

CLASS ACTION DEFENSE GROUP

DISCRIMINATION CLASS ACTION REVIEW 2026

DuaneMorris®

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CITATION FORMATS

All citations in the *Discrimination Class Action Review* are designed to facilitate research.

If applicable, the preferred citation of the opinion included in the West bound volumes is used, such as *Black Farmers And Agriculturalists Association, Inc., et al. v. Rollins*, 154 F.4th 473 (6th Cir. 2025).

If the decision is not available in the preferred format, a Lexis or Westlaw cite from the electronic database is provided, such as *Loiseau, et al. v. Bozzuto's Inc.*, 2025 U.S. Dist. LEXIS 153121 (D. Conn. Feb. 21, 2025).

If a ruling is not available in one of these sources, the full case name and docket information is included, such as *Arrington, et al. v. Burger King Corp.*, Case No. 18-CV-24128 (S.D. Fla. Apr. 9, 2025).

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NOTE FROM THE EDITOR

The stakes at issue in class action litigation are typically significant and are apt to keep corporate counsel and senior management up at night. A company's market share and corporate reputation are often implicated by a class action and these exposures and risks put immense pressure on corporate decision-makers.

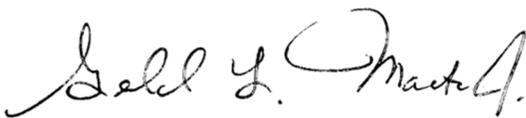
The purpose of the *Discrimination Class Action Review* is multi-faceted. We hope it will demystify some of the complexities of class action litigation, and keep corporate counsel updated on the ever-evolving nuances of Rule 23 issues in the discrimination space. In this respect, we hope this book will provide our clients with an analysis of trends and significant rulings that enable them to make informed decisions in dealing with complex litigation risks.

Class actions challenging employment policies and practices has a robust history since passage of the Civil Rights Act of 1964. For decades, federal courts routinely granted class certification in nationwide discrimination class actions, which often spiked settlements that entailed huge pay-outs and across-the-board changes to HR systems. In turn, significant changes in the workplaces of Corporate America resulted from class action precedents, massive settlements, and injunctive relief orders.

Ultimately, as the class action landscape continues to evolve, so too are the playbook theories of the plaintiff and defense bars. Counsel on both sides are becoming more sophisticated and creative in their approaches to prosecuting and defending class actions. Courts are facing increasing pressure to quickly and efficiently discern between properly pled actions and meritless litigation, not only to promote court expediency but also to spare businesses the incredible expense that accompanies class defense.

Defense of discrimination class actions is a hallmark of the litigation practice at Duane Morris. We hope this book – manifesting the collective experience and expertise of our class action defense group – will assist our clients by identifying developing trends in the case law and offering practical approaches in dealing with discrimination class action litigation.

Sincerely,



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GLOSSARY AND KEY U.S. SUPREME COURT DECISIONS

Adequacy Of Representation – Plaintiffs must show adequacy of representation per Rule 23(a)(4) to secure class certification. It requires representative plaintiffs and their counsel to be capable of fairly and adequately protecting the interests of the class.

Amchem Products, Inc. v. Windsor, et al., 521 U.S. 591 (1997) – *Windsor* is the U.S. Supreme Court decision that elucidated the requirements in Rule 23(b), insofar as common questions must predominate over any questions affecting only individual class members and class resolution must be superior to other methods for the adjudication of the claims.

Ascertainability – Although not an explicit requirement of Rule 23, some courts hold that the members of a proposed class must be ascertainable by objective criteria.

Comcast Corp. v. Behrend, et al., 569 U.S. 27 (2013) – *Comcast* is the U.S. Supreme Court decision that interpreted Rule 23(b)(3) to require that, for questions of law or fact common to the class, the plaintiffs' damages model must show damages are capable of resolution on a class-wide basis.

Commonality – Plaintiffs must show commonality per Rule 23(a)(2) to secure class certification. This requires that common questions of law and fact exist as to the proposed class members.

Class – A group of individuals that has suffered a similar loss or alleged illegal experience on whose behalf one or more representatives seek to bring suit.

Class Action – The civil action brought by one or more plaintiffs in which they seek to sue on behalf of themselves and others not named in the suit but alleged to have suffered the same or similar harm.

Class Certification – The judicial process in which a court reviews the submissions of the parties to determine whether the plaintiffs have met their burden of showing that class treatment is the most appropriate form of adjudication.

Collective Action – A type of representative proceeding governed by 29 U.S.C. § 216(b) where one or more plaintiffs seeks to bring suit on behalf of others who must affirmatively opt-in to join the litigation. It is applicable to claims under the Fair Labor Standards Act, the Age Discrimination in Employment Act, or the Equal Pay Act.

Cy Pres Fund – In class action settlement agreements, this is the money set aside for distribution to a § 501(c) organization when class members do not return a settlement claim form and money is left over after distribution to the class.

Decertification – Following an order granting conditional certification of a collective action or certification of a class action, a defendant can move for decertification based on the grounds that the members of the collective action are not actually similarly-situated or that the requirements of Rule 23 are no longer satisfied for the class action.

Epic Systems Inc. v. Lewis, et al., 138 S. Ct. 1612 (2018) – *Epic Systems* is the U.S. Supreme Court decision holding that arbitration agreements requiring individual arbitration and waiving a litigant's right to bring or participate in class actions are enforceable under the Federal Arbitration Act.

Opt-In Procedures – Under 29 U.S.C. § 216(b), a collective action member must opt-in to join the lawsuit before he or she may assert claims in the lawsuit or be bound by a judgment or settlement.

Opt-Out Procedures – If a court certifies a class under Rule 23(b)(3), class members are bound by the court's judgment unless they opt-out after receiving notice of the lawsuit.

Numerosity – Plaintiffs must show that their proposed class is sufficiently numerous that adding each class member to the complaint would be impractical. This is a requirement for class certification imposed by Rule 23(a)(1).

Ortiz, et al. v. Fibreboard Corp., 527 U.S. 815 (1999) – *Ortiz* is the U.S. Supreme Court ruling that interpreted Rule

23(b)(3) to require personal notice and an opportunity to opt-out of a class action where money damages are sought in a class action.

Predominance – The Rule 23(b)(3) requirement that, to obtain class certification, the plaintiffs must show that common questions predominate over any questions affecting individual members.

Rule 23 – This rule from the Federal Rules of Civil Procedure governs class actions in federal courts and requires that a party seeking class certification meet four requirements of section (a) and one of three requirements under section (b) of the rule.

Rule 23(a) – It prescribes that a class meet four requirements for purposes of class certification, including numerosity, commonality, typicality, and adequacy of representation.

Rule 23(b) – To secure class certification, a class must meet one of three requirements of Rule 23(b)(1), Rule 23(b)(2), or Rule 23(b)(3).

Rule 23(b)(1) – A class action may be maintained if Rule 23(a) is satisfied and if prosecuting separate actions would create a risk of inconsistent or varying adjudications with respect to individual class members or adjudications with respect to individual class members that, as a practical matter, would be dispositive of the interests of the other members not parties to the individual adjudications or would substantially impair or impede their ability to protect their interests.

Rule 23(b)(2) – A class action may be maintained if Rule 23(a) is satisfied and the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.

Rule 23(b)(3) – A class action may be maintained if Rule 23(a) is satisfied and questions of law or fact common to class members predominate over any questions affecting only individual members and a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Similarly-Situated – Under 29 U.S.C. § 216, employees may bring suit on behalf of themselves and others who are similarly-situated. The standard is not clearly defined in the statute and many courts have found that, if plaintiffs make a preliminary showing that they are similarly-situated to those they seek to represent, conditional certification is appropriate. A finding in this regard is usually not based on the merits of the claims.

Superiority – The Rule 23(b)(3) requirement that a class action can be permitted only if class resolution is the superior method of adjudicating the claims.

Typicality – The plaintiffs' claims and defenses must be typical to those of proposed class members' claims. This is required by Rule 23(a)(3).

***Wal-Mart Stores, Inc. v. Dukes, et al.*, 564 U.S. 338 (2011)** – *Wal-Mart* is the U.S. Supreme Court ruling that tightened the commonality requirement of Rule 23(a)(2) and held that judges must conduct a “rigorous analysis” to determine whether there is a “common” contention central to the validity of the claims that is “capable of class-wide resolution.”

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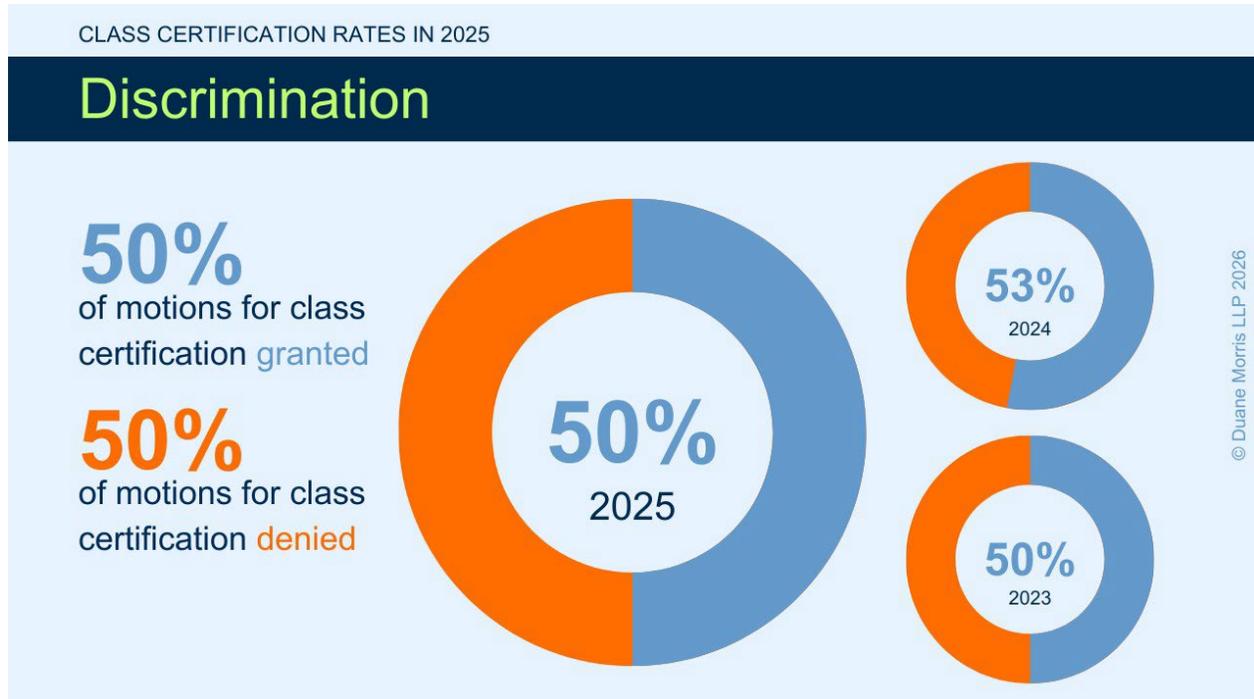
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Discrimination Class Actions

I. Executive Summary

Class action litigation in the discrimination space remains an area of prime focus of skilled class action litigators in the plaintiffs' bar.

Plaintiffs succeeded in certifying their cases at a slightly higher rate this past year. In 2025, courts granted class certification 50% of the time and denied certification in 50% of the cases. In contrast, in 2024, courts granted 53% of class certification motions and denied 47% of them.



Class actions challenging employment policies and practices has a robust history since passage of the Civil Rights Act of 1964. For decades, federal courts routinely granted class certification in nationwide employment discrimination class actions, which often spiked settlements that entailed huge pay-outs and across-the-board changes to HR systems and personnel practices. In turn, significant changes in the workplaces of Corporate America resulted from class action precedents, massive settlements, and injunctive relief orders.

This changed in large part over a decade ago when the U.S. Supreme Court decided *Wal-Mart Inc. v. Dukes, et al.*, 564 U.S. 338 (2011). That decision reversed a class certification order in a pay and promotions lawsuit involving 1.5 million class members who asserted claims of sex discrimination in pay and promotions. In handing down this ruling in *Wal-Mart*, the Supreme Court tightened the legal requirements for securing class certification in general and with respect to discrimination lawsuits in particular. It simultaneously forced the plaintiffs' bar to adjust their strategies on how to prosecute class actions, while also fueling new defense strategies for opposing class certification motions. Suddenly gone were the days when nationwide class actions challenging hiring, compensation, and promotion policies of large corporations inevitably ended with across the board certification orders and big settlement checks.

