



**2022**  
**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 2022 FLSA litigation trends as well as our forward-looking predictions for 2023.



Given FLSA litigation trends over the past decade or so, we anticipate that the volume, locations, and substance of filings in 2023 will resemble those that we can now observe retrospectively in 2022. Worth noting, too, is the likelihood that the US Department of Labor's promise — even if delayed — to create growth in the number of employees eligible for overtime pay by revising the executive, administrative, and professional exemptions from FLSA requirements will ignite increased litigation activity, as media and other sources of market awareness focus more attention on overtime pay rights under federal and state laws. This, coupled with plaintiffs' lawyers' innovations and creativity in the cases they file, are sure to make 2023 exciting for those in the wage and hour world. Businesses' operators and in-house lawyers are right to consider the evolving, seemingly ever-present risk of employee-pay litigation to be among the most significant challenges facing them in the next year.

# 5 Key Trends

In 2022, there were approximately 6,400 FLSA lawsuits filed across the country, approximately 2,800 of which were designated by court coding as collective actions.



**Suit Spikes**



**10-Year  
Timeline**



**US District  
Court Trends**



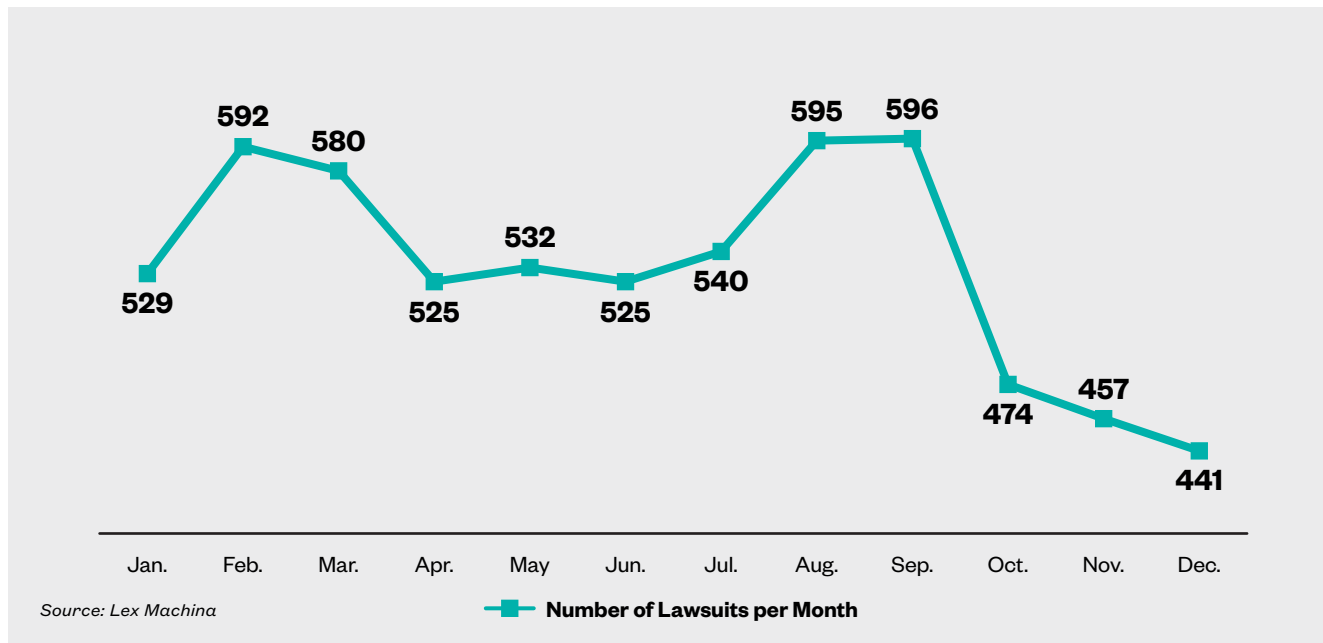
**Hot States**



**Industries  
Impacted**

# 1 Suit Spikes

The number of lawsuits spiked in the first and third quarters of the year, with approximately 1,700 and 1,730 filed in each, respectively, compared to approximately 1,580 and 1,372 in the second and fourth, respectively.



