

News You Can Use



Because You're Different

Litigation Risk

Workplace Class-Action Lawsuits Are Spiking

CLASS-ACTION lawsuits by workers against employers have risen dramatically during the COVID-19 pandemic and settlement amounts have hit record levels, a trend that is likely to continue in 2022, according to a new report.

The report by law firm Seyfarth Shaw, LLP highlights the biggest litigation threats employers face in these unprecedented times of economic upheaval and a tight labor market. While the types of class-action lawsuits comprise a wide range of allegations, the report found four areas that were particular threats to businesses.

Statutory liability

Statutory suits included actions over breach of contract for employee benefits, antitrust law violations, and violations of anti-harassment and privacy laws. Class-action settlements jumped nearly seven-fold in 2021.

Much of that amount was to settle sexual abuse allegations against two universities. Large settlements were also reached for collecting fingerprint and handprint data without workers' consent, and over allegations that employers colluded to limit wages.

The COVID-19 pandemic inspired employee lawsuits as businesses attempted to bring workers back on-site or implement hybrid work arrangements, according to Seyfarth Shaw.

Employer vaccine and masking mandates produced employee pushback. It is too early to know how large future settlements will be, but the large numbers of affected employees suggest that overall amount will be sizable.

ERISA

Allegations that employers violated the federal Employee Retirement Income Security Act more than doubled last year.

Half the settlements were for alleged mismanagement of 401(k) plans. Alleged breaches of fiduciary duties (such as overpaying administrative fees) and underfunding plans made up the rest.

Wage and hour

Minimum wage hikes have made lost-wage cases more costly.

There is also more focus on firms' alleged misclassification of workers as independent contractors. The trend of employees working remotely because of the pandemic may also spawn claims that employers are not paying them for all the hours they work.

Total settlements for wage and hour class-action lawsuits more than doubled to \$641 million, from \$295 million in 2020.

Discrimination

This includes claims such as gender discrimination related to pay, and sexual harassment. There were also large settlements of age and racial discrimination claims.

Some COVID-19-related suits alleged discrimination based on disability or religious beliefs, as workers argued that their health status or religion precluded them from getting vaccinated.

There were also charges of retaliation against workers who raised concerns about workplace safety or who sought disability or religious accommodations.

See 'Plan' on page 2

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Workers' Comp

PAID LEAVE LAW: Some employees

GOV. GAVIN Newsom Feb. 9 signed into law a measure that will extend paid COVID-19 leave benefits for workers in California.

AB 84 requires organizations that have 26 or more workers to provide up to 40 hours of supplemental paid sick leave for employees who are unable to work on-site or remotely for one of a number of reasons.

The legislation is retroactive to Jan. 1. Under the measure, anyone who was unable to work due to the COVID-related reasons below since Jan. 1 would qualify for paid leave.

Qualifying Events for Paid Sick

- The employee is subject to a quarantine or isolation period related to COVID-19 under health authorities' guidance.
- The employee has been advised by a health care provider to isolate or quarantine due to COVID-19.
- The employee is experiencing symptoms of COVID-19 and seeking a medical diagnosis.
- The employee or a family member has an appointment to receive a COVID-19 vaccination (limited to 24 hours per vaccination).
- The employee is experiencing symptoms, or caring for a family member experiencing symptoms, related to a COVID-19 vaccination that prevents the employee from being able to work or telework (limited to 24 hours per vaccination).
- The employee is caring for a family member who's subject to a government quarantine, isolation order or guidance; or who has been advised by a health care provider to isolate or quarantine.
- The covered employee is caring for a child whose school or place of care is closed or otherwise unavailable for reasons related to COVID-19 on the premises.

Up to 80 hours in some cases

Here's the catch, though: Under the proposed law, employees could actually qualify for an additional 40 hours of supplemental paid sick leave if they test positive for COVID-19 or are caring for a family member who tested positive. If that happens, then the employer could require the employee or infected family member to obtain a test on the fifth day after a positive test.

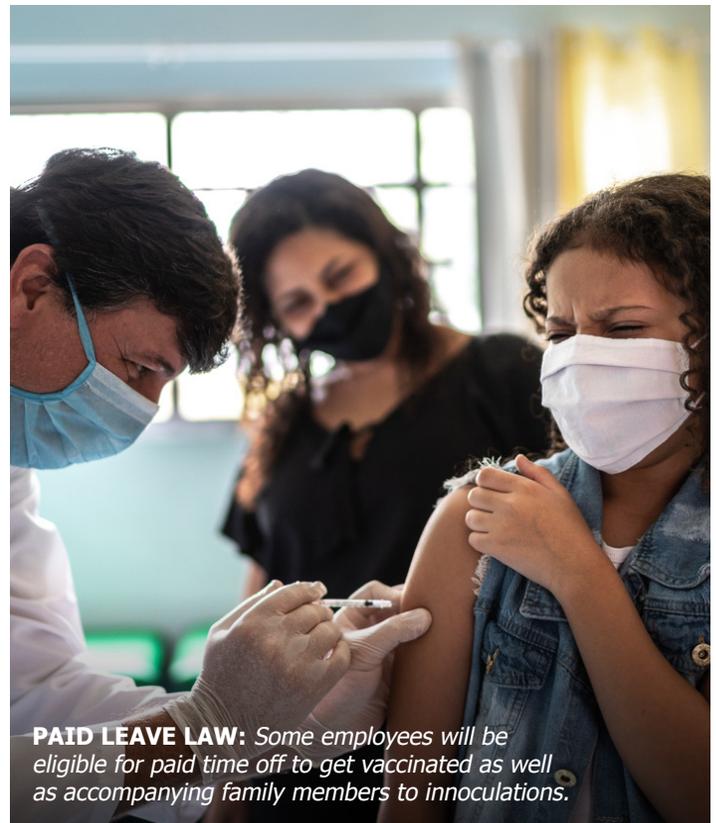
If the employee refuses to get tested or disclose test results, the employer could deny the additional paid sick leave, under the proposal.

Employers would be required to pay for the tests of their workers. The maximum amount of paid sick leave per day an employer would be obligated to pay is \$511.

The takeaway

The measure builds on a similar law that took effect last year, also requiring employers to pay sick leave to workers for COVID-19-related reasons.

AB 84 is moving swiftly through the Legislature and Newsom said he plans to sign it. ❖



PAID LEAVE LAW: Some employees will be eligible for paid time off to get vaccinated as well as accompanying family members to inoculations.

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Plan Ahead If You Want to Hold an In-Person Holiday Event

The takeaway

Businesses are vulnerable to employee lawsuits on any of these grounds, even when they take preventative steps. Even groundless lawsuits are expensive to defend and can result in hundreds of thousands of dollars in legal fees.

Employment practices liability insurance covers allegations of discrimination, harassment, invasion of privacy, and may cover

claims of wage and hour violations.

Employee benefits liability insurance covers claims of mismanagement of benefit plans, while employee dishonesty insurance may cover thefts committed by plan administrators.

Umbrella or excess liability insurance policies provide additional coverage for these types of lawsuits.

Call us to find out about the available options. ❖