But the pendulum appears to be swinging back, as courts are becoming increasingly inclined to find for plaintiffs in class certification rulings, and thereby raising the potential for large monetary remedies. This is especially true in the discrimination context, as society continues to grapple with widespread inequality in the wake of large-scale social justice campaigns like Black Lives Matter and the #MeToo movement. Businesses are being confronted with

increasingly employee-friendly legislative changes and a more aggressive plaintiffs' bar.

But despite the rising rates of discrimination-based class action lawsuit filings, courts have remained steadfast in their application of *Wal-Mart* and allowing class actions to proceed only where all requirements have been satisfied. Whether it be establishing commonality across the putative class or satisfying the court's insistence for adequate representation, courts have not shied away from demanding litigants demonstrate compliance with Rule 23, readily dismissing lawsuits and denying class certification for cases that cannot clear this hurdle. This rigorous analysis to determine whether all prerequisites have been met frequently operates as the make-or-break point of any case.

In particular, plaintiffs often run into trouble meeting the criteria for commonality. In the discrimination arena, this typically requires plaintiffs to establish an alleged practice or policy of discrimination that is common across the putative class, including, as necessary, across departments and even state lines. But as defense counsel and courts alike are quick to point out, the class representative is burdened with establishing more than his or her own experience and attributing it across the prospective class to survive Rule 23(a) scrutiny. In this sense, a plaintiffs' certification burden must go beyond the run of the mill assertion, "I was harmed by discrimination, and others likely were too."

Ultimately, as the class action landscape continues to evolve, so too are the playbook theories of the plaintiff and defense bars. Counsel on both sides are becoming more sophisticated and creative in their approaches to prosecuting and defending class actions. Courts are facing increasing pressure to quickly and efficiently discern between properly pled actions and meritless litigation, not only to promote court expediency but also to spare businesses the incredible expense that accompanies class defense.

As a result, motions to dismiss and challenges to class certification are quickly turning into pivotal benchmarks in class action litigation. Still, the plaintiffs' bar remains undeterred. As public opinion of large businesses wanes, and while workplace inequality continues to grab headlines and remains in the forefront of the public eye, employers can expect discrimination class actions to reach even greater heights in 2026.

II. Significant Rulings In Employment Discrimination Class Actions In 2025

1. Rulings On Class Certification Motions Commonly Turn On Commonality, Numerosity, Or Typicality

Employers defeated class certification motions in discrimination lawsuits in 2025 by attacking the basis of the motions as insufficient under Rule 23. Hornbook case law demands that plaintiffs establish each element underlying Rule 23(a) and dictating a pathway for class certification under Rule 23(b). This type of defense strategy challenges the proof offered in support of the class certification motion.

In *Loiseau, et al. v. Bozzuto's Inc.*, 2025 U.S. Dist. LEXIS 153121 (D. Conn. Feb. 21, 2025), the plaintiffs, a group of Black hourly employees, filed a class action alleging that the defendant discriminated against Black employees in terms of pay, work assignments, promotions, workplace discipline, and terminations, and subjected them to a hostile work environment. The plaintiffs sought class-wide injunctive relief, compensatory damages, and punitive damages. The plaintiffs filed a motion for class certification pursuant to Rule 23, and the court granted the motion in part and denied it in part. The plaintiffs sought to certify a class of all Black employees who worked within the defendant's wholesale operations in Connecticut between November 21, 2018, and the date of class certification. In opposition, the defendant argued the plaintiffs could not satisfy the commonality requirement for their disparate impact claims due to the discretion allowed in management decisions. The defendant contended that the policies in question did not apply uniformly across all employees, and thus, the plaintiffs failed to establish a common injury. The court found that the plaintiffs' class definition was overly broad and modified it to include only Black, hourly warehouse associates. The court determined that the plaintiffs satisfied the numerosity, commonality, typicality, and adequacy requirements of Rule 23(a) for a class of hourly warehouse associates. The court found commonality for the plaintiffs' disparate impact claims related to the defendant's six-month performance review system and Bid Policy, but not for the defendant's promotion policies. The court also ruled that the class met the commonality requirement for the plaintiffs' disparate treatment claims due to some alleged statistical evidence of discrimination. However, the court did not find commonality for the plaintiffs' hostile work environment claims, as the evidence was largely confined to the North Haven facility and did not extend to all the defendant's facilities. The court reasoned that the plaintiffs' statistical evidence demonstrated disparities in pay, discipline, and warehouse assignments, which supported their disparate treatment claims. The court opined that the plaintiffs' claims met the predominance requirement of Rule 23(b), as the

resolution of both the plaintiffs' disparate impact and disparate treatment claims depend on generalized proof more than individualized proof, at least at the liability stage. *Id.* at 55. The court also concluded that a class action would be the superior method of adjudication, as the interest of the class members in maintaining separate actions was small, the court was not aware of any other litigation pending concerning the controversy, the court was not concerned about "concentrating the litigation of the claims in the particular forum," because all of the warehouses at issue were located in the district, and there was nothing to indicate to the court that the action would be less manageable than another complex case. *Id.* at 60-61. The court granted thereby granted the plaintiffs' motion in part, and certified a class of Black, hourly warehouse associates for the plaintiffs' disparate impact and disparate treatment claims under Rule 23(b)(3).

In *Doe 1, et al. v. National Collegiate Athletic Association*, Case No. 22-CV-1559 (N.D. Cal. Mar. 5, 2025), the court denied the plaintiffs' bid for class certification in its entirety. It determined that the plaintiffs' motion failed the commonality requirement of Rule 23. The plaintiffs, a group of former University of San Francisco baseball players, filed a class action alleging that former USF coaches maintained a sexually abusive environment. Specifically, from at least 2000 onward, USF baseball coaches Anthony Giarratano and Troy Nakamura engaged in misconduct, including appearing naked at practice, one coach exposing himself while mocking players, forcing athletes to mimic sexual acts, discussing their sexual preferences, making players remove clothing for errors, and distributing sex toys as prizes. The plaintiffs alleged that USF failed to properly supervise the coaches and did not implement appropriate training despite receiving multiple parental complaints, at least one Title IX investigation, and experiencing a disproportionately high player attrition rate. The plaintiffs alleged that they complained of misconduct to USF administrators in 2000, 2013, 2014, and 2021, and argued these reports should have put the university on notice about the alleged abuse, yet USF remained deliberately indifferent. In response to their bid for certification, the court found that the plaintiffs failed to demonstrate that these issues were common across the entire class, which spanned two-decades and encompassed hundreds of players. This created difficulty in establishing any common issues that could be adjudicated on a class-wide basis. Moreover, even if some questions could be considered common across the proposed class, they were not central to the validity of each claim. For these reasons, the court ruled that the case could not proceed as a class action, stating that sexual harassment cases like this were too individualized to justify class-wide adjudication.

In *Doe One, et al. v. CVS Pharmacy*, 2025 WL 2992214 (N.D. Cal. June 13, 2025), a group of individuals living with HIV/AIDS, filed a disability discrimination class action against subsidiaries of CVS Pharmacy, Inc., challenging CVS's distribution policy for specialty medications. *Id.* at *1. The plaintiffs alleged that CVS's policy requiring patients to obtain specialty medications either by mail or at a CVS location to receive in-network pricing disproportionately harmed individuals with HIV/AIDS, whose complex treatment regimens require personalized, in-person counseling. *Id.* Further, the plaintiffs argued that the policy undermined patient privacy, restricted access to pharmacist expertise, and jeopardized treatment efficacy. *Id.* at *2. The plaintiffs filed a motion for class certification, and the court denied the motion. The court found that the plaintiffs failed to establish that the alleged harms, including inadequate pharmaceutical counseling, delivery complications, and privacy breaches, were commonly experienced by all members of the proposed class. *Id.* at *6-8. Despite extensive discovery, the court opined that the plaintiffs could not demonstrate the "uniform experience of injury sufficient to establish commonality" under Rule 23(a). *Id.* at *9. The court observed that it was unclear what proportion of putative class members actually experienced delivery delays, privacy breaches, or counseling issues. *Id.* Because these injuries varied significantly among members, the court held that individualized inquiries would predominate and denied class certification. *Id.*

In *Mobley, et al. v. Workday, Inc.*, 2025 U.S. Dist. LEXIS 94475 (N.D. Cal. May 16, 2025), the named plaintiff filed a class action alleging that Workday's artificial intelligence (AI)-based hiring software discriminated against job applicants on the basis of race, age, and disability. *Id.* at *2. Four other plaintiffs joined and alleged they also applied to hundreds of positions through Workday's platform and were consistently rejected without an interview. *Id.* Central to the plaintiffs' theory of discrimination was Workday's AI systems, including the Candidate Skills Match (CSM) and Workday Assessment Connector (WAC), which allegedly screen, sort, and rank job applicants, sometimes using machine learning techniques that perpetuate employer biases. *Id.* at *5-7. The plaintiffs argued that these tools disproportionately harm applicants over 40 by recommending them less frequently or filtering them out entirely before human review. *Id.* The plaintiff sought preliminary certification of a collective action on the age discrimination claim under the ADEA, and the court granted conditional certification. *Id.* at *2. Workday argued that because the parties had already engaged in some discovery, the plaintiffs should be held to a higher burden of proof for the similarly situated analysis, but the court rejected this argument and held that, at this stage, plaintiffs only needed to show "substantial allegations" of a common discriminatory policy, not definitive proof. *Id.* at *12-14. The court found that the plaintiffs had done so, pointing to allegations in the complaint and declarations from opt-in plaintiffs who similarly experienced a high rejection rate of their applications submitted via Workday. *Id.* at *14-15. The court further noted

that all proposed collective members allegedly faced a common barrier of the automated systems that treated older applicants unfairly. *Id.* at *15-16. Workday asserted that its AI tools merely assist employers, without making hiring decisions or recommendations. *Id.* at *16-17. However, the court disagreed, citing to Workday's own marketing and discovery responses showing that its AI assigns candidates qualitative labels like "strong" or "low" to candidates using skills-matching algorithms, which could plausibly be interpreted as recommending or not recommending candidates. *Id.* at *18. Workday next argued there is no single, uniform AI policy because employers could activate or deactivate AI features, and the impact of the AI varies depending on employer-specific data. *Id.* at *20. The court disagreed. It found that the proposed collective action was limited to applicants actually screened by Workday's AI systems, including those using the same algorithms. *Id.* at *20-23. The court also noted that other courts have previously certified collective actions even where discrimination varied in degree across subgroups, provided the alleged mechanism of discrimination was shared. *Id.* at *22-23. Finally, Workday argued that variations among applicants' qualifications, the number of applications submitted, and outcomes of submitted applications rendered certification impossible. *Id.* at *24. The court again disagreed, reiterating that at the conditional certification stage, the plaintiffs' burden is to identify legal or factual similarities that are material to the resolution of the case." *Id.* at *25. Accordingly, the court granted the plaintiffs' motion for conditional certification, signaling a growing judicial willingness to scrutinize algorithmic and AI-driven employment tools under traditional discrimination frameworks, particularly where the plaintiffs allege systemic bias embedded in automated systems. *Id.* at *33.

Workday subsequently sought to exclude job applicants using its newly acquired HiredScore's technology from the collective action in *Mobley, et al. v. Workday, Inc.*, Case No. 23-CV-770 (N.D. Cal. July 29, 2025). Workday argued that HiredScore's technology was distinct, trained with different inputs, and implemented after the lawsuit began, and therefore outside the scope of the plaintiff's initial lawsuit. The court held that the AI fell within the broader challenged policy in the plaintiffs' allegations. The court ruled that changes or additions to Workday's AI system over time could not remove newer tools like HiredScore's from the scope of the alleged discriminatory policy. The court stated that the plaintiffs challenged Workday's use of AI in general to score, sort, rank, or screen applicants, and not just the original tools in place when the case was filed. Workday claimed the HiredScore system was trained on different data and produced different results than the AI initially challenged. However, the plaintiffs argued that since the acquisition, HiredScore's technology as merged into Workday's hiring platform and thus affected applicants in the same way. The court allowed the job applications who used HiredScore to be part of the conditionally certified collective action. The court determined that arguments brought by Workday pertaining to distinctions in its technology may be addressed with subclasses and decided at the decertification stage and denied Workday's motion to narrow the class and collective action definition.