## ② 10-Year Timeline

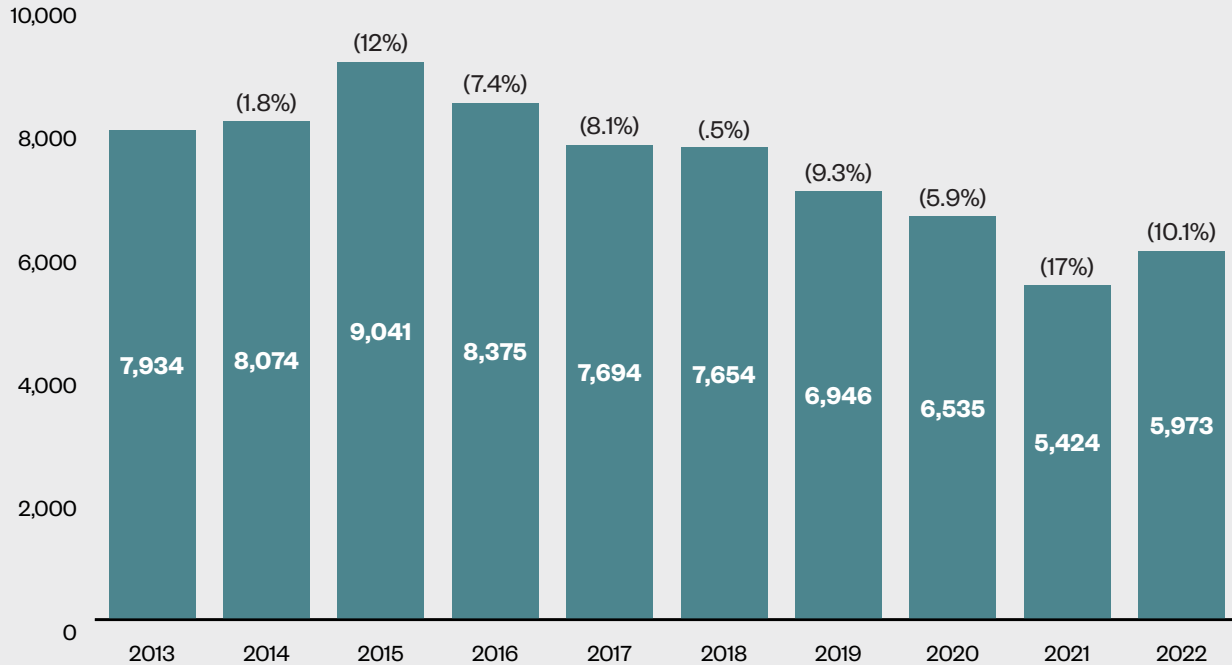
Year-over-year since 2020, plaintiffs have filed—on average—about 6,000 FLSA lawsuits cases per year, nationally.<sup>1</sup> Although certain assumptions might be made, it is hard to know what effect COVID has had on filing trends and whether the dip in the number of cases filed in 2020 and 2021 (compared to the several years prior) is a consequence of the myriad complicated dynamics that the pandemic created. 2022's increased filings compared to 2021's, however, might be a harbinger of a greater activity in 2023 and beyond, especially given an apparent revitalized interest in employee pay concerns across markets nationally.

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<sup>1</sup> According to PACER's reporting, just under 6,000 FLSA lawsuits were filed last year in federal courts across the country. Lex Machina reported closer to 6,400. An explanation for the difference is not readily apparent from the data.

