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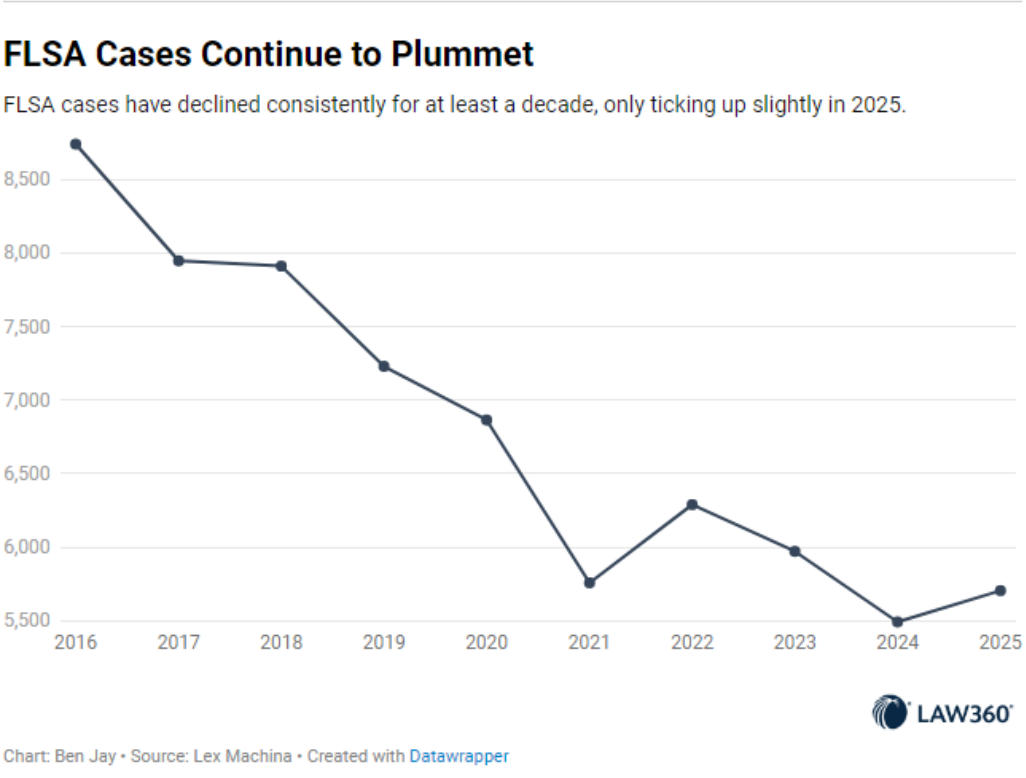
Employment Law Cases Have Rebounded Except For FLSA

By **Max Kutner**

Law360 (March 9, 2026, 11:00 PM EDT) -- Employment law cases overall have bounced back from pandemic-era lows, especially discrimination and disability accommodation suits, though a slump has continued for Fair Labor Standards Act claims, according to a report by legal analytics provider Lex Machina.

Lex Machina's 2026 Employment Litigation Report, which focuses on federal civil litigation from the start of 2023 to the end of 2025, shows that federal employment law cases generally have recovered from a pandemic-era dip. In 2025, plaintiffs filed 26,635 employment law cases in federal courts, the highest amount since at least 2016.

However, that trend is due largely to surges in new discrimination and disability accommodation cases, not FLSA suits. Proposed collective actions also were down generally in recent years.