In *Meinert, et al. v. Port Authority Of Allegheny County*, 2025 U.S. Dist. LEXIS 54639 (W.D. Penn. Mar. 25, 2025), the plaintiffs, a group of bus drivers and maintenance workers of the Pittsburgh Regional Transit, filed a class action against the transit company in December 2022, asserting claims for religious and disability discrimination and failure to accommodate under federal and state law. *Id.* at *2. The plaintiffs alleged that they held sincere religious beliefs against receiving COVID-19 vaccinations but were fired after submitting medical exemptions to the company's policy requiring vaccinations for employees. *Id.* In total, the transit company received 350 accommodation requests related to its COVID-19 vaccination policy — 54 of which were for medical exemptions and 296 of which were for religious exemptions. *Id.* at *7. The defendant formed an Accommodation Review Committee that ultimately granted 13 medical exemption and 30 religious exemption requests to its vaccination policy. *Id.* The plaintiffs argued that the exemption review process was a "sham" because the defendant did not challenge the sincerity of any of the plaintiffs' requests for religious exemptions and did not consider whether the plaintiffs' medical conditions were a recognized disability under the ADA. *Id.* at *9-10. Instead, the plaintiffs stated that their medical exemption requests were denied because their pre-existent conditions or disabilities did not show a contraindication to the CDC guidelines. *Id.* at *10. In response to the plaintiffs' request that the court certify the medical exemption class, the court found the medical exemption class failed to meet the numerosity and commonality prerequisites because the plaintiffs presented no evidence to contradict the defendant's assertion that only twelve individuals fell into the proposed class. *Id.* at *13. Further, the court was not persuaded that joinder of all twelve proposed class members was impracticable. *Id.* at *16. The court further addressed the lack of commonality of the medical exemption class in dicta (as the lack of numerosity was sufficient to dismiss the proposed class) but nevertheless found that determining whether each member of the class had a cognizable disability would be an individualized inquiry that could not be considered on a class-wide basis. *Id.* at *23. With respect to the religious exemption class, the court similarly found a lack of commonality given that the sincerity of a class member's religious beliefs and the undue hardship to the defendant are both individualized inquiries not suitable for class treatment. *Id.* at *24-25. The court rejected the plaintiffs' contention that the defendant did not engage in any individual analysis to determine undue hardship, crediting an affidavit submitted by the Company detailing the Accommodation Review Committee's process and attaching denial letters, which the court reasoned illustrated that the defendant considered undue hardship on an individual-by-individual basis. *Id.* at *27. For

the same reasons, the court also reasoned that predominance was lacking as to the religious exemption class because the plaintiffs failed to demonstrate that the elements of their claims could be proven at trial through evidence that is common to all class members. *Id.* at *30. Thus, the court denied the plaintiffs' motion for class certification. *Id.*

In another unsuccessful bid for class certification, the plaintiffs in *Horoschak, et al. v. Sirius XM Radio, Inc.*, 2025 U.S. Dist. LEXIS 141593 (S.D.N.Y. July 24, 2025), a group of former employees over the age of 40, filed a nationwide collective action alleging that the defendant subjected them to discrimination on the basis of their age in violation of the Age Discrimination in Employment Act (ADEA) when it terminated their employment. The plaintiffs asserted that their dismissals were not part of a legitimate workforce reduction, but part of a broader, unlawful effort by the company to replace older employees with younger employees. The plaintiffs based their argument on a 2022 statement from Sirius XM's Chief Technology Officer, who reportedly expressed a desire to hire younger workers to better match the company's target audience. They alleged this marked the beginning of a cultural shift that led to a series of actions against older employees, including unfair performance reviews, marginalization, and ultimately, termination. The plaintiffs filed a motion for conditional certification of a collective action, and the court denied the motion. The court found that the plaintiffs failed to meet the low threshold required for conditional certification of a collective action by alleging the existence of a discriminatory plan or policy, and that their claims rested on conclusory allegations based on the single statement from the CTO made two years prior to the reduction in force that eliminated the plaintiffs' jobs. The court stated that the plaintiffs had not provided any affidavits, declarations, or supporting documents to demonstrate that employees experienced discrimination or that the defendant maintained a company-wide policy targeting older workers which could connect the CTO's alleged comment with terminations of the plaintiffs or other employees. Moreover, the court found that there were inconsistencies in how the plaintiffs defined the proposed collective action, and key differences among potential collective action members, including varying employment circumstances, waivers, arbitration agreements, and possible statute of limitations issues, such that the plaintiffs could not establish that they were similarly-situated. Finally, the court opined that the heavier burden to certify a nationwide class required the plaintiffs to demonstrate a global discriminatory policy was at play in all of Sirius XM's decisions to terminate employees, which the plaintiffs also failed to do. Accordingly, the court denied the plaintiffs' motion for conditional certification of a collective action.

Similarly, in *In Re Wells Fargo Mortgage Discrimination Litigation*, 2025 U.S. Dist. LEXIS 150753 (N.D. Cal. Aug. 5, 2025), the plaintiffs filed a class action alleging that the defendant engaged in systemic discrimination against minority mortgage applicants by disproportionately denying mortgage applications from minority borrowers, delaying their applications, and offering less favorable loan terms than those offered to similarly qualified White applicants. According to the plaintiffs, the defendant implemented a form of digital redlining through certain centralized, algorithm-driven underwriting tools, which they used to assign minority applicants to lower credit risk classes and resulting in fewer approvals. *Id.* at *10-11. The complaint raised claims under the Equal Credit Opportunity Act, the Fair Housing Act, 42 U.S.C. § 1981, California's Unruh Civil Rights Act, and the Unfair Competition Law. In support of their motion for class certification, plaintiffs relied on an expert-conducted regression analysis, which concluded that minority applicants faced statistically significant disparities in loan approval rates compared to White applicants. The defendant's expert did not dispute the presence of statistical disparities but contended the analysis failed to establish causation. The defendant's expert further maintained that without reviewing individual loan files, no one could determine whether applicants were wrongfully denied loans based on race or other legitimate (and non-race motivated) reasons. The court agreed, finding that while the plaintiffs "focused like a laser" on the presence of disparities, they offered little to show whether or how the defendant's underwriting systems caused them, thus failing their obligations to establish commonality under Rule 23(a)(2). *Id.* at *6. Indeed, the court admonished the plaintiffs that it was their burden, not Wells Fargo's burden, to offer class-wide evidence of causation, and that Supreme Court precedent expressly rejected the results-oriented approach they advanced. *Id.* Ultimately, without something to connect all the decisions impacting the proposed class, the court opined that it would be impossible to say that examination of each would produce a common answer to explain each class-member's situation, thereby warranting denial of class certification.

A widely anticipated but ultimately consistent opinion regarding the circuit split on the burden of proof for the initial stage of class certification came out from the Seventh Circuit this year. In *Richards, et al. v. Eli Lilly & Co.*, 2025 U.S. App. LEXIS 19667 (7th Cir. Aug. 5, 2025), the Seventh Circuit vacated and remanded a district court's decision to conditionally certify a group of potential opt-in plaintiffs in an Age Discrimination in Employment Act (ADEA) collective action. The plaintiff filed a collective action against the defendant, an international pharmaceutical manufacturer and her one-time employer, alleging discrimination under the ADEA after she was denied a promotion to District Sales Manager, a position she had held on an interim basis for six months and which was subsequently given to a younger, less experienced employee. The plaintiff alleged a broad pattern where the defendant promoted younger employees over older ones through its "Early Career Professionals" initiative in violation of the ADEA and subsequently filed a

motion for conditional certification of a collective action on behalf of all Eli Lilly employees over the age of 40 who had applied for and were denied promotions for which they were qualified. The district court drew on *Lusardi v. Xerox Corp.*, 118 F.R.D. 351 (D.N.J. 1987), to hold that an employee seeking to certify a collective action has a lighter burden of proof at the first stage, where notice to a proposed collective action is sought, and thus a court may rely solely on the plaintiff's allegations without considering competing evidence submitted by the employer. The second step follows opt-ins and discovery, and a defendant may challenge whether the members of the collective action are similarly-situated. In recent years, however, the Fifth and Sixth Circuit Courts of Appeal have found that *Lusardi's* two-step approach is inconsistent with the text of the FLSA. *Swales v. KLLM Transportation Services, LLC*, 985 F.3d 430 (5th Cir. 2021); *Clark v. A&L Homecare & Training Center, LLC*, 68 F.4th 1003 (6th Cir. 2023). In *Swales*, 985 F.3d at 443, the Fifth Circuit rejected *Lusardi's* two-step approach outright, and required its district courts to "rigorously enforce" the FLSA's similarity requirement for notice recipients with a preponderance of evidence at the outset of the litigation in a one-step approach. Similarly, in *Clark*, 68 F.4th at 1011, the Sixth Circuit adopted a comparable, though slightly more lenient standard requiring the employee to show a "strong likelihood" that others are similarly situated to him or her before the district court permits a notice to be sent. In contrast, the Second, Ninth, Tenth, and Eleventh Circuits continue to either follow or allow the district court to adopt the two-step framework outlined in *Lusardi*. *Harrington, et al. v. Cracker Barrel Old Country Store, Inc.*, 142 F.4th 678 (9th Cir. 2025); *Thiessen, et al. v. General Electric Capital Corp.*, 267 F.3d 1095 (10th Cir. 2001); *Myers, et al. v. Hertz Corp.*, 624 F.3d 537 (2d Cir. 2010); *Hipp, et al. v. Liberty National Life Insurance Co.*, 252 F.3d 1208 (11th Cir. 2001).

In *Richards*, the district court had followed *Lusardi* in permitting the named plaintiff to send notice to the employees whom she contended were similarly-situated. The defendant filed a motion for interlocutory appeal, which was subsequently granted, and the Seventh Circuit took on the circuit split, ultimately rejecting the *Lusardi* framework but declining to go as far as *Clark* or *Swales*. The Seventh Circuit observed that the notice process should be facilitated by three guiding principles established in *Hoffmann-La Roche Inc. v. Sperling*, 493 U.S. 165 (1989): (i) the timing and accuracy of notice; (ii) judicial neutrality; and (iii) the prevention of abuses of joinder. *Id.* at *14. It reasoned that the *Lusardi* standard threatened the latter two principles by "incentivizing defendants to settle early rather than attempt to 'decertify' at step two . . . transforming what should be a neutral case management tool into a vehicle for strongarming settlements and soliciting claims." *Id.* at *17. The Seventh Circuit opted for a standard where a plaintiff is required to "make a threshold showing that there is a material factual dispute as to whether the proposed collective is similarly situated" through a showing of "some evidence suggesting that they and the members of the proposed collective are victims of a common unlawful employment practice or policy." *Id.* at *21-22. Further, the Seventh Circuit wrote that an employer "must be permitted to submit rebuttal evidence" and the courts are required to "consider the extent to which plaintiffs engage with opposing evidence" when assessing whether a material factual dispute exists. *Id.* at *22. In considering that threshold determination, the district court retains its discretion to decide whether notice under the two-step approach is appropriate or not, how narrow notice may be, and whether it can resolve any of the disputed issues. It also may authorize limited and expedited discovery, use its equitable tolling authority, or to request more evidence to assist it in making its determination. *Id.* at *24. The Seventh Circuit thus vacated and remanded for further proceedings consistent with its opinion. A dissent written by Judge Hamilton disagreed with the district court's opinion that once notice is issued to opt-ins who may be similarly-situated to the plaintiff, it was the plaintiff's burden to certify the collective action and to demonstrate the similarity by a preponderance of evidence. Judge Hamilton objected to the majority opinion on the grounds that as the interlocutory appeal did not address these issues and so the circuit court should refrain from issuing additional guidance, particularly since its opinion steers too close to a Rule 23 analysis for class certification, whereas a collective action is closer to questions of joinder or case consolidation.