# FLSA Cases

## 12-months ending December 31st



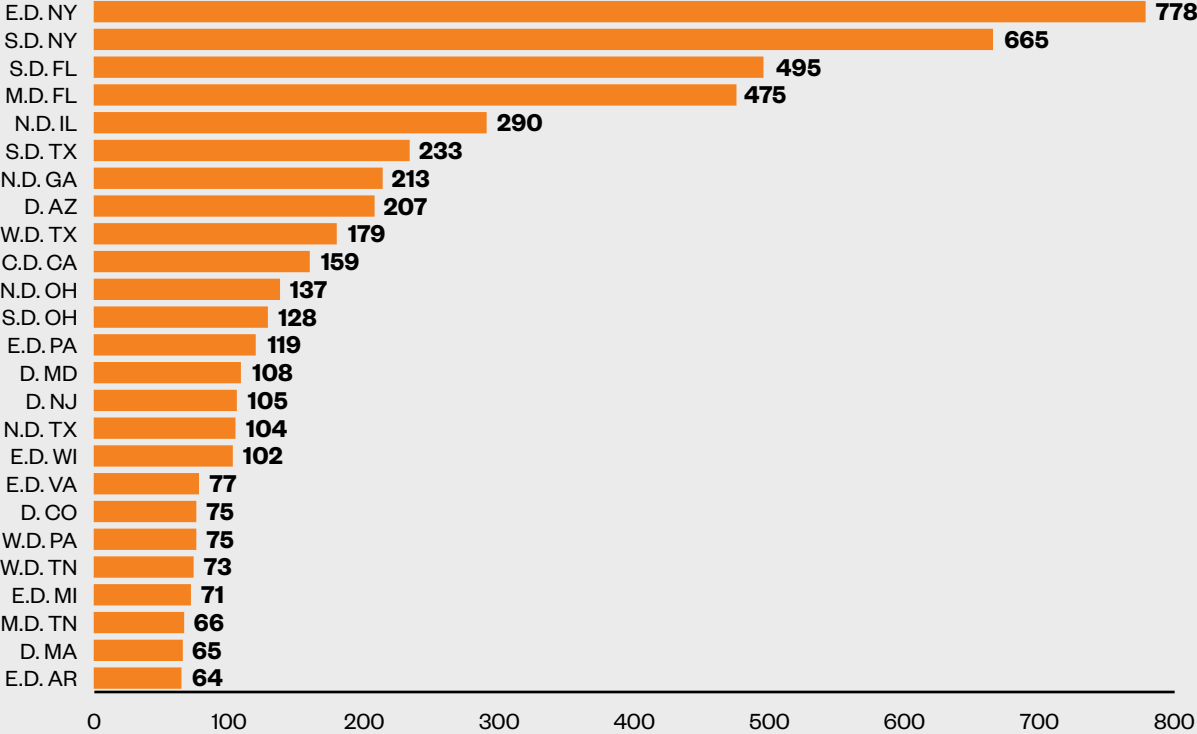
Sources: 2013-2021: Federal Judicial Caseload Statistics | 2022: [www.pacer.gov](http://www.pacer.gov)

## ③ US District Court Trends

Courts in Eastern and Southern Districts of New York dominated the top 25 where plaintiffs brought suit against employers across industries. Of the approximately 6,000 suits, plaintiffs filed nearly 1,500 in New York’s four federal districts, and most prolifically in the Southern and Eastern Districts. And while some might wonder whether these high numbers in New York, and similarly in Florida, derive from single/multiplaintiff suits filed after collective *decertification* (or following *denied* conditional certification), a careful review of the data reveals that—while there are certainly instances of redundant, “spinoff” litigation—former opt-in plaintiffs’ filings do not account for the hundreds of unrelated lawsuits filed last year in the most active districts.



