

PREVENTIVE Legal Medicine

The Dangers of Class-Actions Call for Experienced Counsel



In the last four years, employment class action lawsuits related to the Civil Rights and Fair Labor Standards Acts have risen dramatically, from less than 700 in 2001 to nearly 1,500 in 2004. These are alarming statistics for retailers. Not only are the potential damages multiplied tremendously by the formation of class litigation, but the retailer is particularly vulnerable to damage in the court of public opinion. Aggressive lawyers understand that a chain store embroiled in a massive class action discrimination or wage-and-hour lawsuit risks losing the loyalty of their mass-market customers.

The media is such an effective weapon wielded by litigators that “some lawsuits are even kicked off by a press conference,” said Allan King, co-chair of the class action defense practice of Littler Mendelson, the nation’s largest employment and labor law firm. According to King and other experts at Littler Mendelson, not only are detailed, preventive steps the best defense to class action lawsuits, the

same preventive steps are powerful tools for defense lawyers in the event of litigation.

The best-case scenario, of course, is to stay out of the courts in the first place. Among Littler Mendelson’s strengths is its ability to address — through a thorough, organization-wide review of hiring, pay and promotion policies and practices (or Class Action Audit)— effective prevention policies and alternative dispute-resolution strategies, the goal of which is to choke potential disagreements before they take root.

But the firm is arguably best known for its litigation skill. In fact, Littler Mendelson’s Appellate Group in the last five years has worked on numerous cases that have changed, or reaffirmed, workplace law for the benefit of the firm’s clients. “The objective is to act in time to head off a claim. But if it comes to litigation, we feel we’re at an advantage because we’ve been in the trenches with these companies and can use that experience to develop defenses that make certification less likely,” said King.

One of the key skill sets for defense attorneys in today’s complicated world of class action lawsuits is the ability to understand and present statistics that purport to characterize a large class of employees. These statistics are subject to interpretation—and the case often rests on them.

“In our experience, the response to a class action lawsuit is never, ‘Oh, they found out,’” said King. “It’s a gray area. And the statistics can be manipulated to portray a pattern of misconduct where none is intended and may not truly exist.”

The role of statistics in class action lawsuits is what first drew King to the legal profession. As an economist and former University of Texas professor, King played the role of expert witness with an ability to explain why certain numbers are important and others are misleading.

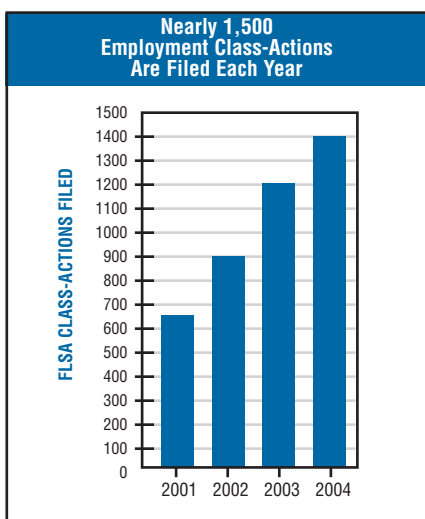
“The firm has years of experience presenting and attacking this kind of statistical evidence,” he said.

Littler Mendelson, in fact, defended clients in 200 class action lawsuits last year. That experience, in concert with its success in preventing lawsuits, can provide a strong measure of protection against the tactics utilized by plaintiffs’ attorneys in today’s litigious environment.

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“It’s more effective to catch problems before they become expensive, rather than rush in after the fact,” said King. The firm’s Class Action Audits have the purpose of doing just that. In both discrimination and wage-and-hour disputes, subtle distinctions demand careful analysis. Littler Mendelson is experienced in helping companies examine their hiring, pay and promotion practices in a way that highlights potential problems and offers advice to deter lawsuits.



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