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Labor & Employment

## Law Firm Layoffs (and Alternatives) Create Litigation Risk

Posted Mar 13, 2009, 09:00 pm CDT

By [Martha Neil](#)

Employment litigation, in general, is increasing, and laid-off lawyers certainly should be able to recognize a possible cause of action as quickly as most potential plaintiffs.

So law firms need to exercise care when making layoffs—particularly since they, unlike their corporate clients, don't have much prior experience doing so, reports the [National Law Journal](#) in a reprise of [an earlier NLJ article](#).

But developing laws and practices are making it harder for employers to stay on top of the rules. Among them, a seemingly brand-new employment trend sparked by the sputtering economy is creating another potential pitfall for unwary employers, including law firms, according to the [Connecticut Post](#): By reducing work schedules in an effort to avoid layoffs, employers can inadvertently shift exempt salaried workers to nonexempt status.

In a worst-case scenario, that could require retroactive payment of overtime pay back to day one, says attorney Dan Green. He chairs the employment group at Begos Horgan & Brown in Westport, Conn.

Employment discrimination suits are already at a 44-year high, reports [Bloomberg](#), based on statistics compiled by the U.S. Equal Employment Opportunity Commission. The news agency attributes the litigation increase to a U.S. Supreme Court decision last year allowing FedEx Corp. employees to sue without first making a formal complaint to the EEOC.

And the recent Lilly Ledbetter Fair Pay Act is likely to open the door to even more litigation, writes [Inc.](#) magazine.

Another development also does not favor potential law firm defendants in employment litigation. A decade ago, associates hesitated to sue their former firms, fearing that the litigation would hurt them when seeking new work elsewhere. But that's no longer as big a roadblock, so associate litigation against law firms is

rising, too.

"We're seeing more of that now," partner Gerald Hathaway of Littler Mendelson tells the National Law Journal. "It's a new phenomenon."

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