

So Many Ways to Sue

Determining the scope of employee lawsuits is problematic. For starters, there are no aggregate numbers for how many such suits are filed annually. After all, they can be filed in either federal or state court and can allege violations of a multitude of federal or state employment statutes.

For example, in 2005, the number of cases filed alleging only labor law violations (relating to workplace conditions, union issues, and fair labor violations (relating to workplace conditions, union issues, and fair labor standards) and civil-rights violations (related to the Americans with Disabilities Act and the Civil Rights Act of 1991) in all U.S. district court was 35,252. But this doesn't include the cases filed in state court alleging violations of state labor and employment laws.

Adding up the vast economic toll isn't easy either. Statistics from the Equal Employment Opportunities Commission, the federal agency that oversees compliance with federal antidiscrimination laws, offer only a small glimpse, but it is staggering. In 2005, companies paid out more than \$378 million in discrimination-claim nonlitigated settlements with that agency alone. That's up from \$362 million the year before, but doesn't include the billions that companies pay out in legal costs or court-ordered judgments and settlements or the hundreds of mammoth class-action suits filed on allegations of such things as breach of fiduciary duty (filed by employees of Enron and AIG) and the massive sex-based discrimination suits filed in 2004 against large retailers like Wal-Mart and Costco.

The other cost, of course, is the disruption such suits cause. "In addition to the damages that companies pay, these lawsuits divert time, talent, and resources," says Ralph Dawson, a partner with Fulbright & Jaworski. And between the time spent preparing the lawyers, serving as witnesses, gathering evidence, and so on, says Michael Sheetz, a partner with Nixon Peabody, the "overall cost of executive downtime far outweighs the out-of-pocket costs."—K.F.