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WAGE & HOUR INSURANCE MARKET UPDATE

DECEMBER 2025

The wage and hour exposure

- Wage and hour litigation under the Fair Labor Standards Act (FLSA) and similar state and local wage and hour laws continues to be an area of intense focus for the plaintiffs' bar.
- Historically, wage and hour filings have outpaced all other workplace class-action litigation, such as pay discrimination claims. 2024 was no exception: federal filings surged, with approximately 1,673 FLSA collective actions nationwide.¹
- These lawsuits are also easier for plaintiffs to maintain. Conditional certification only requires a "modest factual showing," which is universally recognized as a very low threshold.
 - Courts favored conditional certification in nearly 80% of first-stage decisions in 2024.²
 - For the first half of calendar year 2025, courts issued more certification rulings in FLSA collective actions and wage and hour class actions than in any other type of case.
- The top 10 wage and hour settlements in 2024 totaled \$614.6 million, down from \$742.5 million in 2023 but notably up from \$574.6 million in 2022 and still in line with recent years.²

Key allegations

Misclassification of employees as exempt from the protections of the FLSA versus nonexempt, or as independent contractors versus employees.

Off-the-clock, "donning and doffing," and other unpaid work: Resulting in miscalculated overtime, unpaid time during breaks, and improper reimbursements.

Remote and hybrid work blurring lines: Employees working from home risk performing unpaid work "off the clock." Employers face challenges in tracking hours, overtime, and meal breaks under multiple state and local laws.

Tech-driven exposures: Use of AI, biometric time tracking tools, and other new technologies raises risk.

Regulatory & government shifts

Civil money penalties of up to \$2,515 may be assessed for each repeated or willful violation of minimum wage or overtime requirements under the FLSA. The Department of Labor (DOL) is required to adjust these penalties for inflation each year.

DOL policy change: On June 27, 2025, the DOL's Wage and Hour Division announced it will no longer seek liquidated damages in administrative investigations and will only pursue them in litigated matters.

DOL staff shortages: The Wage and Hour Division hit its lowest staffing in 52 years,³ potentially limiting enforcement capacity. However, employers must remain vigilant, as states and plaintiffs' firms are quick to fill the void.

¹ Bloomberg Law Court Dockets – FLSA Case Analytics, February 2025

² Duane Morris LLP – Wage and hour Class and Collective Action Review – 2025

³ Wage Division Investigative Ranks Hit 52-Year Low Under Trump

Notable settlements & judgments

- **Entertainment** — Wage theft class action: \$233M settlement (California, 2024)
- **Transportation** — Independent contractor misclassification: \$175M settlement (Massachusetts, 2024)
- **Healthcare** — Unpaid wages: \$98M verdict (Washington, 2024)
- **Retail** — Off-the-clock work and rounding practices: \$72.5M settlement (California, 2024)
- **Manufacturing** — Failure to compensate for pre- and post-shift activities and incorrect overtime calculations: \$15M settlement (Wisconsin, 2024)
- **Financial institutions** — Unpaid overtime: \$15M settlement (Washington, 2024)

Implications for employers

- No industry is immune, as reflected by the variety of organizations facing eight- and nine-figure settlements and judgments noted above.
- The cost of defense and indemnity continues to rise rapidly. Class/collective actions are more frequent, and certification hurdles are lower.
- Hybrid and remote work creates jurisdictional vulnerability, which can lead to multistate exposure, complexity in pay rules, and logistical tracking challenges.

Actionable steps for clients

- Implement accurate timekeeping and overtime-tracking systems, especially for remote employees.
- Regularly audit job classifications and pay computations.
- Understand and stay on top of changes in state and local wage laws, including implications for remote or hybrid workforces.
- Prepare for DOL civil investigations.
- Expect higher resolution costs; ensure your EPL policy covers defense costs or consider procuring wage and hour liability Insurance as a risk transfer tool.

Coverage availability

EMPLOYMENT PRACTICES LIABILITY INSURANCE

- Typical EPL policies are not designed to provide coverage for wage and hour claims, and many policies will exclude them entirely.
- **Defense-expense only sublimits:** Some EPL policies can provide limited defense cost coverage for wage and hour claims, typically ranging from \$50K-\$150K, often subject to aggregate caps and high retentions.
- **High-risk jurisdictions:** Where these sublimits are available, an employers' presence in states like California, New York, Massachusetts, and Illinois frequently triggers exclusionary language or lower sublimits due to the aggressive plaintiffs' firms and complex or more employee-favorable wage and hour laws in those jurisdictions.

WAGE AND HOUR LIABILITY INSURANCE

- Available through Bermuda carriers, these programs offer broader defense expense coverage and indemnity for settlements or judgments. Retentions typically exceed \$1M, making this coverage best suited for larger employers with significant multistate exposure, although there are generally no minimum headcount requirements.
- The definition of loss is broad and encompasses settlements and judgments (including unpaid wages), pre- and post-judgment interest, defense costs, plaintiffs' counsel fees, liquidated damages, punitive and exemplary damages, and statutory fines and penalties (where insurable by law).
- Coverage can be procured as a "stand-alone" policy, blended with an EPL program, or structured as an excess policy with a drop-down feature.

For more information on wage and hour liability insurance, please reach out to:



Kelly Thoerig

Managing Director,
U.S. D&O/EPL Product Leader
Professional and Executive Risk, Lockton
816.381.3008
kelly.thoerig@lockton.com