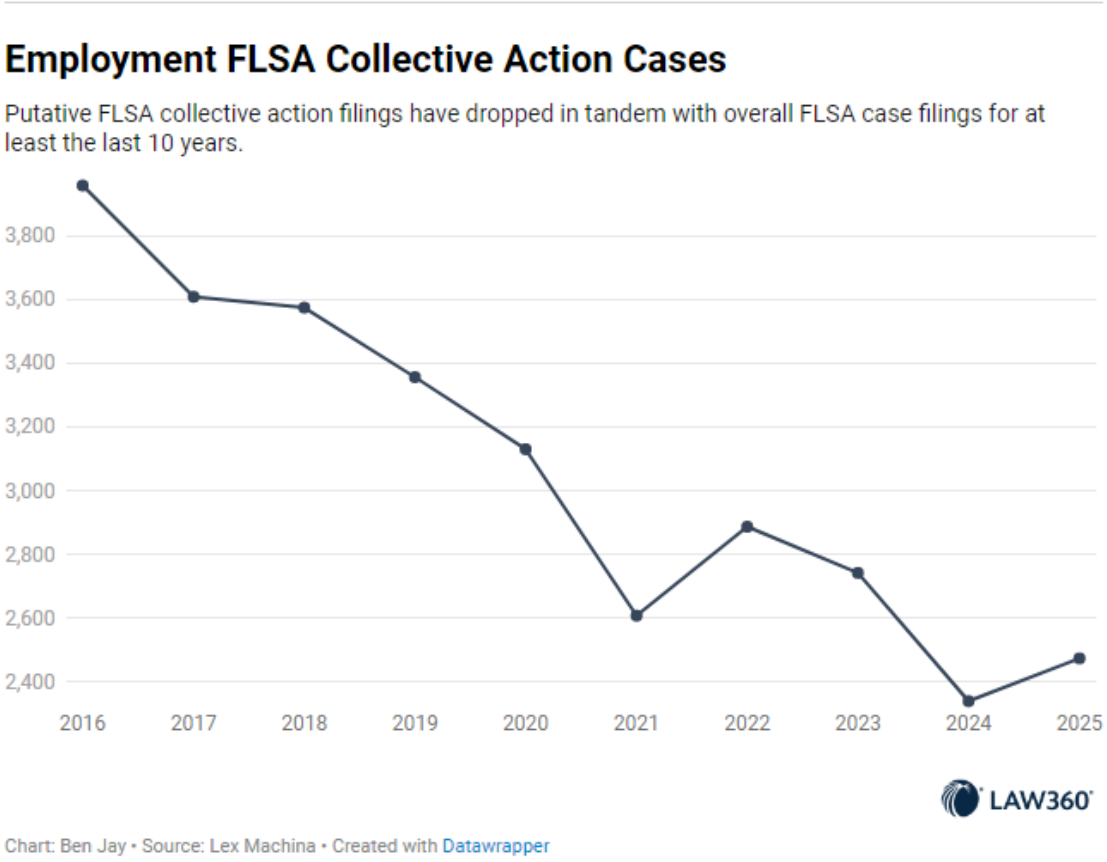


FLSA cases generally have been on the decline since peaking in 2015, with only a slight uptick in 2025. Unlike other forms of employment litigation, this area has not recovered from a pandemic-era slump, the report said.

In 2025, plaintiffs filed 5,704 new FLSA cases in federal courts, slightly higher than the 5,491 in 2024, according to the report. That was lower than the 5,971 in 2023 and down from 8,742 in 2016.

Lex Machina attributed the slump potentially to employer compliance, arbitration programs, shifting enforcement priorities and plaintiffs suing under state laws instead.

Jason Schwartz of management-side firm Gibson Dunn & Crutcher LLP said while FLSA cases "haven't gone away ... plaintiff lawyers are trying to use more employee-friendly state laws to bring those actions."



David Mastagni of Mastagni Holstedt APC, who represents workers, said the state law path can sometimes be the better route, given laws like California's Private Attorneys General Act. The statute enables workers to sue on behalf of themselves, the state and other workers for labor law violations.

"A lot of attorneys just prefer to do, like in California, the state law claims because you have PAGA and you have daily overtime, daily double time," he said.

Management-side attorney Leah Lively of Buchalter PC said shifting federal policies, like the salary threshold for FLSA overtime exemptions, has caused uncertainty.

"People are going to state law because there is certainty," she said. "Really, if you're on the West Coast,

you can get the same sort of damages and sometimes more penalties under state law than you can under federal law."

Andrew Melzer of worker-side firm Sanford Heisler Sharp McKnight LLP said he agreed with Lex Machina's assessment in the report that arbitration pacts might be contributing to the trend.

"Arbitration agreements are used to curtail people's rights and prevent them from bringing valid cases for violations that they've experienced," he said.

