

Impact of COVID-19 Pandemic on Employment Litigation in 2020

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Most of 2020 has been tumultuous for employers and their management liability insurers and brokers. Interesting claims have started to emerge nearly 10 months into the COVID-19 pandemic as the number of COVID-19-related employment complaints filed approaches 1,000.

Trends and Impact on Employment Claims in Federal Courts

Focusing only on federal employment cases, Lex Machina's "Special Report: Impacts of COVID-19 on Employment Litigation in Federal Court" (October 2020) identifies several significant global trends in employment litigation, as well as a few COVID-19-specific trends. Through the first nine months of 2020, there has been an overall:

1. 12% decrease in federal employment cases from 2019, but 16% decrease compared to the average number of filings from 2010-2019;
2. Significant decreases in harassment (-22%), Americans with Disabilities Act (-20%), and discrimination (-17%) from 2019, perhaps due to the lack of workplace contact and mass layoffs or shifts to remote work;
3. Approximately 2,000 fewer cases were closed in 2020 than 2019, reflecting the dramatic slowdown in court activity during the pandemic; and
4. The federal district courts with the most employment filings are in New York, Florida, Pennsylvania, Illinois, and Georgia, essentially unchanged from 2019. Such states as California and New Jersey routinely see fewer federal filings and more state filings, data not captured by this survey.

According to Lex Machina, some decreases in litigation are attributable to the fact that many employees were laid off due to the pandemic, and therefore not working. Additionally, those who were working may have feared that bringing up an issue or filing a claim might cause them to lose their job during this already difficult time. Further, the remote working environment, which resulted from the COVID-19 pandemic, avoids negative workplace interactions. Finally, the fact that courts were closed for many weeks or months and claimant-side attorneys may have been working remotely may have resulted in reduced filings.

Lex Machina tracking of COVID-19 cases in federal court identified the following trends through the first three quarters of 2020:

1. 309 employment cases attributable directly to the COVID-19 pandemic filed in federal court;
2. The 309 cases include 228 claims of retaliation, 142 claims of Family and Medical Leave Act violations, and 129 claims of Fair Labor Standards Act violations;
3. 36 of the 309 COVID-19 cases already have settled, most of which were filed against hospitality businesses, warehouse companies, and retirement homes;
4. The federal district courts with the most COVID-19 cases are in New York, Florida,

New Jersey, Pennsylvania, Michigan, and Illinois; and

5. Jackson Lewis P.C. is handling more than twice as many COVID-19-related employment cases in federal court than any other law firm.

In addition, Jackson Lewis is handling numerous state court cases and agency actions involving COVID-19-related claims. To assist employers and their management liability insurance carriers and brokers to evaluate litigation risks, Jackson Lewis has created an [COVID-19 Employment LitWatch](#) tracker to monitor nationwide trends involving COVID-19 cases in state and federal courts.

The COVID-19 Employment LitWatch confirms several of Lex Machina's findings, including:

1. The majority of federal COVID-19 employment cases were filed in Florida, New York, Texas, Michigan, Pennsylvania, and Ohio;
2. The majority of federal COVID-19 employment cases involve employers in the healthcare, manufacturing, transportation, and hospitality industries; and
3. The majority of federal COVID-19 employment cases involve claims of disability leave and accommodation, discrimination/harassment, retaliation/whistleblower, and wage and hour claims.

The COVID-19 Employment LitWatch goes farther than Lex Machina and includes COVID-19 employment cases in state courts nationwide. Tracking state court cases is important because the vast majority of the COVID-19 employment cases have been filed in state court. Indeed, the COVID-19 Employment LitWatch reveals:

1. 653 COVID-19 employment cases were filed in state courts, through November 9, 2020;
2. Approximately 66% of all COVID-19 employment cases were filed in state court, not federal court;
3. California and New Jersey have significantly more COVID-19 employment cases than any other states, and nearly all of the claims are in state court (California 187 of 201 cases in state court; New Jersey 113 of 124 cases in state court). Florida, New York, Texas, Ohio, and Michigan round out the top seven states; and
4. Several states have experienced dramatic upticks in COVID-19 lawsuits since Labor Day.

In addition to these broad trends, the COVID-19 Employment LitWatch contains detailed, regularly updated information and tracks by state, complaint category, and more. The [COVID-19 Advisor](#) also offers resources important to employers, including guidance on business openings, closure orders, paid sick leave, and unemployment insurance.

Jackson Lewis has a [dedicated team](#) tracking and responding to the developing issues facing employers as a result of COVID-19. Please contact a team member or the Jackson Lewis attorney with whom you regularly work if you have questions or need assistance.

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