In *Davis, et al. v. U.S. Parole Commission*, 2025 U.S. Dist. LEXIS 24577 (D.D.C. Feb. 11, 2025), the plaintiff, an individual with physical and mental disabilities on lifetime parole in Washington, D.C., brought a class action alleging systemic disability discrimination by the U.S. Parole Commission and the Court Services and Offender Supervision Agency (CSOSA). *Id.* at *2. The plaintiff alleged these agencies lacked policies or procedures to assess or accommodate disabilities for individuals on parole or supervised release, in violation of the Rehabilitation Act. *Id.* at *7-8. The supervision of D.C. Code offenders is a joint effort between the Parole Commission, which makes core decisions on conditions and violations, and CSOSA, which implements supervision and administers graduated sanctions. *Id.* at *3-4. The plaintiff alleged that the system disproportionately penalizes individuals with disabilities for technical violations (e.g., missed appointments, drug tests), due to the absence of disability accommodations. *Id.* at *5. The plaintiff contended his physical and mental health conditions, including chronic pain from severe burns and PTSD, interfered with his ability to comply with supervision requirements. *Id.* at *5-6. He was arrested and incarcerated for failure to check in with his CSO by phone, which he alleged was due to a malfunctioning phone provided by a support organization. *Id.* at *6-7. The plaintiff filed the instant lawsuit while serving a 12-month sentence for the violation. *Id.* at *7.

The court previously granted the plaintiff a preliminary injunction, ordering the Government to comply with the Rehabilitation Act with respect to him personally, but declined to extend that relief to others. *Id.* at *8. The plaintiff sought class certification for all disabled individuals under D.C. parole or supervised release who need accommodations. *Id.* at *8-9. The Government opposed class certification, alleging that the proposed class lacked commonality, typicality, and failed to meet Rule 23(b)(2)'s requirement that the remedy sought applies uniformly across the class. *Id.* at *11. The Government argued that class members' experiences varied too widely and that the plaintiff's circumstances (notably, his lifetime parole) were atypical. *Id.* The court rejected the Government's arguments and granted class certification, finding that the plaintiff met all four requirements under Rule 23(a) and the fifth requirement under Rule 23(b). The court stated that the proposed class was large enough to make joinder impractical; the class shared a central legal and factual issue — the systemic failure to provide disability accommodations; the plaintiff's claims arose from the same alleged systemic flaw as those of the class; and that the plaintiff and plaintiff's counsel would be capable of fairly and adequately representing the class. *Id.* at *15-22. As to the Rule 23(b)(2) requirements, the court determined that Government's uniform failure to act justified class-wide injunctive relief and that a class action would be the superior method of adjudication. *Id.* at *23. The court thereby granted the plaintiff's motion for class certification. *Id.* at *23-24.

By way of contrast, the court split the baby in *Won, et al. v. Amazon.Com Services, LLC*, 2025 U.S. Dist. LEXIS 168038 (S.D.N.Y. August 28, 2025), where the plaintiff, a member of the U.S. Army Reserve, filed a class action alleging that Amazon violated the Uniformed Services Employment and Reemployment Rights Act (USERRA) by failing to provide short-term paid leave for military service on the same terms as other types of leave, specifically, jury duty leave. During her employment, the plaintiff, a fulfillment associate at an Amazon warehouse in Staten Island, took two short-term military leaves of absence. Pursuant to Amazon's military leave policy, the plaintiff applied for the difference between her Amazon wages and her military pay, but did not receive payment until after she filed her lawsuit in May 2021. Class certification briefing was referred to the magistrate judge, who recommended the district court approve certification for reservists seeking paid military leave but reject the request for retrospective declaratory relief. Still, the district court deviated from that recommendation, agreeing that the plaintiff had established the numerosity, commonality, and typicality requirements of Rule 23(a), but declining to certify the plaintiff as a class representative because she was better off under Amazon's military leave policy than under its jury leave policy, thereby creating a conflict of interest with proposed class members. The court, however, invited the plaintiff to remedy this issue by offering up new class representatives within 60 days of its ruling. In addition, while declining to certify the class under Rule 23(b)(2) (due to standing deficiencies), the court opined that the plaintiff established predominance of questions of law over all class members (whether paid leave is a right or benefit, and whether short term military leave is comparable to jury duty leave) and that class litigation was a superior method of resolving the claims at issue to other forms of adjudication. Accordingly, and subject to the proposed class offering up a new and satisfactory class representative, the plaintiff class was permitted to proceed on a class basis.

In *Pickett, et al. v. City Of Cleveland*, 104 F.4th 300 (6th Cir. 2025), the plaintiffs, a group of Black residents of Cuyahoga County, Ohio, filed a class action alleging that the City of Cleveland's water utility lien policy violated the Fair Housing Act (FHA) and the Ohio Civil Rights Act by disproportionately harming Black homeowners. *Id.* at 305-06. Cleveland Water, a public utility under the City of Cleveland, provides water services to around 1.5 million customers across Ohio. *Id.* at 305. Although not legally required, it funds its operations through various utility rates and fees paid by users. *Id.* When customers fall behind, Cleveland Water can place a "water lien" on the property. *Id.* Between 2012 and 2020, more than 17,000 such liens were issued, which accrued penalties and interest, increasing the risk of foreclosure and eviction for property owners. *Id.* The plaintiffs argued that the liens were disproportionately placed on properties in predominantly Black neighborhoods. *Id.* at 306. Nearly 68% of water liens were concentrated in these areas, compared to only 18% in majority White neighborhoods, and the plaintiffs contended that Cleveland's facially neutral policy had a disparate impact on Black residents. *Id.* The plaintiffs filed a motion for class certification pursuant to Rule 23, and the district court granted the motion. *Id.* at 307. On the city's appeal, the Sixth Circuit affirmed the district court's ruling. Cleveland argued that not all members of the class had suffered economic harm and that plaintiffs could not simply point to a common statutory violation to satisfy the predominance requirement. *Id.* The Sixth Circuit disagreed, holding that the plaintiffs had standing even without economic loss because the injury under the FHA was not limited to monetary harm. *Id.* at 311-12. The Sixth Circuit stated that mere placement of a lien, which could jeopardize housing security, constituted a cognizable injury. *Id.* at 313. Furthermore, the Sixth Circuit concluded that at the class certification stage, economic damages could vary and be addressed later. *Id.* at 313-14. The Sixth Circuit stated that the common legal question of whether Cleveland's lien policy disproportionately harmed Black homeowners in violation of the FHA was central to resolving the claims. *Id.* at 314. Accordingly, the Sixth Circuit affirmed the district court's ruling granting the plaintiff's motion for class certification. *Id.*

In *L.B., et al. v. Premera Blue Cross*, 781 F. Supp. 3d 1128 (W.D. Wash. 2025), the plaintiffs, parents of transgender adolescents, filed a class action alleging that the defendant engaged in sex and age discrimination by denying insurance coverage for mastectomies for transgender youth under the age of 18, in violation of the Affordable Care Act (ACA). *Id.* at 1132-35. The plaintiffs sought class certification and partial summary judgment on the sex discrimination claim, while the defendant cross-moved for summary judgment on all claims and both parties moved to exclude the opposing side's expert witnesses. *Id.* at 1132. The defendant argued that its medical policy did not violate § 1557 of the ACA, asserting that it had legitimate, nondiscriminatory reasons for its coverage decisions. *Id.* at 1137-38. The defendant contended that its policy was justified by the immaturity of minors to make informed decisions and the lack of flawless studies supporting gender-affirming surgeries for adolescents. *Id.* at 1134-35. The court ruled that the defendant's medical policy facially discriminated on the basis of sex in violation of § 1557 and granted summary judgment in favor of the plaintiffs for declaratory relief. *Id.* at 1142. The court found that the plaintiffs failed to exhaust administrative remedies for their age discrimination claims, and thereby granted the defendant's motion for summary judgment with respect to the claims of age discrimination. *Id.* at 1145. Finally, with respect to class certification, the court concluded that the plaintiffs did not meet the typicality and adequacy criteria for class certification. *Id.* at 1147. The court explained that the defendant approved the mastectomy of one plaintiff prior to turning 18 years of age and that both plaintiffs' claims were not typical of class members who had not yet had surgery. *Id.* Thus, the court denied the plaintiffs' motion for class certification. *Id.*

In *Waldschmidt, et al. v. Union Pacific Railroad Co.*, 2025 U.S. Dist. LEXIS 182480 (D. Neb. Sept. 15, 2025), the plaintiffs filed a class action alleging that their employer, Union Pacific Railroad (UPR), violated the Americans with Disabilities Act (ADA) by implementing policies adversely affecting hearing-impaired employees, former employees, and job applicants. The policies, they claimed, were more restrictive than federal regulations and did not accommodate hearing-impaired workers. For example, UPR denied its hearing-impaired workforce the ability to wear custom hearing protection or use hearing aids under approved devices. In response to the plaintiffs' motion for class certification, UPR acknowledged the numerosity and commonality requirements were satisfied, but argued that the proposed representative's claims did not typify those of the class with respect to the two-step hearing process the business employed. Moreover, they maintained that individual assessments were necessary to determine if each plaintiff was qualified for their job and if they suffered adverse employment actions due to their disability, undermining the predominance requirement outlined by Rule 23(b)(3). The court disagreed with these positions. It noted that UPR failed to present evidence that any class members were indeed not qualified, and that any differing degrees of harm went to calculation of damages, not issues of predominance. Finally, the court rejected UPR's argument against certifying a class under Rule 23(b)(2), finding cohesiveness among the proposed class related to the threatened harm from application of the company's hearing policies. In sum, the court certified classes under both Rule 23(b)(2) and (3).

Finally, in *Torres, et al. v. MMS Group LLC.*, 2025 U.S. Dist. LEXIS 181047 (S.D.N.Y. Sept. 16, 2025), the plaintiff filed a class action alleging that the defendants failed to maintain and provide accessible residences to deaf or hearing-impaired individuals. The plaintiff asserted that the defendants' apartment buildings lacked surveillance cameras in elevators, bed shakers for emergencies, smoke alarms with strobe lights, and security staff fluent in American Sign Language. Previously, a magistrate judge recommended certifying the plaintiff's proposed class with some modifications. On review, the court partially granted the plaintiff's motion for class certification and granted the defendants' motion to seal certain sensitive medical information. The magistrate judge found that the plaintiff's proposed class satisfied Rule 23(a)'s requirements for class certification and proposed narrowing the class period. *Id.* at *7-8. The defendants opposed the magistrate judge's report and claimed that the plaintiffs failed to meet Rule 23(a)'s requirements of numerosity, adequacy, commonality, and typicality. They also contended that the plaintiff failed to establish Article III standing. However, the court found these arguments simply "rehash[ed] the same arguments set forth" in the original report, and the defendants only restated factual claims and arguments from prior filings. *Id.* at *9. The court found that the defendants did not provide any analysis of how the plaintiff's alleged injury-in-fact was incorrect. The plaintiff objected to the report's recommendation to narrow the class period, but the court similarly found that the plaintiff's arguments were a "rehashing of the same arguments" from previous filings. *Id.* at *22. Accordingly, the court adopted the magistrate judge's report and recommendation in full and granted the plaintiff's class certification.

2. Rulings On Class Certification Motions Based On Superiority

Court rulings on Rule 23(b)(3) issues involving superiority were also spotlighted in 2025.

For example, a TikTok moderator filed a class action in *Young, et al. v. Bytedance Inc.*, 2025 U.S. Dist. LEXIS 31675 (N.D. Cal. Feb. 18, 2025), alleging the defendant subjected him to disturbing videos causing him psychological harm.

