**Employment litigation is more complex than ever.** The dramatic increase in multiple-plaintiff litigation poses new challenges. Class and collective actions have captured the interest of the plaintiff’s bar, the media and the general public. They pose a significant threat to U.S. corporations, often damaging reputations and creating economic hardship.

Our Class Actions and Complex Litigation Practice combines creativity and experience with extensive subject matter knowledge. Our facility with federal and state wage and hour law, discrimination law, ERISA and other laws assists clients in spotting vulnerabilities and developing strategies to avoid this massive litigation. When necessary, we aggressively defend class action claims. We have had remarkable success opposing class certification and negotiating favorable settlements.

**Wage and Hour Class Action Avoidance and Defense**

Wage and hour cases - which require no showing of intent and can result in enormous damages awards - are filed in federal court more frequently than any other type of employment law class or collective action. As wage and hour litigation continues to grow at an ever-increasing pace, Jackson Lewis strives to help clients prevent issues before they arise and obtain the best possible outcomes when defending cases in state and federal court.

**Jackson Lewis’ Wage and Hour Practice Group.** Counseling clients about wage and hour issues, performing wage and hour compliance reviews and defending related litigation have been three of our firm’s core services for over 55 years. Our attorneys have negotiated successful resolution of claims alleging misclassification of workers’ exempt status, overtime pay violations, “off the clock work,” inaccurate time and payroll records, time clock rounding practices, and other wage and hour issues for hundreds of employers with nationwide or multi-state operations. We have defended scores of collective or class-type actions brought by private parties and also by federal and state Departments of Labor.

**A Preventive Approach.** When a wage and hour violation affects many employees over an extended period of time, it can give rise to substantial liability - even if the employer acted in good faith. We believe it is important to address potential wage and hour issues before plaintiffs bring a lawsuit or the government begins an investigation.

Jackson Lewis regularly assists clients in reviewing company policies and practices and then pointing out areas of non-compliance and making suggestions for how to come into compliance in a way that fits with the client’s operational needs and minimizes the risk of subsequent litigation or government investigation. Some of the areas we focus on include:

- Classification of employees as exempt or non-exempt from overtime, including examining job duties as well as compensation practices such as deductions from wages;
- Classification of workers as independent contractors or employees;
- Proper compensation for all hours worked by non-exempt employees, including activities at the start and end of the workday and tasks performed away from the workplace;
- Proper calculation of overtime, including consideration
of all required compensation in the regular rate and the allocation of compensation items to the proper workweek(s);
• Proper treatment of meal and rest periods;
• Whether an employer uses the fluctuating workweek correctly;
• Compliance with child labor laws;
• Timekeeping procedures; and
• Recordkeeping.
We also assist clients in drafting policies for handbooks and designing training for management personnel.

Defending Wage and Hour Class Actions. Our basic approach in defending employers in wage and hour class actions may be briefly summarized as follows: a vigorous and focused defense coupled with lean staffing by experienced class action attorneys. Drawing upon the experience we have gained through defending hundreds of class and collective actions over the last several years, we try to provide realistic assessments of liability and damages as early as possible in the litigation, and we work to develop strategies that make business sense, recognizing the implications for the business operations going forward.

This approach has proved to be successful. We have defeated plaintiffs’ attempts to expand individual or multiple plaintiffs’ efforts into massive class or collective actions in a number of cases and have prevailed on the merits of a multitude of such actions. Some of our recent successes include:
• Obtaining dismissals of class claims either voluntarily or involuntarily;
• Limiting nationwide class claims to single facility claims;
• Defeating conditional certification and final certification;
• Obtaining summary judgment on the underlying merits of the class claim;
• Obtaining extremely favorable settlements;
• Conducting multi-state “blitz” campaigns with a focused, effective and efficient approach; and
• Implementing compliance strategies while the litigation is pending.

**Discrimination Class Actions**

The EEOC’s renewed effort to focus litigation efforts on systemic discrimination is only one of the latest major developments signaling a resurgence of employment class action claims. Plaintiffs in virtually all protected classifications are resorting to this fearsome weapon. Resolving cases on a class-wide basis is not only expensive but often requires employers to turn control of certain employment decisions and practices over to courts, agencies and private parties as part of programmatic relief.

**Prevention: Jackson Lewis’ In-House Capabilities are Unmatched.** Unlike most firms, Jackson Lewis offers a variety of preventive tools for “spotting” and resolving indicators of systemic discrimination prior to litigation. In the course of defending government contractors in systemic discrimination cases before the OFCCP, our Affirmative Action Practice Group has developed the in-house expertise to perform class-based liability vulnerability audits that evaluate employers’ personnel processes and practices. Through this internal network of experts, Jackson Lewis also has the resources to manage and analyze large volumes of data and model estimated damages in class and collective action litigation.