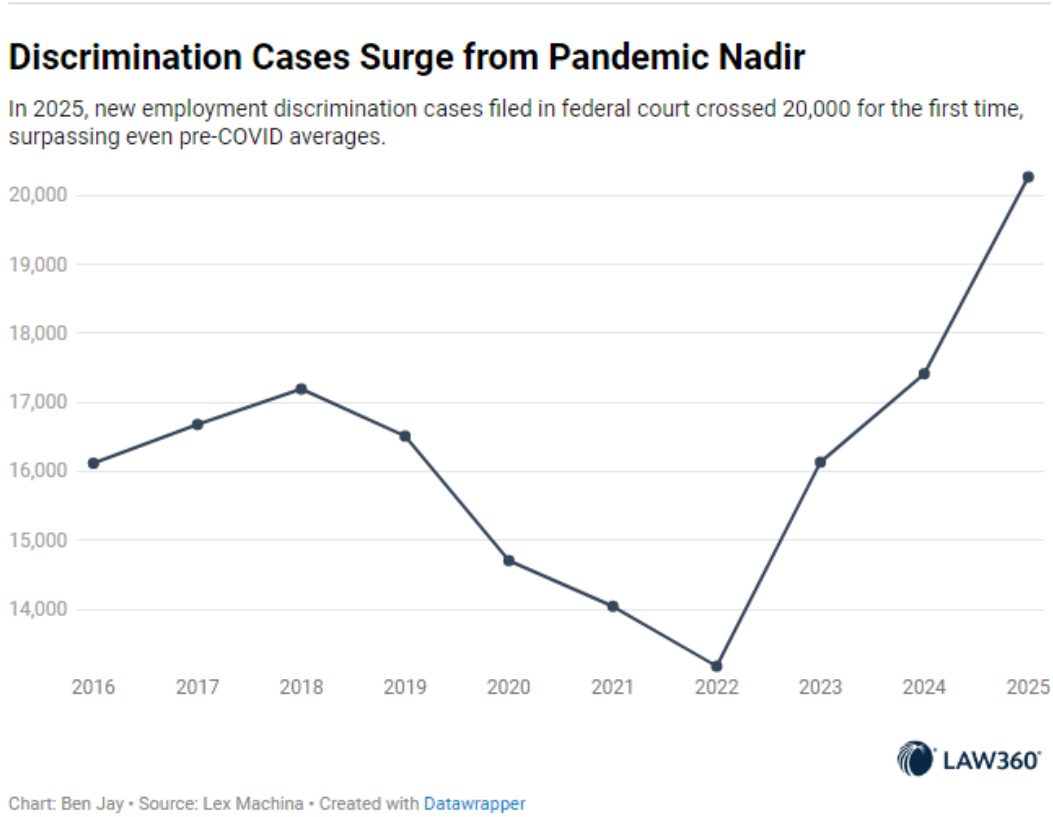
Similar to the FLSA trend, putative FLSA collective action filings generally were down over the past decade, despite ticking up slightly in 2025.

In 2025, plaintiffs filed 2,474 putative collective actions, compared to 3,957 back in 2016. The report attributed this potentially in part to heightened certification standards.

Putative class action filings, on the other hand, have been increasing, up about 10% in 2025 to more than 1,100, according to Lex Machina. The 2025 number was the most since at least 2009, the report said.

Plaintiffs often brought those filings under state law claims in California, and then defendants removed them to federal court, according to the report.

"California is the juggernaut of class actions," Lively said.



An area that contributed to the overall increase in federal employment law cases in recent years is discrimination.