The court ultimately denied his motion for class certification on a number of grounds. First, because the plaintiff – who was no longer employed by the company by the time he initiated his lawsuit – lacked standing to seek forward-looking relief, and in any event, failed to submit sufficient evidence to support his assertion that no monitor would remain in the job long enough to pursue a class action. Second, because the plaintiff’s pitch for a “medical monitoring fund” – wherein TikTok would establish a fund for monitoring and treating class members for psychological harm – lacked clarity and feasibility, and indeed, even after hearing from the plaintiff, the court still could not understand how it purported to work. *Id.* at *2. Moreover, while relying on the phrase “medical monitoring,” the plaintiff seemingly sought compensation for injuries despite maintaining this was not a personal injury case. *Id.* at *3. Third, the court questioned whether the plaintiff could establish TikTok’s control over moderators’ work was uniform across the proposed class, particularly where the training and supervision of those moderators varied depending on if they worked for third-party agencies (TPAs) or business process outsourcing vendors (BPOs). Indeed, the differences could be so significant that the plaintiff, himself employed by a TPA, might not adequately represent the BPOs under Rule 23(a)(3), many of whom previously signed arbitration agreements that would seemingly preclude them from participating in the lawsuit at all. Fourth, whether TikTok breached its duty of care would likely generate different answers across the class due to variations in training, exposure to harmful content, and mitigation measures available to different moderators. These differences are compounded by the variation in state laws that would necessarily apply to proposed class members spread across nearly half of the states in the country. Finally, and perhaps most significantly, unlike wage & hour or consumer fraud cases, the court reasoned that a class action in this context did not appear to be the superior method of adjudication, where affected moderators could reasonably bring individual claims and recover damages without the complications of a class action.

3. Rulings On Decertification Of Class Claims

Even if the plaintiff initially prevails on class certification, the defendant still has an opportunity to break the class through decertification.

Such was the case in *UnifySCC, et al. v. Cody*, 2025 U.S. Dist. LEXIS 97298 (N.D. Cal. May 21, 2025), where the plaintiffs filed a class action alleging that the County of Santa Clara’s COVID-19 vaccination policy violated their rights by forcing employees to choose between vaccination and unpaid leave, prioritizing medical exemptions over religious ones, and demonstrating hostility towards religion. *Id.* at *2-3. The plaintiffs claimed that the County’s Risk Tier System and accommodation procedures were non-neutral and not generally applicable, thus subject to strict scrutiny under the Free Exercise Clause. The defendants filed a motion to decertify the class, arguing that the class was not ascertainable, as many class members did not suffer an injury or seek accommodations, and that individualized inquiries were necessary to resolve the claims. *Id.* at *10-12. The defendants contended that the County’s communications did not constitute coercion or duress, and that the plaintiffs failed to establish a common injury among class members. *Id.* at *13. The court granted the defendants’ motion for decertification, finding that the plaintiffs failed to meet the commonality requirement under Rule 23(a) and that individual issues predominated over common ones under Rule 23(b). *Id.* at *24-25, *39-40. The court noted that the plaintiffs’ claims required individualized inquiries into each class member’s experience with the County’s accommodation process, and that the evidence did not support a class-wide injury. *Id.* at *33-35. The court also dismissed *UnifySCC* for lack of standing, as their claims for prospective relief were mooted. *Id.* at *41-42.

4. Rulings Granting Defendant’s Motions To Dismiss

Aggressive defendants frequently seek to quell a class action before it even gets off the ground by attacking the sufficiency of the claims as they are pled in the complaint. If successful, the benefits of this strategy are plain and significant by eliminating the class allegations before the plaintiff ever gets to probe the defendant on their policies, procedures, or other practices in class-wide discovery. However, these efforts are often difficult, as they require convincing the court that no amount of discovery will alter the fact that plaintiffs’ claims or class certification theories are fundamentally flawed. But while difficult to prove, defendants can and do prevail.

In one such case, *Opiotennione, et al. v. Bozzuto Management Co.*, 2025 U.S. App. LEXIS 5007 (4th Cir. Mar. 4, 2025), the plaintiff, a 55-year-old woman, filed a class action alleging the defendant’s online housing advertisements posted to Facebook’s targeted users 50 and under, thus denying her and other users over 50 an equal opportunity to learn about housing options. The district court dismissed these claims, finding the plaintiff had not suffered a concrete and particularized injury, and therefore lacked Article III standing. In particular, the district court noted that the plaintiff had not requested or been denied specific housing information, nor faced any direct barrier to accessing rental listings. Additionally, even within the targeted age group, not all Facebook users received the advertisements, as

Facebook's algorithm determined ad distribution. On the plaintiff's appeal, the Fourth Circuit affirmed the district court's ruling, concluding the plaintiff's claims of discrimination, loss of information, and stigmatic harm were too abstract to constitute a legally cognizable injury. The Fourth Circuit concluded that merely being part of a disfavored age group was insufficient for standing, and that the plaintiff had other means to access the same rental information.

The defense in *Buckley, et al. v. Chicago Tribune, LLC*, 2025 U.S. Dist. LEXIS 24361 (N.D. Ill. Feb. 11, 2025), mounted another successful bid to dismiss the litigation at the outset. There, the plaintiffs, seven African-American female journalists at the Chicago Tribune, filed a class action against Chicago Tribune, LLC, Tribune Publishing Company (TPC), and Alden Global Capital, alleging systemic pay discrimination on account of race and sex in violation of Title VII of the Civil Rights Act, the Illinois Human Rights Act (IHRA), and both federal and state Equal Pay Acts (EPA and IEPA). Specifically, the plaintiffs asserted that the company's diversity outreach programs have been used to hire minority journalists at lower starting salaries, often on a part-time basis, while White journalists were brought in full-time at higher pay. The plaintiffs asserted that Black and female journalists were typically recruited from lower-paying suburban newspapers, whereas White and male journalists were hired from prestigious, better-paying publications. In denying the motion in part, the court rejected the defendants' argument that the plaintiffs had failed to exhaust administrative remedies for their class-wide claims, finding the language in their charge of discrimination sufficiently telegraphed the existence of broader, class-wide claims. The court also determined that the current and former owners of the company could be considered indirect or de facto employers under the cited statutes because the complaint satisfactorily alleged that they controlled employees' pay, even if they did not oversee hiring, firing, or work performance. However, the court granted the defendant's motion to dismiss the EPA and IEPA claims, finding that the complaint's threadbare allegations lacked specific details about the responsibilities or conditions of the plaintiffs' purported peers to substantiate claims that plaintiffs performed equal work to higher-paid White and male colleagues. Instead, the allegations relied on general statements about pay disparities within job categories, which, the court concluded, did not nudge the equal pay claims from possible to plausible under applicable case law. Finally, the court denied the defendants' motion to strike the class allegations, believing the complaint was not facially deficient such that class certification was improbable. Ultimately, the court dismissed the plaintiffs' EPA and IEPA claims without prejudice.

In *Baez, et al. v. New York State Office Of Temporary And Disability Assistance*, 2025 U.S. Dist. LEXIS 59447 (S.D.N.Y. Mar. 28, 2025), the plaintiffs, a group of individuals joined by Residents to Preserve Public Housing, filed a class action alleging that the New York State Office of Temporary and Disability Assistance (OTDA) and the New York City Housing Authority (NYCHA) discriminated against Black and Hispanic or Latino public subsidized housing tenants in violation of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, and New York State Human Rights Laws. *Id.* at *1-2. The plaintiffs alleged that the OTDA and its commissioner, Barbara C. Guinn, intentionally discouraged eligible NYCHA residents from applying for the Emergency Rental Assistance Program (ERAP) and pushed them toward repayable loans. *Id.* at *3-5. They also alleged that NYCHA failed to timely recertify tenants' incomes, leading to incorrect rent calculations. *Id.* at *5-6. The defendants moved to dismiss, arguing that the plaintiffs lacked standing and failed to state a claim. *Id.* at *7. OTDA contended that the plaintiffs did not show any injuries traceable to its actions since it did not directly manage NYCHA. *Id.* at *10. The court agreed. It found that the plaintiffs did not plausibly allege OTDA's involvement in NYCHA's failure to recertify tenant incomes. *Id.* at *10-11. The court also ruled that Commissioner Guinn was entitled to qualified immunity, because the antidiscrimination laws did not clearly prohibit the program's lack of prioritization of subsidized tenants. *Id.* at *12-14. Additionally, the court opined that claims against OTDA under the New York State Human Rights Law and the Fair Housing Act were barred by sovereign immunity since the state had not waived immunity and Congress had not abrogated it. *Id.* at *15. Regarding the NYCHA claims, the court determined that the individual plaintiffs lacked standing as they could not demonstrate the likelihood of future harm or a direct link between the alleged discrimination and their injuries. *Id.* at *16-18. The court concluded that Residents to Preserve Public Housing also lacked standing because their claims were outside of the organization's mission and the organization's diversion of resources did not constitute a concrete injury. *Id.* at *19-21. The court further ruled that the plaintiffs' claims were time-barred since the alleged discrimination was known long before the suit was filed. *Id.* at *22-24. Consequently, the court granted the defendants' motions to dismiss the action. *Id.* at *25.

In one case that reached the Sixth Circuit, *Chen, et al. v. Hillsdale College*, 2025 U.S. App. LEXIS 22135 (6th Cir. Aug. 28, 2025), the plaintiffs, two students at Hillsdale College in Michigan, reported that they had been sexually assaulted by male student-athletes. Plaintiff Chen alleged that her assault occurred in a campus dormitory, and Plaintiff Villarreal reported an off-campus assault. The plaintiffs had filed complaints with college administrators, and the defendant retained outside legal counsel to conduct investigations. Following the investigations, the defendant placed Villarreal's alleged assailant on social probation, ordered them to complete community service, and suspended one of them from the baseball team. Chen's alleged assailant, who was already serving community service for a

previous alcohol-related incident, faced no additional sanctions. The plaintiffs contended that the defendant failed to enforce or meaningfully follow through on the disciplinary actions and filed a class action on behalf of themselves and a group of female students alleging negligence, intentional infliction of emotional distress (IIED), and sex discrimination under Michigan's Elliot Larsen Civil Rights Act (ELCRA). Hillsdale moved to dismiss the lawsuit and to strike the class allegations, and the district court agreed. On appeal, the Sixth Circuit affirmed the district court's ruling. The plaintiffs had argued that the defendant was negligent in failing to prevent their assaults. The Sixth Circuit explained that under Michigan law, a party must owe a legal duty to prevent harm in order to be held liable for negligence, but colleges are generally not required to protect students from criminal acts by third parties unless a special relationship exists, and no such special relationship had existed with either plaintiff here because the assaults did not occur during school-sponsored events or in contexts where the defendant had direct control over the environment. Even assuming a special relationship had existed, the Sixth Circuit found that the plaintiffs failed to show that the defendant had advance knowledge of an "imminent and foreseeable" threat of harm to them. *Id.* at *12. As to the plaintiffs' claim that the defendant's handling of their complaints constituted intentional infliction of emotional distress, the Sixth Circuit reasoned that Michigan law requires "extreme and outrageous" conduct that is "beyond all possible bounds of decency," and that the defendant's actions, although they may have seemed insensitive or inadequate, did not rise to the legal threshold for IIED. *Id.* at *15. Finally, the plaintiffs alleged that the defendant discriminated against them based on sex in violation of the ELCRA. They argued that the college's policies were applied disparately to female sexual assault victims than to male victims, and that there was a disproportionate negative impact on female students. The Sixth Circuit rejected the plaintiffs' arguments, finding that the plaintiffs had not provided sufficient facts alleging that male and female victims were treated differently or proffer any Hillsdale-specific data showing that the college's neutral policies disproportionately harmed women. Accordingly, the Sixth Circuit affirmed the district court's ruling dismissing the claims.