Jackson Lewis can help clients prevent systemic class action litigation by:
• Performing standard, as well as more complex compensation analysis, such as multiple regression analysis;
• Conducting self-audits of compensation systems;
• Conducting robust statistical analysis of personnel selection decisions;
• Performing adverse impact analysis designed to “red flag” all areas of potentially troubling adverse selection trends affecting protected groups;
• Conducting “reduction in force” analysis to determine whether a company’s selection decisions during the course of a layoff are having an adverse impact on any particular protected group; and
• Performing various kinds of diversity analyses to identify deficiencies and trends in female and minority representation across organizations.

**Defending Discrimination Class Actions.** Not only does Jackson Lewis have the expertise to help employers avoid systemic discrimination litigation by conducting privileged audits, but it also has the experience and knowledge necessary to aggressively defend class action discrimination claims. We have successfully opposed class certification, negotiated favorable settlements, and even convinced class counsel to withdraw claims in a multitude of cases, often working with labor economists and statisticians to defeat plaintiffs’ commonality arguments and disprove their allegations. Some of our recent successes include:
• Defeating certification of a proposed nationwide class of 8,000 female sales representatives alleging sex discrimination with regard to pay, promotions and terminations;
• Defeating certification of a proposed nationwide class of 30,000 women alleging sex and pregnancy discrimination based on the exclusion of prescription drug coverage for birth control pills;
• Defeating certification of a proposed southeastern region class of 275 African American store managers alleging segregation in placement;
• Convincing class counsel in two related cases involving several hundred African American store managers claiming they were segregated to stores in minority neighborhoods and systematically denied promotions based on their race to voluntarily dismiss all class claims;
• Convincing class counsel to voluntarily dismiss a class action involving 2,000 current and former African American employees claiming they were assigned harder work, paid less and terminated based on their race; and
• Serving as class monitoring counsel by a consortium of insurance companies in the Abdallah v. Coca Cola class action. We attended the mediation and rendered an opinion on liability and the reasonableness of the proposed settlement.

Prevention and Defense of ERISA Class Actions

Jackson Lewis represents officers, directors, other plan fiduciaries, employers, plans, plan administrators, and third-party administrators in all manner of complex ERISA litigation, including:
• Claims for breach of fiduciary duty;
• Welfare benefits due under group health, life and disability insurance plans;
• Severance;
• Benefits under cash balance, 401(k), ESOP and other pension plans;
• COBRA violations;
• Statutory penalties under ERISA; and
• Violations of ERISA’s non-interference provision.

Through user-friendly advice, materials and training programs, we offer our clients innovative yet practical strategies for coping with complex benefits issues and minimizing potential exposure.

When defending ERISA class actions, we first evaluate with the client the benefits and risks of negotiating a settlement. If early resolution is not feasible, we seek to resolve the case through initial dispositive motions. These motions isolate key ERISA issues such as standing, preemption, lack of availability under ERISA of the
requested relief, failure to exhaust administrative remedies, and the impact of releases executed by the class members, to name just a few. We then vigorously defend against class certification.

A Comprehensive Approach to Electronic Discovery Management in Complex Litigation

Jackson Lewis has the infrastructure and expertise necessary to guide clients through even the most complex electronic discovery projects. Our integrated processes, state-of-the-art technology and expert project management skills enable Jackson Lewis attorneys to efficiently handle all aspects of electronic discovery while complying with legal obligations and managing costs.

At Jackson Lewis, we believe that effective planning and management are key components of the electronic discovery process. We work with clients to develop proactive case strategies that satisfy all document retention and production obligations without imposing an undue burden on business operations. Recognizing that cases and clients differ, we frequently assign a litigation analyst to work with the Jackson Lewis legal team and our client’s information technology staff in order to understand and map the client’s network topology and document environment.

The firm’s ability to marshal teams of attorneys and paralegals from nearly 55 offices spread across the country gives us a competitive advantage in tackling burdensome document review projects in class action and other complex litigation. However, when it is more efficient and cost-effective to use outside vendors, we work with clients to choose an appropriate vendor. We have national pricing agreements in place with select vendors and have successfully leveraged our firm’s size and complex litigation caseload to negotiate competitive pricing for electronic discovery work. We also work closely with specialized vendors for forensic collection and analysis, document imaging and full-text extraction, and electronic discovery processing and printing.

In addition to assistance during the course of litigation, Jackson Lewis helps employers develop electronic information retention and destruction policies, employee technology and electronic communication policies, and formalized litigation hold procedures that take into account each client’s organizational structure, technological capabilities and firm culture.

Contact Jackson Lewis

To learn more about our services, please visit us online at jacksonlewis.com.
About Jackson Lewis P.C.

With over 765 attorneys practicing in nearly 55 locations throughout the U.S. and Puerto Rico, Jackson Lewis provides creative and strategic solutions to employers in every aspect of workplace law. Recognized as the 2014 Law Firm of the Year in the category of Litigation – Labor & Employment, and ranked in the First Tier nationally in the categories of Employment and Labor Law on behalf of Management in U.S. News – Best Lawyers® “Best Law Firms,” our firm has one of the most active employment litigation practices in the U.S.