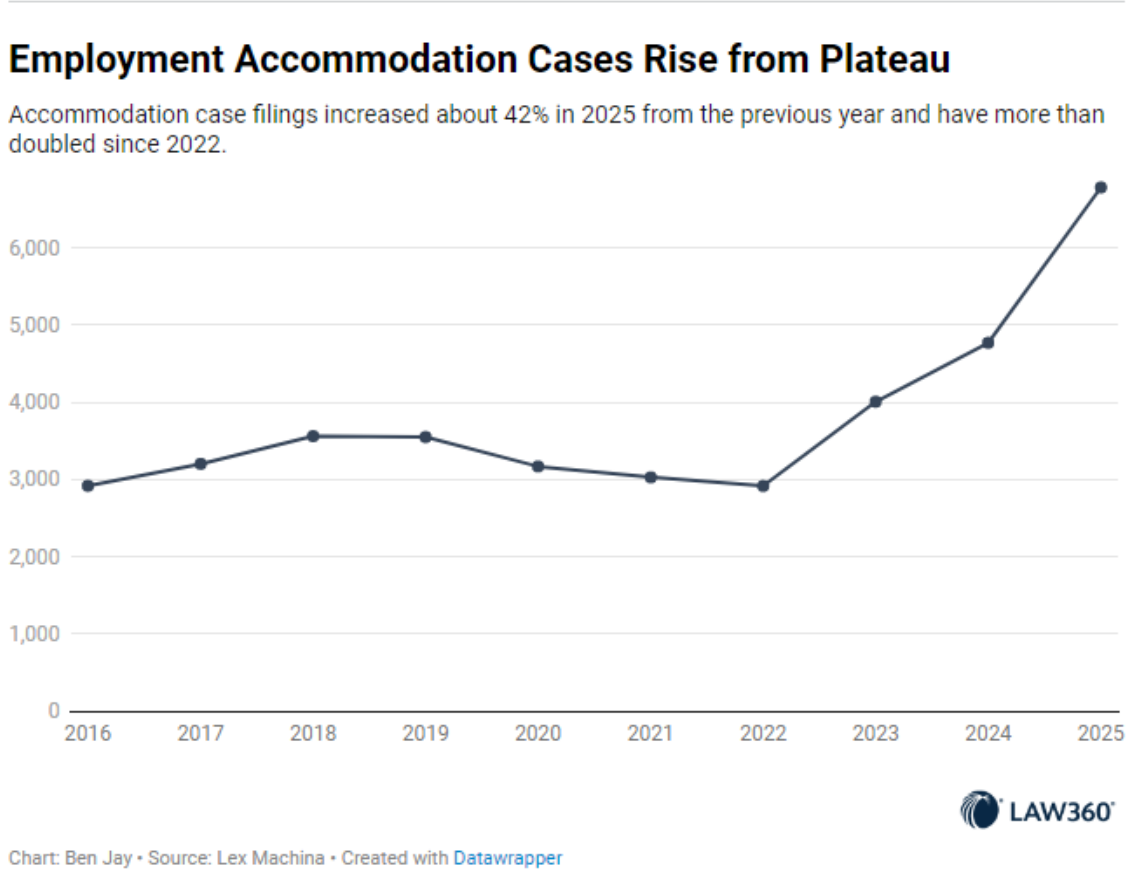
In 2025, the number of new discrimination cases filed in federal court crossed 20,000 for the first time, surpassing even pre-pandemic averages, according to the report. There were 20,265 such filings in 2025 and 17,413 in 2024, compared to 16,116 in 2016.

Following a pandemic-era dip, these cases have rebounded since 2022 at a faster rate than other employment law areas, Lex Machina said, which the report attributed to recent U.S. Supreme Court developments.

Those cases included Ames v. Ohio Department of Youth Services, in which the U.S. Supreme Court held in June 2025 that employees in a majority group do not need to show additional "background circumstances" to support a Title VII discrimination claim.

The report also cited Muldrow v. City of St. Louis, in which the justices held in 2024 that an undesired job transfer can form the basis of a Title VII complaint if an employee can show "some harm," rather than "significant harm." The high court's Bostock v. Clayton County decision, in which the justices held in 2020 that Title VII bars discrimination against "homosexual and transgender employees," was also in the report.

Sanford's Melzer said Muldrow was especially significant.



"Courts had written in these limitations in the law that weren't there," he said. "There's really not supposed to be a threshold for sufficient harm to bring a case."

