

WAGE-AND-HOUR LAWSUITS REACH RECORD LEVELS



All across the US, the number of wage-and-hour lawsuits that are being filed are reaching record highs as is the increase in the number of hybrid-cases filed on behalf of California workers. Wage and hour lawsuits are outpacing all other types of workplace legal actions. The lawsuits are primarily revolved around workers being misclassified as exempt and their overtime money is not given to them, which is a violation of the Fair Labor Standards Act. Also more and more workers are getting laid off, owing to the declining economy and are seeking legal remedies. According to information released by the Chicago based firm Seyfarth Shaw LLP, as many as 7,064 lawsuits were filed under the Federal Labor Standards Act up to the end of March this year. That is one thirds more than the number of cases two years ago, a substantial increase. "At the federal level, the cases have been skyrocketing, the cases are very lucrative for plaintiff's lawyers," he says. "And they're much easier and less expensive than discrimination class actions for plaintiff's lawyers to bring. "The national numbers are up. That's true on this coast as well," said Brandon McKelvey, a partner in the labor and employment department of Seyfarth Shaw's Sacramento office. Earlier he said plaintiffs tended to resolve their difference within the ambit of their state laws claims and did not accuse their employers of violating federal laws or stretch their lawsuits to cover other states. However, there is an increasing trend towards the latter these days. "We're seeing a lot more of that," he said. California workers are better off than workers in other states when it comes to seeking redress through courts. The California state labor laws are inclined towards the workers more than the employers, who allege that they are more than generous towards the workers. However, workers have realized that numbers carry clout and lawsuit that cover both workers from California and other states can hugely influence the outcomes and the payouts. A majority of the lawsuits include wrongful classification of employees, work done but not paid for and inaccurate calculations of overtime pay for non-exempt workers. Misclassification rules were introduced many years ago and need to be amended and rewritten. They are not suitable for the modern jobs and modern industries. McKelvey said. "It's like a square peg in a round hole. It doesn't really fit well on either side." Brian T. McMillan, a shareholder with Littler Mendelson P.C. in San Jose, Calif. said, "When you consider whether or not an individual is properly classified as an exempt vs. nonexempt for overtime, it's nothing that they can just look up and get a definitive answer for," Mr. McMillan said. "The decision rests upon a specific case-by-case actual analysis as to what the particular employer does day in and day out, so it's difficult, even as a lawyer, to provide guidance." Moreover, the depressed economy also gives reason and time to the employees to enter into litigation far more easily than when things were good. It is seen that there is generally more litigation on a down economy, where companies are forced to lay off workers. "A lot of people get laid off and go see a plaintiffs' lawyer. It's usually because they are angry. They want to sue to get their job back or get money," McKelvey said. "Usually, the answer is 'No,' but the attorney starts asking 'How were you paid? How were you classified?' The attorney creates a platform for them to sue their employers and asks loaded questions the answers to which provided the attorney enough legal ammunition to file wage-and-hour class actions on behalf of their clients. It is seen that many a time the employer commits a violation unintentionally. The dire market situation results in unavoidable cost cutting and slashing of work hours and overtime, making it rather difficult for employees to keep an accurate record of hours that the workers have put in. Many supervisors also lacked training in wage payment practices.