In a more complicated case, *Bradley, et al. v. Gannett Co. Inc.*, 2025 U.S. Dist. LEXIS 171877 (E.D. Va. Sept. 3, 2025), the plaintiffs, former newsroom employees, filed a class action asserting race discrimination under Title VII and Section 1981, and alleged that the defendant, a mass media holding company and newspaper publisher, implemented a company-wide inclusion initiative that had imposed racial quota requirements that disadvantaged class members' employment opportunities with the defendant. The plaintiffs further asserted that the defendant's leadership were entitled to bonuses if racial parity quotas were met, and that a directive not to hire any "more straight White males" was issued to management. *Id.* at *3. The defendant moved to dismiss the plaintiffs' complaint and dismiss the class allegations, and the court partially granted the defendant's motions. The plaintiffs relied on the defendant's 2020 Inclusion Report as evidence of the racial quota policy in their initial complaint. However, the court found that the plaintiffs' allegations were "conclusory and speculative" and contradicted the contents within the report. *Id.* at *14-15. The court stated that the plaintiffs asserted that the policy did not require employees to be treated fairly, but the report stated that the defendant strived to ensure all employees were included and had equal opportunities. After the plaintiffs filed their second amended complaint in which they moved away from relying exclusively on the Inclusion Report, the defendant argued that each of the named plaintiffs failed to state a claim, and the court mostly agreed. The court ruled that the plaintiffs failed to allege that they suffered any race-based pay disparity, race discrimination, reputational damage, retaliation, or intolerable work environment as a result of a company-wide policy or plan. However, the court found that plaintiff Logan Barry had sufficiently alleged that he was not promoted due to discrimination based on his claims that managers had told him that he was the most qualified for the role that a less experienced, non-White individual was instead promoted. Otherwise, the court found that all the plaintiffs other than Barry had failed to assert a claim for relief pursuant to 42 U.S.C. § 1981 and partially granted the defendant's motion to dismiss. Regarding the plaintiffs' motion for class certification, the court found that the proposed class was not ascertainable. While the plaintiffs alleged that every employee was subject to the policy, the court found that the plaintiffs could not reasonably assert that the policy harmed every person subject to it, which included those employees who plaintiffs allege were promoted due to reverse race discrimination, those in management or supervisory positions or human resources staff, IT professionals, and janitors. Consequently, the court concluded that identifying class members under the plaintiffs' overbroad definition would be implausible. The court determined that the plaintiffs failed to meet the commonality requirement of Rule 23(a) because the plaintiffs did not demonstrate how the allegedly discriminatory policy was distributed to the over 100 brands who employed newsroom members, and relief sought was based on different theories of recovery, different positions, different newspapers, in different geographical locations, and applied by different decisionmakers. Thus, the court dismissed the majority of the plaintiffs' claims and struck the class claims.

In *Prichard, et al. v. Long Island University*, 2025 U.S. Dist. LEXIS 146309 (E.D.N.Y. July 30, 2025), the court issued one of the first decisions concerning deference to EEOC regulations following the U.S. Supreme Court's decision in *Loper Bright Enterprises v. Raimondo, et al.*, 603 U.S. 369, 401 (2024). In this case, the plaintiff, a financial aid counselor at Long Island University (LIU), was terminated in 2022 after exhausting her FMLA leave following a kidney

transplant. *Id.* at *1. The plaintiff filed a charge with the EEOC on July 24, 2023, alleging disability discrimination under the ADA. At her request, the EEOC issued an early right to sue (RTS) letter only 57 days later — well before the 180-day statutory waiting period elapsed. The plaintiff thereafter filed a class action alleging that the defendant violated the ADA, as well as other state-specific human rights laws. *Id.* at *3. LIU moved to dismiss, arguing that the early right to sue letter was invalid and thus, the plaintiff had not satisfied the precondition to filing suit under Title VII. The EEOC regularly issues right to sue letters upon a charging party's request prior to the expiration of Title VII's 180-day statutory waiting period if the Commission determines that it is probable it will "be unable to complete its administrative processing of the charge within 180 days from the filing of the charge." See 29 C.F.R. § 1601.28(a)(2). This regulation, as well as other regulations promulgated by the Commission, have previously enjoyed longstanding "Chevron deference," which required judicial deference for agency interpretations of vague laws. In the Supreme Court's 2024 ruling in *Loper-Bright*, it eliminated "Chevron deference," holding it was the courts, not agencies, that determined statutory meaning. *Loper Bright* at 401. There is currently a circuit split regarding the Commission's "early right to sue" regulation, and it has been upheld as lawful by the Ninth, Eleventh, and Tenth Circuits (prior to *Loper-Bright*). See *Saulsbury, et al. v. Wismer & Becker, Inc.*, 644 F.2d 1251 (9th Cir. 1980); *Sims, et al. v. Trustee Joist MacMillan*, 22 F.3d 1059 (11th Cir. 1994); *Walker, et al. v. United Parcel Service, Inc.*, 240 F.3d 1268 (10th Cir. 2001). In contrast, the D.C. Circuit has invalidated the regulation while the Third Circuit has opined, in *dicta*, that early RTS letters should be discouraged as contrary to congressional intent. See *Martini v. Federal National Mortgage Association*, 178 F.3d 1336 (D.C. Cir. 1991); *Moteles, et al. v. University Of Pennsylvania*, 730 F.2d 913, 917 (3d Cir. 1984). The Second Circuit has not addressed this question but has observed that district courts have decided this issue both ways. *Id.* at *5. In this case, the court sided with LIU, concluding that the EEOC exceeded its statutory authority by issuing a right to sue letter before the 180-day period had expired. As the court observed, "Prichard's assertion that deference is due the EEOC's interpretation of the statute effectively urges this court to operate in a parallel universe in which *Loper Bright* had been decided the other way. No case that Prichard cites (or that the Court has identified) sided with the EEOC on textual grounds without according to deference: they either deferred to the agency pre-*Loper Bright*, or relied primarily on policy considerations." *Id.* at *7. The court then "directed" the EEOC to reopen the plaintiff's charge and granted leave to re-file once: (i) the EEOC dismissed her claim; or (ii) investigated for 123 more days and neither filed a lawsuit, or entered into a conciliation agreement. *Id.*

Meanwhile, in *Mandala, et al. v. NTT Data, Inc.*, 2025 U.S. Dist. LEXIS 144074 (W.D.N.Y. July 28, 2025), the plaintiffs, two African-American men with past felony convictions who had received job offers from NTT which were withdrawn subsequent to the performance of a background check, brought a putative class action against the defendant, a global IT services company, alleging that its hiring policy disqualifies applicants with criminal convictions in violation of Title VII of the Civil Rights Act and New York's Human Rights Law (NYSHRL) as well as claims of improper use of criminal background checks under state law. The defendant filed a motion to dismiss, which the court granted in part and denied in part. The court also denied the defendant's motion to strike the class claims. The plaintiffs had asserted that the defendant's blanket policy disproportionately impacted Black applicants, who are statistically more likely to have criminal convictions due to broader racial disparities in the criminal justice system. The plaintiffs pointed to national studies showing higher arrest and incarceration rates for Black individuals, and research suggesting that Black applicants with criminal records face greater employment obstacles than their white counterparts. The district court dismissed the plaintiffs' original complaint in 2019, finding that the general population statistics they relied upon were insufficient to demonstrate a disparate impact specific to the defendant's applicant pool. The plaintiffs appealed, and the Second Circuit affirmed the dismissal. The majority ruled that national statistics must be meaningfully tied to the employer's actual pool of qualified applicants to support a disparate impact claim. While the panel left open the possibility that broader statistics could be sufficient, it held that the complaint lacked such necessary context. A dissenting judge, however, wrote that the district court imposed an unfairly high bar at the pleading stage. In 2021, the Second Circuit declined to rehear the case *en banc*, though several judges emphasized that national data could support claims like this if it were accompanied by allegations showing continued racial disparities among similarly qualified job seekers. The plaintiffs subsequently filed their first amended complaint which added detailed statistics showing that even among individuals with some college education, Black men face significantly higher rates of imprisonment than white men. The complaint also cited research that found no evidence suggesting individuals with criminal records are more likely to engage in misconduct once employed. The defendant again moved to dismiss, arguing that the plaintiffs still failed to show a plausible link between their statistical claims and the actual impact of the defendant's hiring policy. The defendant also argued that some of the state law claims were time-barred and asked the court to strike the class allegations. The court denied the motion to dismiss the Title VII and NYSHRL disparate impact claims at the motion to dismiss stage due to the low threshold for pleading after finding that the plaintiffs had plausibly alleged that the defendant's policy disproportionately harms qualified Black applicants who were likely to be within the defendant's applicant pool with the addition of the statistical evidence, and the statute of limitations was tolled when plaintiff Mandala had previously filed a charge with the EEOC. The court dismissed the plaintiffs' claim under New York's General Business Law following the plaintiffs' voluntary agreement to

drop it. The court refused to strike the class allegations before discovery, however, reasoning that it was premature to rule on whether the plaintiffs could meet the class certification requirements. For these reasons, the court granted in part and denied in part the motion to dismiss and denied the motion to strike the class claims.

In *Bush, et al. v. Honda Development & Manufacturing of America, LLC*, 2025 WL 1830702 (N.D. Ala. July 2, 2025), the plaintiff, an African-American employee in a supervisory fleet maintenance role, brought an action on behalf of himself and a putative class of African-American employees, associates, and contractors alleging a systemic pattern or practice of employment-related race discrimination in violation of Title VII of the Civil Rights Act of 1964 and Section 1981 in the U.S. District Court of the Southern District of Ohio. The plaintiff alleged that class members did not have the opportunity to apply for certain jobs or promotions, were discouraged from applying, or applied and did not receive such positions due to their race while working for the defendant. The defendant filed a motion to change venue to the Northern District of Alabama, which the court granted, as well as a partial motion to dismiss, arguing that the class action complaint failed to satisfy Rule 23's requirements of ascertainability, commonality, typicality, adequacy, predominance, and superiority requirements, and "that the complaint [wa]s an impermissible shotgun pleading." *Id.* at *3. The Northern District of Alabama agreed and granted the motion. The court found that the proposed class was so broad as to include every exempt African-American employee and contractor regardless of injury, failing to meet the Rule 23(a) requirements articulated in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), for "some specificity . . . even as early as the pleadings stage." *Id.* The court found wrote that the defendant's business records would not be able to identify: (i) class members that did not apply for positions because the position was not properly posted; (ii) class members that were unaware of vacancies; or (iii) class members that did not hear about positions through word of mouth. *Id.* With regard to commonality, the court determined that the proposed class was not likely to generate "common answers" to the question of how or why class members were allegedly disfavored due to their race because the complaint alleged "a full range of different claims," such as "being discouraged from applying for a job, applying for a job and not getting it, or not being told about an opportunity," which are all separate theories presenting different factual scenarios. *Id.* at *6. As to predominance, the court found that because the plaintiff seeking individual monetary damages, an individualized analysis was necessary. *Id.* at *11. The court rejected the plaintiff's argument that the injunctive relief sought established predominance given that the monetary damage sought were not "incidental" to the injunctive relief but, instead, at the forefront of the redress requested. *Id.* Finally, the court ruled that the complaint also failed to establish that the plaintiff was an adequate class representative with injuries typical to the class members because he held a supervisory position with the defendant but sought to represent class members in non-supervisory roles as well as contractors who could not bring Title VII claims.

The court also found the *Bush* complaint form to be a deficient "shotgun pleading" under the Eleventh Circuit standards against pleadings replete with vague, immaterial, and conclusory allegations, with the plaintiff alleging that "word-of-mouth information disproportionately excluded or disadvantaged African American employees from knowing about and competing for positions and training;" that non-African American employees were "promoted at a faster pace to a higher-level position;" the defendant's "discriminatory practices . . . deterred the Plaintiff and putative class members from further pursuing additional vacancies and job opportunities;" that "departmental and plant-based selection criteria and/or restrictions favored employees in departments and/or facilities or locations that were disproportionately Caucasian;" the defendant's "recruitment and selection process perpetuated past and existing racial disparities in the jobs at issue;" and that the named "Plaintiff [] has personal knowledge of the discriminatory obstacles and disparate impact experienced by other members of the putative class." *Id.* at *13. The court concluded, quoting *Dukes*, that these allegations without factual support failed to provide the "glue holding the alleged reasons for all the [challenged employment] decisions together" and therefore failed to show how class treatment would generate a common answer as to why members of the class were allegedly disfavored. The court gave the plaintiff leave to replead the class allegations to cure the identified deficiencies but instructed that any amended complaint should only include allegations for which the plaintiff has a "good faith basis . . . supported by Supreme Court and Eleventh Circuit case law." *Id.* at *14.

