

THE SKYROCKETING COST OF COMPLIANCE

“Over the last decade, risk managers, in-house legal professionals, and human resources departments have been challenged by an explosion of lawsuit filings **that has made wage and hour claims the single largest employment practices-related exposure for US employers.** But in recent years, the Fair Labor Standards Act (FLSA) - the law at issue in most wage and hour lawsuits — **has become a “gold mine” for the plaintiff’s bar.**”

- ADEOLA ADELE, US Employment Practices Liability Product Leader, Marsh & McLennan Companies, 2013

Three currents are driving the rising costs and risks of compliance: a surge in the number of wage and hour claims filed by employees; a sharp rise in the number of wage and hour lawsuits filed in federal court; and increased enforcement efforts by the Obama administration.

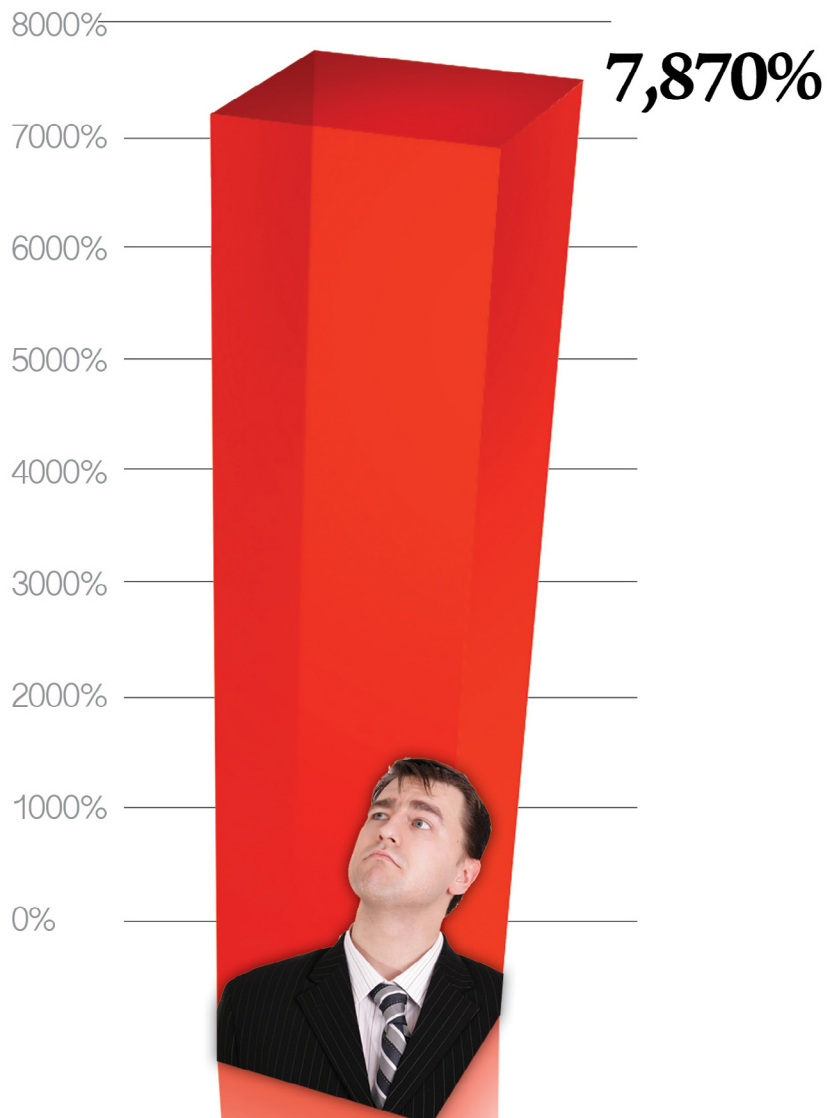
From 2002 to 2011, the U.S. Department of Labor tracks a nearly **3000 percent increase** in employers with wage and hour claims filed against them, plus a gargantuan **828 percent rise** in the back wages paid by employers as a result.