# US District Court Trends



Source: Lex Machina

## 4 Hot States

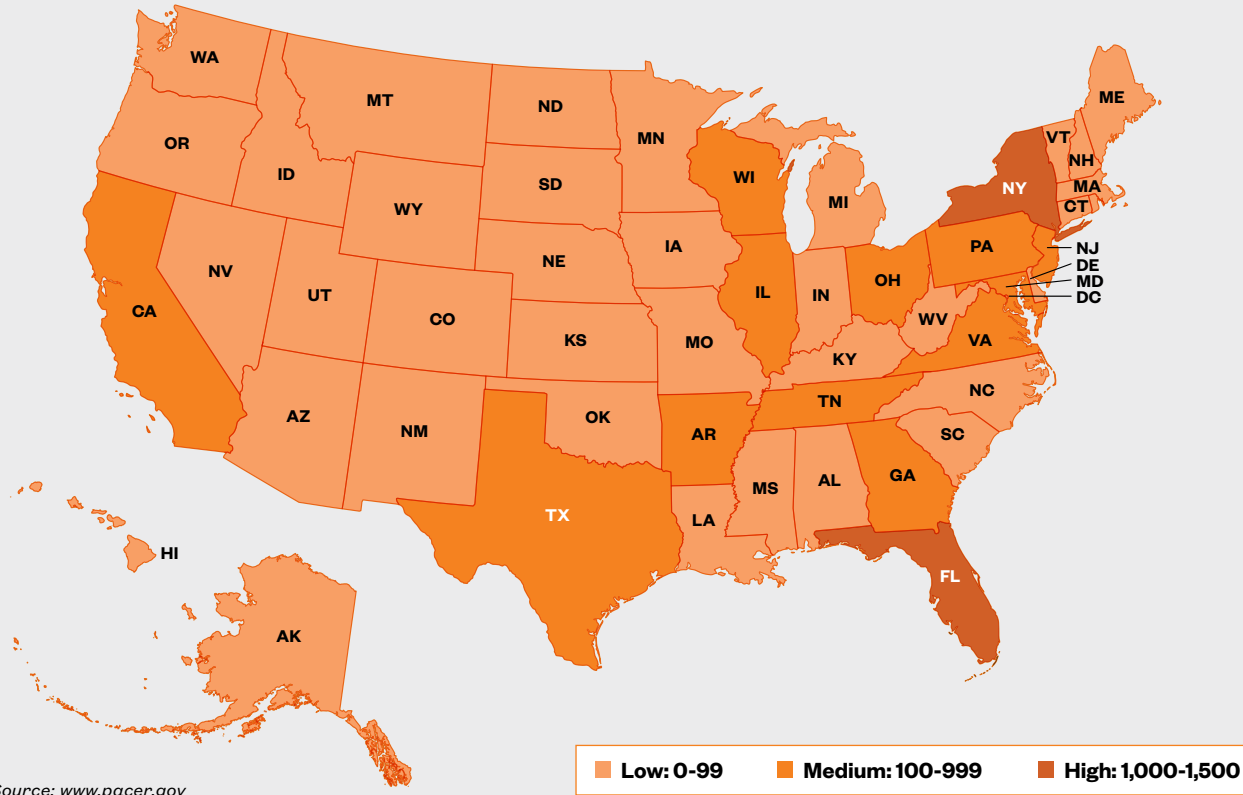
Number of FLSA lawsuits filed by state.

Court Id	Total
Alaska	3
Alabama	64
Arkansas	98
Arizona	201
California	210
Colorado	68
Connecticut	25
Delaware	16
<b>Florida</b>	<b>1,029</b>
Georgia	218
Hawaii	1
Iowa	12
Idaho	7
Illinois	296
Indiana	75
Kansas	23
Kentucky	22

Court Id	Total
Louisiana	51
Massachusetts	59
Maryland	100
Maine	2
Michigan	82
Minnesota	18
Missouri	53
Mississippi	31
Montana	3
North Carolina	66
North Dakota	7
Nebraska	9
New Hampshire	6
New Jersey	99
New Mexico	29
Nevada	14
<b>New York</b>	<b>1,431</b>