In *Davis, et al. v. General Mills Operations, LLC*, 2025 U.S. Dist. LEXIS 199416 (N.D. Ga. Oct. 8, 2025), the plaintiffs filed a putative class action alleging that the defendant violated Title VII of the Civil Rights Act of 1964 and 42 U.S.C. § 1981 by discriminating, harassing, and retaliating against Black employees who worked at the defendant's Covington, Georgia facility. The plaintiffs alleged the defendant implemented pervasive race discrimination practices throughout its operations at the facility. The plaintiffs alleged that the systemic discriminatory practices were perpetuated by a group of White supervisors known as the "Good Ole Boys," who perpetuated a "racially hostile work environment" and denied equal opportunities for advancement of Black employees for decades with impunity and with the support of Human Resources personnel and company leadership. *Id.* at *4. This group allegedly provided false performance evaluations to vindicate adverse employment actions against Black employees and to promote underqualified White employees over more qualified Black employees; provided inadequate training to Black employees; subjected Black

employees to harsher and stricter disciplinary actions for minor transgressions; and retaliated against Black employees who complained about discrimination with write-ups, demotions, and termination. The plaintiffs also alleged that symbols of white supremacy were displayed at their work site and on clothing some Black employees were required to wear. The defendant moved to dismiss the plaintiffs' claims under Rule 12(b)(6), arguing that the plaintiffs failed to plausibly allege that they endured purposeful racial discrimination, harassment, or retaliation, and that the plaintiffs' claims could not properly be brought as a class action under Rule 23 because of each claim's individualized nature. The court found that the plaintiffs' complaint contained a multitude of conclusory, overbroad, and vague claims amounting to a "shotgun pleading" and dismissed the complaint without prejudice and recommended that the plaintiffs file an amended complaint. *Id.* at *75. Regarding the plaintiff's request for Rule 23(a) class certification, the court determined that the plaintiffs failed to meet the commonality requirement because their claims of adverse employment actions ranged from write-ups to employment termination in a variety of work positions under different supervisors, and thus were highly individualized. The court agreed with the defendant that 15 putative members of the class bringing individual suits against the defendant demonstrated that the named plaintiffs' claims here were not typical of the proposed class, and the plaintiffs could not adequately represent the interests of other class members. Thus, the court found that the plaintiffs failed to establish Rule 23(b) requirements and granted the defendant's motion to dismiss while directing the plaintiffs to file an amended complaint.

In *Black Farmers and Agriculturalists Association, Inc., et al. v. Rollins*, 154 F.4th 473 (6th Cir. 2025), the plaintiffs alleged that the U.S. Department of Agriculture (USDA) denied applications the plaintiffs filed on behalf of deceased relatives to the Discrimination Financial Assistance Program. The district court previously dismissed the plaintiffs' claims under Rule 12(b)(6), as a statute required the USDA to only accept applications from living farmers. On appeal, the plaintiffs brought a motion for an emergency injunction to stop the USDA from processing applications. The Sixth Circuit affirmed the district court's decision to dismiss the plaintiffs' claim. The plaintiffs challenged the legacy-claim exclusion in the Administrative Procedure Act (APA), asserting that the exclusion was "arbitrary, capricious, or an abuse of discretion." *Id.* at *6. However, the Sixth Circuit found that Congress did not give the USDA the authority to accept legacy claims in the first place, and financial assistance was intended to compensate farmers who experienced discrimination. In response to the COVID-19 pandemic, in 2021, Congress passed the American Rescue Plan Act to appropriate money to assist disadvantaged farmers delineated by the farmer's race. However, the Inflation Reduction Act of 2022 repealed and replaced the American Rescue Plan Act by maintaining guidelines of past discrimination, rather than race, as the determining factor for awards. Thus, the Discrimination Financial Assistance Program was created specifically to distribute these funds. One of the eligibility provisions asserted discrimination that only affected a deceased individual at the time of their application was "facially ineligible." *Id.* at *3. The Sixth Circuit found that the compensation would need to assist a deceased farmer who experienced discrimination, which it could not do. Accordingly, the USDA was required to reject the plaintiffs' applications on behalf of their deceased relatives. The plaintiffs further contended that the American Rescue Plan Act's original definition of assistance covered a broad spectrum of potential applicants, including deceased farmers whose relatives filed on their behalf. However, because that act was repealed, the court dismissed the plaintiffs' argument. The plaintiffs also argued that compensation can assist deceased farmers by placing deceased farmers' relatives in positions that would benefit from the deceased farmers' efforts, which could in turn continue the estate. The Sixth Circuit determined that maintaining property still did not constitute assisting the deceased farmers themselves. Its interpretation of Section 22007 of the Inflation Reduction Act was that the program would provide assistance, not compensation, for prospective, pandemic-induced assistance programs instead of retrospective compensation to farmers who may have already been compensated. The plaintiffs further contended that they had a statutory right to "inherit property" on the "same basis as other 'citizens of the United States.'" *Id.* at *19. The Sixth Circuit maintained that the Inflation Reduction Act did not conflict with the plaintiffs' claim, as the plaintiffs' proposed statute only took effect if the government or private action impaired property interest. Any impairment the plaintiffs purported was derived from prior USDA actions, not the Inflation Reduction Act — thus, the Inflation Reduction Act did not impair the plaintiffs' right to inherit property. Accordingly, the Sixth Circuit affirmed the district court's ruling and denied the plaintiffs' motion for an injunction.

In *Alloway, et al. v. Bowlero Corp.*, 2025 U.S. Dist. LEXIS 221692 (E.D.N.Y. Nov. 10, 2025), the plaintiffs filed a collective action alleging that they were terminated or constructively terminated as part of a company-wide strategy to replace older employees with younger ones, aligning with the defendants' new business model targeting younger clientele in violation of the ADEA. The defendants filed a motion to dismiss, arguing that the plaintiffs' claims were either time-barred or insufficiently pled. The court granted the motion in part. The court found that 63 of the 76 plaintiffs filed their charges of discrimination (CODs) with the EEOC more than 300 days after their termination, and therefore their claims were time-barred by the applicable statute of limitation. The plaintiffs argued for equitable tolling, claiming they were unaware of the discrimination until informed by their counsel. However, the court held that equitable tolling was not applicable as the plaintiffs failed to demonstrate diligence in pursuing their claims and did not show that the defendants' conduct prevented them from timely filing a lawsuit. Consequently, the claims of the 63

plaintiffs were dismissed with prejudice. For the 13 plaintiffs whose claims were not time-barred, the court evaluated whether they sufficiently alleged that age was the “but for” reason of their termination. *Id.* at *28. The court noted that at the motion to dismiss stage, plaintiffs are not required to prove pretext but must provide enough factual information to suggest a plausible claim of age discrimination. The court found that eight of the plaintiffs sufficiently pled their claims by alleging specific instances of age-based discrimination and providing supporting EEOC determinations, and thus, it declined to dismiss the claims of those eight plaintiffs. *Id.* at *40. The court, however, dismissed the claims of the remaining five plaintiffs for failing to state a claim, as they did not provide sufficient factual allegations to support an inference of age discrimination. *Id.* In conclusion, the court granted the defendants’ motion to dismiss in part, dismissing the time-barred claims and the insufficiently pled claims, and denied the motion for the eight plaintiffs who adequately pled their ADEA claims.

5. Rulings Denying Preemptive Motions To Dismiss

Of course, businesses did not prevail across the board on all dispositive motions in 2025.

For example, in *Martinez, et al. v. University Of Texas Austin*, 2025 U.S. Dist. LEXIS 6265 (W.D. Tex. Jan. 13, 2025), the plaintiffs, two Hispanic university professors, filed a class action alleging the University and its president engaged in discriminatory employment practices based on national origin in violation of Title VII. The plaintiffs alleged they and other Hispanic faculty received lower salaries than their non-Hispanic colleagues with similar experience and accomplishments and were treated unfairly in terms of promotions, endowments, and appointments to leadership roles. They also alleged they were retaliated against after complaining about these issues. The defendants filed a motion to dismiss and to strike class allegations, and the court granted in part and denied in part the motion. The defendants first argued that the plaintiffs failed to plausibly allege disparate impact claims because they did not identify a specific, facially neutral policy in their complaint. The court disagreed. It found that the plaintiffs’ reference to various policies and the University’s Board of Regents cumulatively identified subjective decision-making policies used in the University’s employment decisions to state a disparate impact claim. Additionally, the court reasoned that the plaintiffs presented statistical evidence of disparities between Hispanic and non-Hispanic faculty members, including significant pay gaps and underrepresentation in leadership roles, which supported their disparate impact claim. Next, the defendants challenged the plaintiffs’ disparate treatment claims, arguing that at its core, these claims allege unintentional discrimination, which did not satisfy the standard under Title VII. However, the court ruled that the plaintiffs had plausibly alleged intentional discrimination, particularly in relation to pay and promotions. For example, the plaintiffs provided specific instances where they were paid less than non-Hispanic peers, were denied promotions despite being more qualified, and other instances of identifiable anti-Hispanic animus sufficient to support a claim. The court therefore denied the defendants’ motion to dismiss those claims.

The court agreed, however, that the plaintiffs failed to establish sufficient connection between their alleged protected activities and adverse actions they suffered, and therefore failed to plead a satisfactory claim for retaliation. Citing Fifth Circuit jurisprudence that the first instance of protected activity is the relevant starting point for temporal proximity, the court determined the initial protected activity allegedly occurred nearly two years before the first allegation of a specific adverse action. Because this gap in time was too significant to constitute a causal link, the court ruled that the complaint failed to satisfy the temporal proximity element to plead retaliation. The plaintiffs did, however, survive the defendants’ motion to dismiss their § 1981 claims, successfully thwarting the University’s president’s pitch for qualified immunity under the statute. The court invited the defendants to renew their argument at summary judgment, a telling reminder of the favorable burden shifting for the plaintiffs at the dismissal stage. Finally, the court took the extraordinary step of striking the plaintiff’s class allegations, finding that even at the pleading stage, it was facially apparent from the pleadings that there was no ascertainable class. Specifically, the court concluded that the process through which discretionary decision-making is exercised, the criteria governing that discretion, and the involvement of upper management (specifically, the University’s president) did not satisfy a common mode of decision-making for Rule 23(a)(2) purposes. Because the complaint did not demonstrate that the class would meet the predominance requirements under Rule 23(b) either, the court granted the defendant’s motion to strike the class allegations.

Similarly, in *Edwards, et al. v. JBS Souderton, Inc.*, 2025 U.S. Dist. LEXIS 128733 (E.D. Penn. July 8, 2025), a group of Black employees brought a class action against their employer, a beef processing facility, alleging the existence of policies that intentionally discriminated against Black people, variously claiming a hostile work environment, disparate treatment, and retaliation in violation of Title VII. Their complaint included a failure to hire, failure to promote, unequal pay, unlawful demotion, wrongful termination, and that the defendant’s supervisors and employees regularly used racial slurs, and that management failed to intervene. Two plaintiffs additionally alleged violations of the Family and

Medical Leave Act (FMLA). The defendant filed a motion to dismiss, and the court granted in part and denied in part the motion. The court found that the plaintiff alleging a hostile work environment based on the use of racial slurs by supervisors, including common use of a Spanish-language slur for Black people, had plausibly stated a claim under the Third Circuit standard. The court next ruled certain plaintiffs' claims were too vague and lacked specific facts with regard to their claims of failure to promote and dismissed some of them while allowing others to remain. The court found that claims of failure to promote were not viable for all but one of the plaintiffs because they had failed to allege that they were qualified for the promotions. The court also found that those plaintiffs who unsuccessfully sought to be rehired after leaving voluntarily had plausibly claimed discrimination in light of the defendant's practice of rehiring former employees in good standing. The court also allowed the claims for unequal wages and denial of overtime compensation to survive the motion to dismiss, finding that the plaintiffs had pleaded sufficient facts including receiving lower bonuses or being denied overtime in contrast to non-Black employees in the same or similar positions could suggest racial discrimination, and that there was no need to prove exact comparators at an early stage of the litigation. Finally, the court allowed the claims regarding retaliatory demotion and termination to proceed, stating that the plaintiff's complaint had offered detailed allegations of being treated worse than non-Black peers under similar circumstances to sufficiently satisfy the Third Circuit factors of timing and ongoing antagonism based on their claims that they were terminated or demoted after repeatedly complaining of the use of racial slurs. With regards to the two FMLA claims, the court found that plaintiffs did not provide enough evidence showing that invoked or communicated an intent to take FMLA leave and dismissed the allegations. Finally, the court denied the defendant's request to strike the class action allegations prior to discovery. Accordingly, the court denied the defendant's motion to dismiss in part and granted it in part and denied the defendant's motion to strike.

