

MARSH WAGE AND HOUR PREFERRED SOLUTION



The top 10 wage and hour settlements in 2017 totaled \$525 million, the second-highest figure in the last decade, according to law firm Seyfarth Shaw. This expanding area of litigation includes allegations by employees and independent contractors regarding overtime pay, meal and rest breaks, and misclassification. Although these can result in staggering amounts of defense costs, settlements, judgments, and penalties, employment practice liability insurance (EPLI) policies typically exclude wage and hour claims. Marsh's Wage and Hour Preferred Solution is designed to cover such wage and hour risks typically excluded under traditional EPLI policies and most directors and officers (D&O) liability policies for public companies.

COVERAGE SPECIFICALLY FOR WAGE AND HOUR RISKS

The market for wage and hour (W&H) insurance has evolved to include insurers from Bermuda, London, and the US. Although the policies vary among insurers, W&H insurance provides coverage for claims for actual or alleged violations of the Fair Labor Standards Act (FLSA) or similar state laws such as the California Labor Code and the New York Labor Law.

W&H coverage features:

- A definition of "claim" that includes claims brought by the US Department of Labor (DOL) as well as individuals such as independent contractors and employees.

- A broad definition of "wage and hour wrongful acts," including failure to pay overtime and provide meal and rest breaks.
- A definition of "loss" that includes defense costs, settlements, and judgments.
- Coverage for collective and class-action wage and hour claims.
- A non-duty to defend policy (except for the London insurers); insureds may select their own counsel but may need consent in certain instances.
- Capacity of up to \$210 million.

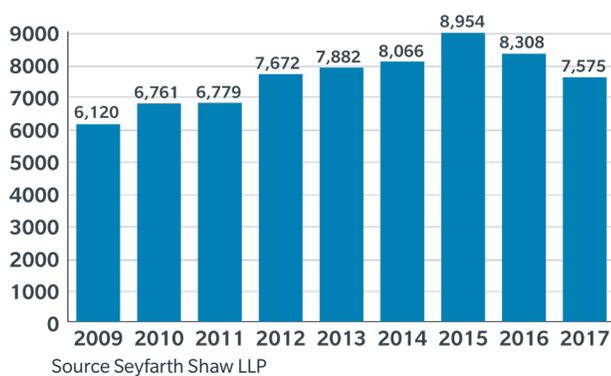
Who it's for

- CEOs, CFOs, risk managers, and human resources directors, and in-house employment law counsel.
- Companies in industries typically at risk of wage and hour claims, including retail, food and beverage, hospitality, technology, financial institutions, and manufacturing.
- Employers with a significant number of exempt employees, hourly employees, and/or independent contractors.
- Companies with a large employee base in California, New York, New Jersey, Illinois, or Florida.

What you get

- Broad coverage for wage and hour claims typically excluded under an EPLI policy.
- A unique wage and hour risk management toolkit — provided at no additional cost by Mercer — that can help companies identify and address potential exposures.
- Claims advocates with specific expertise in W&H coverage issues.

FIGURE 1: FLSA FILINGS IN FEDERAL COURT



WAGE AND HOUR LAWSUITS ABOUND

Although the total number of federal FLSA lawsuits fell again in 2017, the number is still high. (see FIGURE 1). Since 2009, the DOL's Wage and Hour Division has collected more than \$1 billion in back wages for more than 1.2 million workers. In 2017 alone, it recovered \$270 million in back wages. The trend is most notable in California, Illinois, New Jersey, New York, and Florida.

While the fate of the proposed revisions to the salary threshold for the FLSA white collar exemption rules remains to be seen, we expect that plaintiffs' attorneys will continue to pursue lucrative wage and hour claims. This is due in part to the fact that the bar for collective actions under the FLSA is lower than other types of employment litigation — such as discrimination or harassment — and damages in FLSA cases can be more easily quantified.

WAGE AND HOUR RISK MANAGEMENT STRATEGY

Employers can manage their exposures to increasing wage and hour litigation risk through a risk management strategy that includes:

- Staying abreast of changing wage and hour laws.
- Engaging third-party providers and outside legal counsel to conduct regular wage and hour audits.
- Being vigilant regarding proper classification of employees as either exempt or nonexempt, independent contractors, or employees, including reevaluations in light of the proposed FLSA overtime rules in case the rules, or a similar version, still go into effect.
- Evaluating the appropriateness of risk transfer solutions for wage and hour claims based on organization-specific loss history and risk appetite.

Marsh is one of the Marsh & McLennan Companies, together with Guy Carpenter, Mercer, and Oliver Wyman.

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ABOUT MARSH'S EPL/W&H PRACTICE

Marsh's EPL/W&H Practice can help businesses protect against some of their most basic risk exposures. These include wage and hour; workplace harassment; wrongful termination and discrimination, including age and gender; and Equal Employment Opportunity Commission (EEOC) claims. Marsh's team of professionals analyzes a company's exposure to a broad array of employment practices and wage and hour risks and helps develop a thorough risk management plan.

For more information, contact your Marsh representative, or:

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