

Wage Wars: The Plaintiff's Bar Awakens

December 4, 2015 | [Fair Labor Standards Act, Currents - Employment Law](#)

2015 has been a banner year for wage & hour litigation. Roughly 9,000 new federal wage & hour lawsuits were filed as of Sept. 30 – with many thousands more filed in state courts. New federal filings have increased about 450 percent over the last 15 years, according to a recent study by Seyfarth Shaw. What's more, the trend is likely to continue for the foreseeable future. The problems for employers are at least threefold: 1). Wage & hour issues can be extremely difficult to defend against (Employers are essentially strictly liable for minimum wage and overtime violations, so plaintiff's counsel see these cases as low risk and high reward); 2). Federal and state wage & hour laws/regulations vary widely and can be very complex, making this area an easy one for unwary employers to make mistakes; and 3). When mistakes are made, the issues often lend themselves to class and collective actions, which get expensive in a hurry (payment calculations and decisions are often applied to employees as a group, not just one at a time). Another hot button issue in this area of law is the misclassification of independent contractors. Along with plaintiffs' attorneys, the Department of Labor (DOL) has been going hard after potential violators and has been bringing in record fines and settlements. Remember, if the Galactic Empire hires Boba Fett to do a one-off job, the relationship will likely be deemed an independent contractor. Stormtroopers, however, are going to count as employees every day of the week, so you better withhold proper credits taxes and provide applicable benefits. Also anticipated in 2016 is the DOL's final rule under the Fair Labor Standards Act raising the minimum salary to qualify for the "white collar" overtime exemptions to \$50,440 (it stands at \$23,660 today). Thus, overnight, millions of additional employees are going to be eligible for overtime benefits, creating yet another disturbance in the Force ripple effect in wage & hour filings.

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