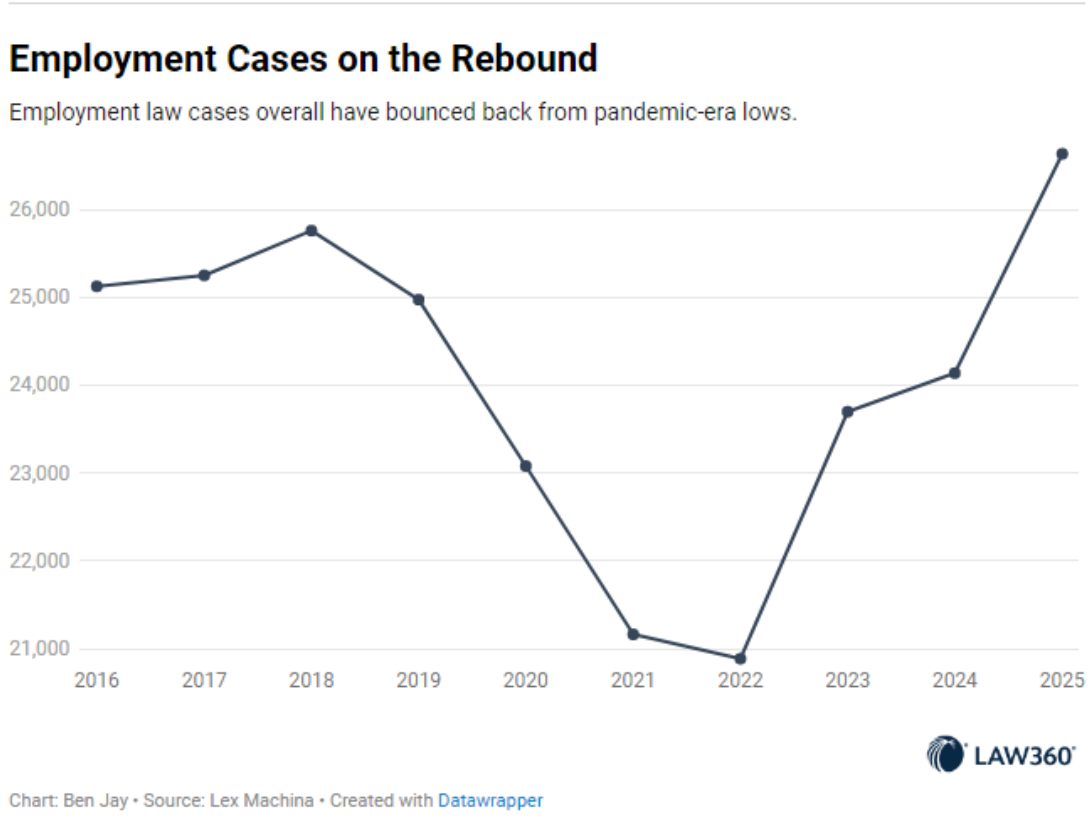
Also on the discrimination front, the U.S. Equal Employment Opportunity Commission was less active in federal courts, according to the report, which attributed the trend to leadership changes and shifting

enforcement priorities. In 2025, there were 98 new EEOC cases in federal courts and 122 in 2024, compared to a high of 204 in 2018.

Chauniqua Young of Outten & Golden LLP, who represents workers, said changes at the EEOC could contribute to an increase in private discrimination suits.

"If there was a shift in priorities and the EEOC is simply issuing notices of right to sue, rather than look into the charges and pursue them in court or conciliate them, that could result in more cases being filed in federal court," Young said.

Accommodation case filings rose more than any other type of claim in the report, increasing 42% in 2025 from the previous year, which Lex Machina said was a record year-to-year increase. Plaintiffs filed around 6,800 disability accommodation cases in 2025.



The report attributed this to long-term health issues stemming from COVID-19, as well as recent large damage awards in disability cases that could have encouraged new filings.

Attorneys pointed to work-from-home policies, and the walking back of such policies, as potentially contributing to this trend.

"Creating blanket policies with few exceptions that everyone has to come back and be in the office can lead to accommodation claims," Melzer said.

Gibson Dunn's Schwartz said the COVID era drove a focus on physical and mental health issues.

"Then you combine that with return-to-work or return-to-the-office, and I think employers were facing a

very large number of accommodation and leave requests, a volume that they hadn't seen before," he said.

Buchalter's Lively said the case law is still developing in this area.

"That makes things ripe for lawsuits because it's not always clear what an employer should be doing and when an employer should be doing that," she said.

Family and Medical Leave Act cases also surged, from 3,593 in 2024 to 4,707 in 2025, the highest number since at least 2016. The report attributed this potentially in part to workforce shortages, more awareness of employee rights and employees' caregiving needs.

Employment cases at the federal appellate level have remained stable, the report found. In 2025, there were 2,033 docketed cases, not so different from the 2,068 in 2016.

From 2023 to 2025, the Ninth Circuit was the most active in the employment realm, accounting for 16% of the cases, followed by the Eleventh and Second circuits, with 12% each, and then the Fifth and Sixth circuits, each with 10%, according to the report.

Over that same period, Atlas Law Center was the most active plaintiff-side firm, bringing 1,802 employment cases, which was more than double the next firm, Karpf Karpf & Cerutti PC.

On the defense side, Littler Mendelson PC was the most active in representing defendants in that time period, with involvement in 5,392 employment cases, followed by Jackson Lewis PC in 5,377 cases and Ogletree Deakins Nash Smoak & Stewart PC in 4,519 cases.

The data for the report was derived from Lex Machina's legal analytics platform and prepared by its product team.

--Editing by Emma Brauer.

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