The defense was also unlucky in *Rajaram, et al. v. Meta Platforms Inc.*, Case No. 22-CV-2920 (N.D. Cal. Feb. 25, 2025). There, the plaintiffs filed a class action alleging that the defendant systematically disadvantaged domestic applicants for technical positions between 2020 and 2022. The plaintiffs alleged that the defendant pursued a deliberate pattern and practice of giving preference to foreign workers, motivated in part by economic incentives tied to wage suppression. The company's hiring decisions, they contend, reflect not just individual acts of bias, but systemic policies that penalized U.S. citizens based on their national origin or citizenship status. The plaintiffs asserted that although they were well-qualified for job positions and received favorable interview feedback, they were routinely rejected in favor of foreign workers holding H-1B visas. Among other motions, the defendant filed a motion to dismiss the litigation, which the court denied. The court determined that the plaintiffs described concrete instances of allegedly discriminatory treatment, which were supported by statistical disparities in the defendant's workforce. The court acknowledged that the statistics alone did not establish a plausible claim, and the plaintiffs' anecdotal allegations were conclusory; but together, they established a broader factual narrative set forth in the complaint that the plaintiffs were treated differently in the hiring process because of their national origin. Accordingly, the court denied the defendant's motion to dismiss.

6. Rulings On Motions For Summary Judgment

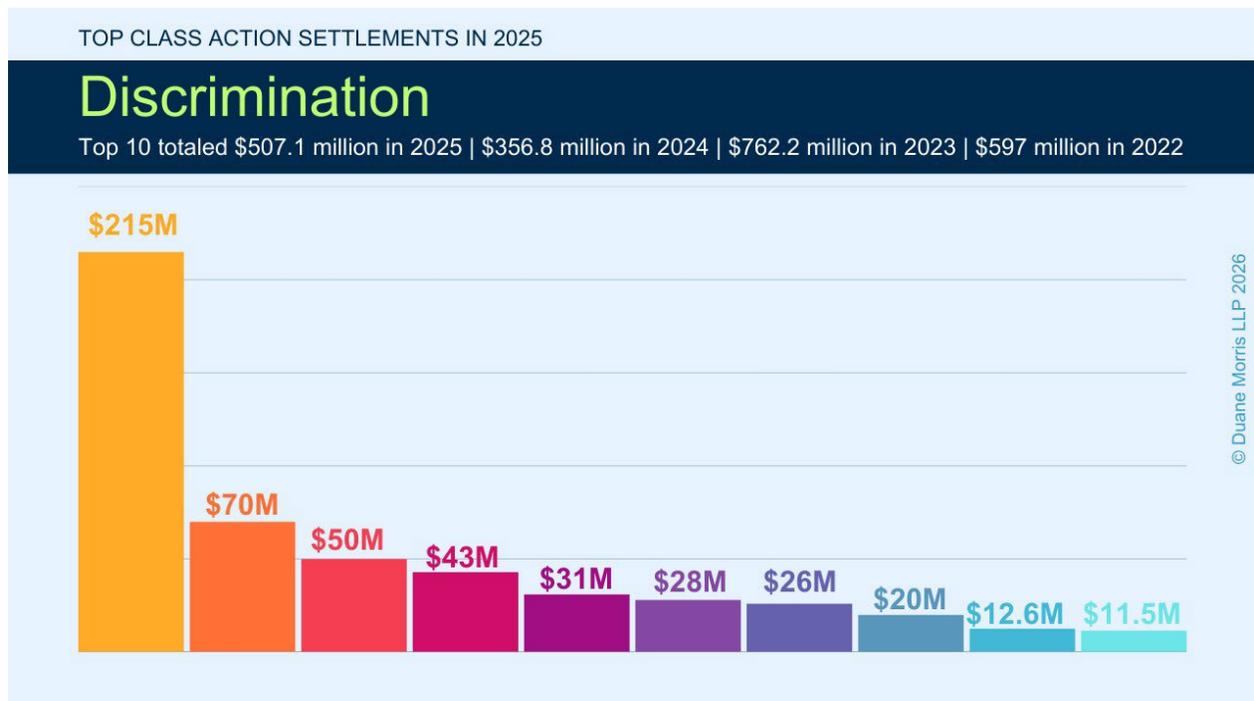
After exchanging documents, deposing witnesses, and fleshing out the material facts of the dispute, defendants commonly seek to dispose of litigation by moving for summary judgment. Under a Rule 56 motion for summary judgment, the argument to the court is relatively straightforward, *i.e.*, that no reasonable juror could find in the plaintiff's favor. If successful, the Rule 56 movant can avoid the timely and expensive costs incurred with proceeding to trial, while also receiving a final (but appealable) judgment absolving them of wrongdoing.

In *Raymond, et al. v. Spirit Aerosystems Holdings, Inc.*, 2025 U.S. App. LEXIS 346 (10th Cir. Jan. 7, 2025), the plaintiffs filed a collective action under the Age Discrimination in Employment Act following a reduction-in-force (RIF) that resulted in the termination of 271 employees. The parties filed cross-motions for summary judgment, and the district court granted the defendant's motion and denied the plaintiffs' motion. On appeal, the Tenth Circuit affirmed the district court's ruling. To support their motion, the plaintiffs offered six categories of testimony and evidence they believed, together, demonstrated the defendant's intent to shed older employees. First, the plaintiffs identified PowerPoint slides addressing tenure and healthcare costs, which acknowledged increased costs as employees age and floated a potential voluntary retirement program for eligible employees. While probative of the issues, the district court held these slides ultimately lacked any reasonable connection between age, healthcare expense, and more importantly, evidence that Spirit acted *because of* this connection. Second, the plaintiffs referred to documents purporting to show Spirit's tracking and calculation of retirement profiles, which the Tenth Circuit dismissed as innocuous, particularly absent any evidence that RIF decision makers were aware of these documents. Third, the plaintiffs pointed to the decision to exempt new employees from the RIF while softening previous bargained-for protections for senior employees as evidence of the company's discriminatory intent. The defendant argued, and the Tenth Circuit agreed, that the exemptions were necessary to preserve the integrity of its recruitment process, while

the claw-back of previously bargained-for protections was neither in violation of the parties' union contract nor evidence of discrimination. Fourth, the Tenth Circuit did not find comments made by various executives to reflect an ageist operating procedure, where there was frequently no evidence that the executive was part of the decision-making team, that the decision-making team had access to data shared by these individuals, or that the statements themselves contained any ageist implications at all. Similarly, and fifth, the Tenth Circuit ruled that comments from managers participating in performance reviews did not reflect discrimination, notwithstanding the plaintiff's argument to the contrary. Sixth, the plaintiffs argued that Spirit's training materials for ranking employees relied on unfavorable stereotypes against older employees. But this logic did not hold up against rationale from the Supreme Court that tenure is distinguishable from age. Finally, the Tenth Circuit was not convinced by the various expert opinions offered by the plaintiffs and found no error in the district court's decision to exclude two declarations submitted by the plaintiffs. Taken together, the Tenth Circuit concluded the lay testimony and documentary evidence did not suggest an ageist protocol for executing the RIF. It affirmed the ruling of the district court granting summary judgment for the defendant.

III. Top Discrimination Class Action Settlements In 2025

In 2025, the top ten discrimination class action settlements and verdicts totaled \$507.1 million. This was a significant increase over 2024, when the top ten discrimination class action settlements totaled \$356.8 million.



1. **\$215 million – *United States Of America v. \$1,546,076.35 In Bank Funds Seized From Republic Bank of Arizona Account 1889*, Case No. 18-CV-8420 (C.D. Cal. July 15, 2025)** (The U.S. Department of Justice launched the Backpage remission process following a settlement to compensate the alleged class of victims whose sex trafficking was facilitated through the Backpage.com website).
2. **\$70 million – *Ferris, et al. v. Wynn Resorts Ltd.*, Case No. 18-CV-479 (D. Nev. Feb. 3, 2025)** (final settlement approval granted to resolve claims in a class action alleging sexual misconduct allegations against founder Steve Wynn).
3. **\$50 million – *Curley, et al. v. Google LLC*, Case No. 22-CV-1735 (N.D. Cal. Dec. 7, 2025)** (preliminary settlement agreement granted in a class action to resolve claims alleging that the company discriminated against Black employees).

4. **\$43 million – *Rasmussen, et al. v. The Walt Disney Co.*, Case No. 19-STCV-10974 (Cal. Super. Ct. Sept. 15, 2025)** (final settlement approval granted in a class action to resolve claims alleging that the defendant systematically paid female employees in California less than men for substantially similar jobs; regularly passed women over for promotion; and loaded them with extra work without providing additional pay).
5. **\$31 million – *In Re Norwich Roman Catholic Diocesan Corp.*, Case No. 21-BK-20687 (D. Conn. Feb. 14, 2025)** (settlement entered after the Norwich Diocese filed for bankruptcy in July 2021 under the weight of lawsuits by survivors of clergy abuse at its Academy at Mount Saint John boarding school).
6. **\$28 million – *Cantu, et al. v. Google LLC*, Case No. 21-CV-392049 (Cal. Super. Ct. Sept. 11, 2025)** (final settlement approval granted in a class action to resolve claims alleging that workers identifying as Latino, Native American and other ethnicities were paid less than White, Asian and Asian-American employees for substantially similar work).
7. **\$26 million – *Hayman, et al. v. Mastercard Inc.*, Case No. 25 Civ. 340 (S.D.N.Y. Aug. 1, 2025)** (final settlement approval granted in a class action to resolve claims alleging sex, gender, race and ethnicity-based employment discrimination).
8. **\$20 million – *Council, et al. v. Merrill Lynch, Pierce, Fenner & Smith Inc.*, Case No. 24-CV-534 (M.D. Fla. Feb. 27, 2025)** (preliminary settlement approval granted in a class action to resolve claims alleging that the company paid Black employees working as financial advisors, financial advisor development program trainees, and financial solutions advisors less than their White counterparts and promoted them less frequently).
9. **\$12.6 million – *Segar, et al. v. Bondi*, Case No. 77-CV-81 (D.D.C. Mar. 28, 2025)** (preliminary settlement approval granted in a class action to resolve claims from more than 400 Black DEA agents who were denied promotions under prior resolutions and court orders).
10. **\$11.5 million – *Mohamed, et al. v. Society For Human Resource Management*, Case No. 22-CV-1625 (D. Colo. Dec. 5, 2025)** (jury verdict returned in a class action to resolve claims alleging that a supervisor systemically favored white employees).

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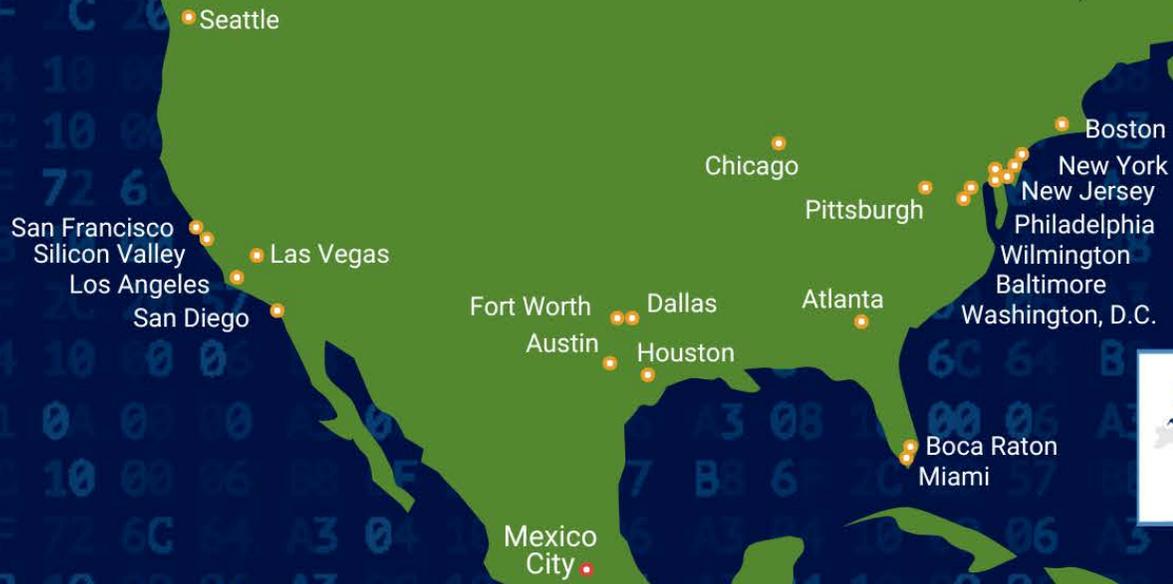
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