According to the Department, the number of wage and hour lawsuits filed in federal court between 2010 and 2011 increased by over **15%**, while an analysis by Seyfarth Shaw, a national employment law firm, reports that “FLSA filings [have] skyrocketed since 2002.” In the 12 months ending March 31, 2012, 7,064 FLSA federal lawsuits were filed, representing a **244%** increase from the same period in 2002.

Though the number of wage and hour violations actually reached their peak before Obama took office (in 2007, during the Bush years), the current President is investing more dollars and staff into the enforcement role. The number of compliance investigators has increased by well over one-third (37.1%) since President Obama took office, while the Wage & Hour Division budget grew 18%. If the Division gets its way in this year’s budget decisions, another 80 investigators will be added in 2013.

NEARLY 8,000% GROWTH IN COMPANIES CITED & PENALIZED FOR COMPLIANCE VIOLATIONS SINCE 2001

Growth in Employers Cited
with Violations (2001 to 2009)



Increasing Risk & Costs of Compliance FROM 2002 to 2011

2983% increase in employers
cited with violations

828% growth in back wages
charged to employers with
wage & hour violations

797% increase in employer vio
lations found by Wage & Hour
Division of the U.S. Dept of
Labor

247%* increase in FLSA law
suits filed in federal courts

SOURCE: U.S. Department of Labor
Wage and Hour Compliance Action
Data; and *Seyfarth Shaw, LLP "FLSA
Cases in Federal Court: 1993-1999 &
2000-2012"

SOURCE: U.S. Department of Labor Enforcement Database,
Wage and Hour Compliance Action Data 1985 to 2012



COMPLIANCE: FROM COMPLEX TO FLUID

If “complex” is the best descriptor for the pre-reform compliance environment, “fluid” has become the new norm for employers. Prior to reform becoming a reality in 2012, employers witnessed an explosive increase in wage and hour complaints and back wages charged.

During the Bush administration’s eight years, the number of employers with wage and hour claims **violations** grew from **219** in the year 2000 to **17,273** during 2008 (a 7,800 percent increase),

reaching a peak in 2008 at **18,095**.

The costs associated also exploded. Back wages charged for Fair Labor Standard Act violations grew by over four times the rate for claims against other wage and hour legislation, such as the **Family Medical Leave Act**. In 2000, FLSA violations accounted for only 17.5% of back wages assessed by the U.S. Department of Labor, but by 2008, FLSA back wages had mushroomed to three-quarters of the total (74.7%).

**Table: Growth in Back Wages
for FLSA Violations**

	2000	2008	Growth
FLSA violations	\$1.77 million	\$124.4 million	6924%
All wage & hour violations	\$10.1 million	\$166.4 million	1543%

BUT THEN CAME THE PPACA...

The new law not only introduced new layers of complexity, but promises to redefine the way employers provide benefits and manage their workforce for years to come. All the more so because the law is rapidly morphing and will not be fully codified for at least another five years.

ELEMENTS OF COMPLIANCE FLUIDITY:

- **Shifting Timelines:** The timeline for key provisions to go into effect not only number in the dozens, but some of them are seeing their implementation dates shift from those originally announced. For example, the Department of Labor has concluded that its automatic enrollment guidance will not be ready to take effect by 2014.

- **Unanswered Questions:** Questions are still being answered, even for provisions slated to begin in 2014. Federal agencies implementing the new law have issued guidance that the answers to dozens of key questions are still forthcoming, such as the final formula for determining whether a worker is full-time in the eyes of the law. For employers, that means a still steady stream of decisions that will impact the way they manage their workforce.

- **Patchwork of Related Regulation:** Many states have opted to operate their own exchanges, which could make for a patchwork of compliance requirements across the 50 states. Even the 32 states that chose to use the federal exchange will have two plans to choose from. Plus a dozen states have remain undecided about whether to adopt Medicaid expansion, while 14 have already announced that they will not do so. That in itself could have major cost implications in industries that employ large numbers of low-wage workers.