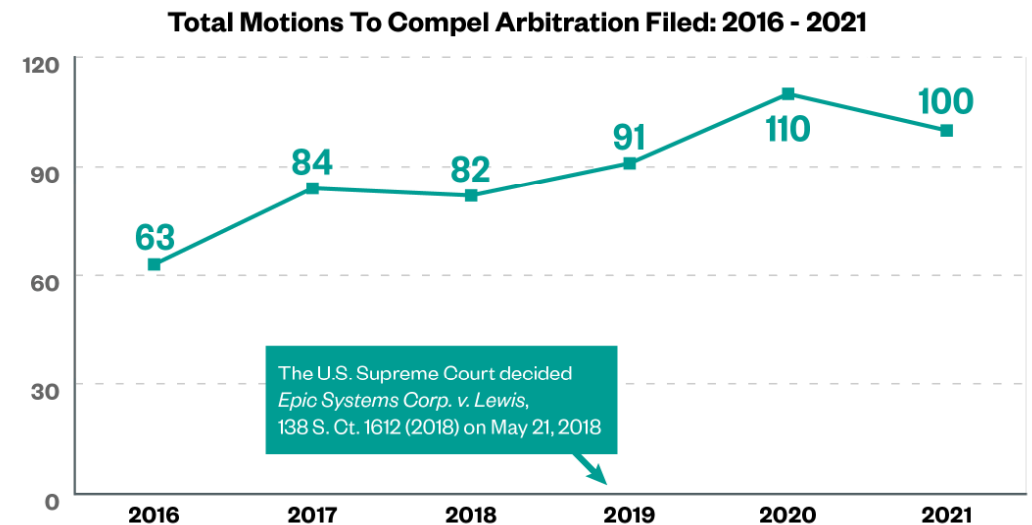
# Trend 5: The Continuing Impact Of Arbitration

---



## Trend 5: The Continuing Impact Of Arbitration

- In the post *Epic Systems* world, estimates are that 60% to 70% of private employers have adopted workplace arbitration programs
- The best risk mitigation approach to eliminating or mitigating workplace class actions is to snuff them out before they start
- Legislation overturning *Epic Systems* is becoming increasingly unlikely



# What Do The Developments Of 2021 Mean For Employers In 2022?

---

- Success begets copy-cats and social media publicity – and more class actions
- Wage & hour cases – how workers are paid – remains as the key inflection point for workplace class actions
- Government enforcement litigation is apt to increase in intensity
- The tail of COVID-19 class action claims will continue
- Arbitration defenses remain viable and may even expand, but are under assault



# What Can Employers Do?

---

- Solid HR fundamentals have never been more important
- Early warning systems (HR hotlines, etc.) are critical
- Every claim has the potential to expand, so every claim is important
- Arbitration remains the best defense



**thank  
you**

Contact Information

Gerald L. Maatman, Jr.

[gmaatman@seyfarth.com](mailto:gmaatman@seyfarth.com)

Follow Workplace Class Action Developments  
On Our Award-Winning Blog  
[www.workplaceclassaction.com](http://www.workplaceclassaction.com)