Court Id	Total
Ohio	249
Oklahoma	26
Oregon	27
Pennsylvania	166
Puerto Rico	2
Rhode Island	11
South Carolina	39
Tennessee	163
Texas	532
Utah	9
Virginia	101
Vermont	1
Washington	32
Washington, DC	48
Wisconsin	119
West Virginia	19
Wyoming	1

# FLSA Lawsuits Filed by State



Source: [www.pacer.gov](http://www.pacer.gov)

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: **11.7%**

Retail: **10.5%**

Business Services: **9.4%**

Services More Generally: **8.3%**

Leisure: **7.6%**

Industrial Manufacturing: **6.1%**

Construction: **5.9%**

Transportation: **5.7%**

Real Estate: **4.7%**

Insurance: **4.3%**

Financial Services: **4.1%**

Energy: **3.6%**

Food & Agriculture: **3.5%**

Consumer Products: **3.2%**

Technology: **2.7%**

“Other Industries”: **2.5%**

Automotive & Transport: **2.1%**

Telecommunications: **1.6%**

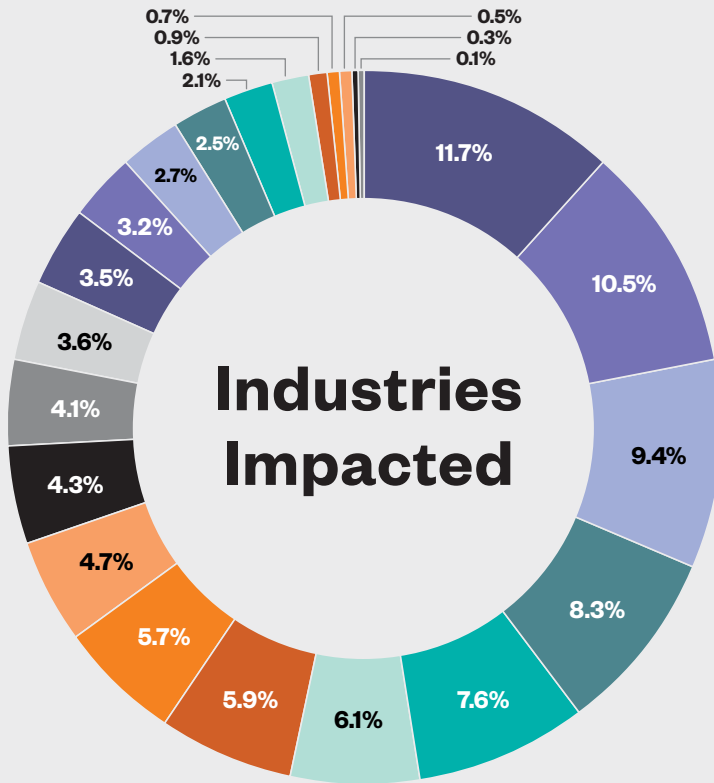
Chemicals: **0.9%**

Pharmaceuticals: **0.7%**

Media: **0.5%**

Natural Resources: **0.3%**

Aerospace & Defense: **0.1%**



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- Real Estate: **4.7%**
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- Financial Services: **4.1%**
- Energy: **3.6%**
- Food & Agriculture: **3.5%**
- Consumer Products: **3.2%**
- Technology: **2.7%**
- "Other Industries": **2.5%**
- Automotive & Transport: **2.1%**
- Telecommunications: **1.6%**
- Chemicals: **0.9%**
- Pharmaceuticals: **0.7%**
- Media: **0.5%**
- Natural Resources: **0.3%**
- Aerospace & Defense: **0.1%**

Source: Monitor Suite Fair Labor Standards Act Practice Area Report

# 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](https://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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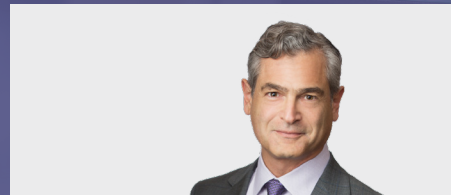
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