

 NORTON ROSE FULBRIGHT

2023 Annual Litigation Trends Survey

PERSPECTIVES FROM CORPORATE COUNSEL



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2023 Annual Litigation Trends Survey
Published by Norton Rose Fulbright
LitigationTrendsUS@nortonrosefulbright.com

More than 50 locations, including Houston, New York, London,
Toronto, Mexico City, Hong Kong, Sydney and Johannesburg.

Attorney advertising.

Corporate counsel faced an increased number of regulatory disputes in 2022 compared to the previous year, as agencies stepped up enforcement on issues ranging from cybersecurity and white-collar crime to worker classification and compliance with evolving healthcare rules.

Employment and labor disputes took center stage, with nearly half of respondents reporting increased exposure in 2022. Respondents expect that trend to continue in 2023, with the majority predicting that disputes of all types—litigation, arbitration and regulatory proceedings—will stay the same or increase. These are among the central findings from Norton Rose Fulbright's Annual Litigation Trends Survey. Now in its 18th year, our research tracks changes across the litigation landscape by surveying legal professionals in key commercial sectors, from general counsel at global corporations to in-house lawyers at small and midsize businesses.

In October and November of 2022, we surveyed more than 430 general counsel and in-house litigation leaders, based in the United States and Canada, in industries such as financial services, energy, healthcare and technology. We supplemented this quantitative research with in-depth interviews, a methodology we first incorporated in 2020 to better explore emerging trends and deepen our understanding of the litigation challenges top organizations face. Additionally, this year we explored class actions in greater depth, revealing fresh insights into an area that more than one-third of respondents identified as a critical concern for their organization in the year ahead.

“Our experience precisely mirrors what our respondents say. Government agencies are eager to bring impactful cases and investigations, and we are seeing robust enforcement efforts across the board. Business is multijurisdictional, so our respondents look for outside counsel who can handle overlapping federal, state and international regulatory investigations and litigation.”

Steven Jansma

Head of Litigation and Disputes, United States

Highlights of our findings

Employment and labor disputes loom large. This was the most common area for litigation across all surveyed industries in 2022—and it also ranked as the most common area of concern for organizations in the year ahead. The spotlight on workplace issues comes amid increased enforcement actions by federal employment and labor regulators, rising unionization activity and a heightened focus on social justice and diversity, equity and inclusion (DEI).

Cybersecurity, data protection and data privacy are top of mind amid mounting cyberattacks and varied regulatory requirements. One-third of respondents reported experiencing litigation in this area in 2022 — and it was the second-highest ranked area of future concern for class actions, as well the number two area in which respondents expect dispute exposure to increase over the next 12 months.

Environmental, social and governance (ESG) concerns are growing. While only 2% of respondents reported ESG-related litigation in 2022, more than one-quarter of respondents (28%) said their exposure in this area had deepened and 24% expect increased exposure in the coming year. Moreover, of those concerned with class actions in the coming year, more than one in three said ESG-related class actions stand among their greatest concerns.

Class action activity and risk parallel the broader litigation landscape in key areas. Employment and labor marked the most common type of class action that respondents encountered in 2022. It was also the leading area of future concern, followed by cybersecurity, data protection and data privacy. ESG ranked third.

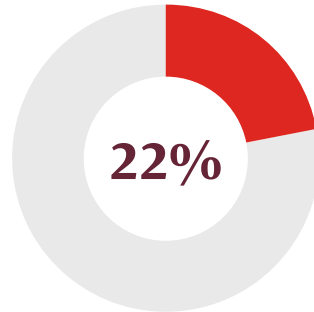
Compliance with evolving regulations and heightened regulatory scrutiny is driving concerns across dispute areas. Half of respondents were involved in at least one type of regulatory proceeding last year, with the median number up to one from zero in 2021, suggesting uncertainty over recent rules from the Securities and Exchange Commission (SEC) and other bodies is adding to litigation risk. More than one-third expect such proceedings to increase in 2023. Healthcare, including life sciences, and retail were the leading industries on this front, with 46% and 45% of respondents in those respective sectors predicting an increase in the coming year.

More legal spending is moving in-house, and organizations feel largely prepared to address litigation in the year ahead. Respondents attributed that confidence to several factors including their organization's in-house litigation experience and confidence in external counsel. Also cited were internal risk management practices as well as in-house tools and capabilities such as eDiscovery platforms and data protection solutions.

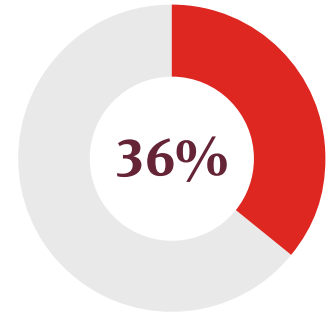
Key statistics



Spend on disputes per
US\$1 billion in revenue*
**Median average*



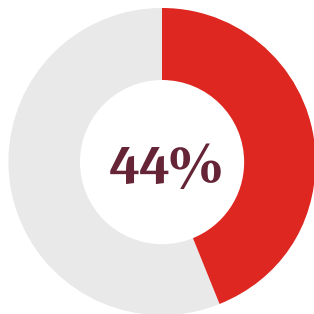
Share of annual litigation
spend allocated to in-house
expenses in 2022, up from
14% in 2021



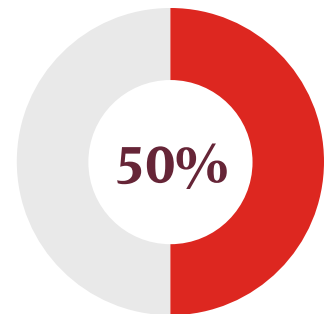
Expect to increase the
number of in-house litigators,
up from 22% in 2021



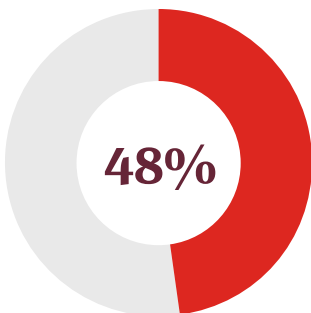
Median number of lawsuits
reported by respondents,
down from six in 2021



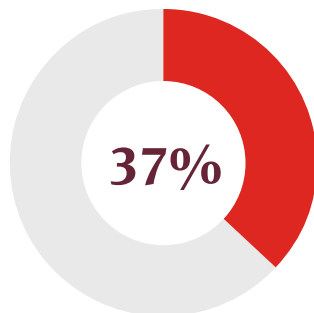
Expect volume of lawsuits to
rise in 2023, only 13% expect
volume to decrease



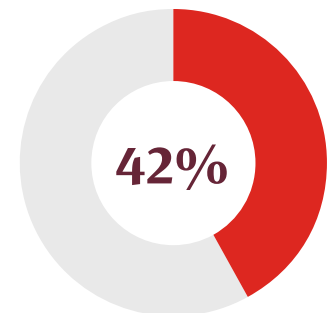
Were involved in at least
one regulatory proceeding
in 2022



Felt more exposed to
employment and labor
disputes in 2022; only 10% felt
less exposed



Share of those concerned
with class actions in the year
ahead who said ESG was an
area of concern

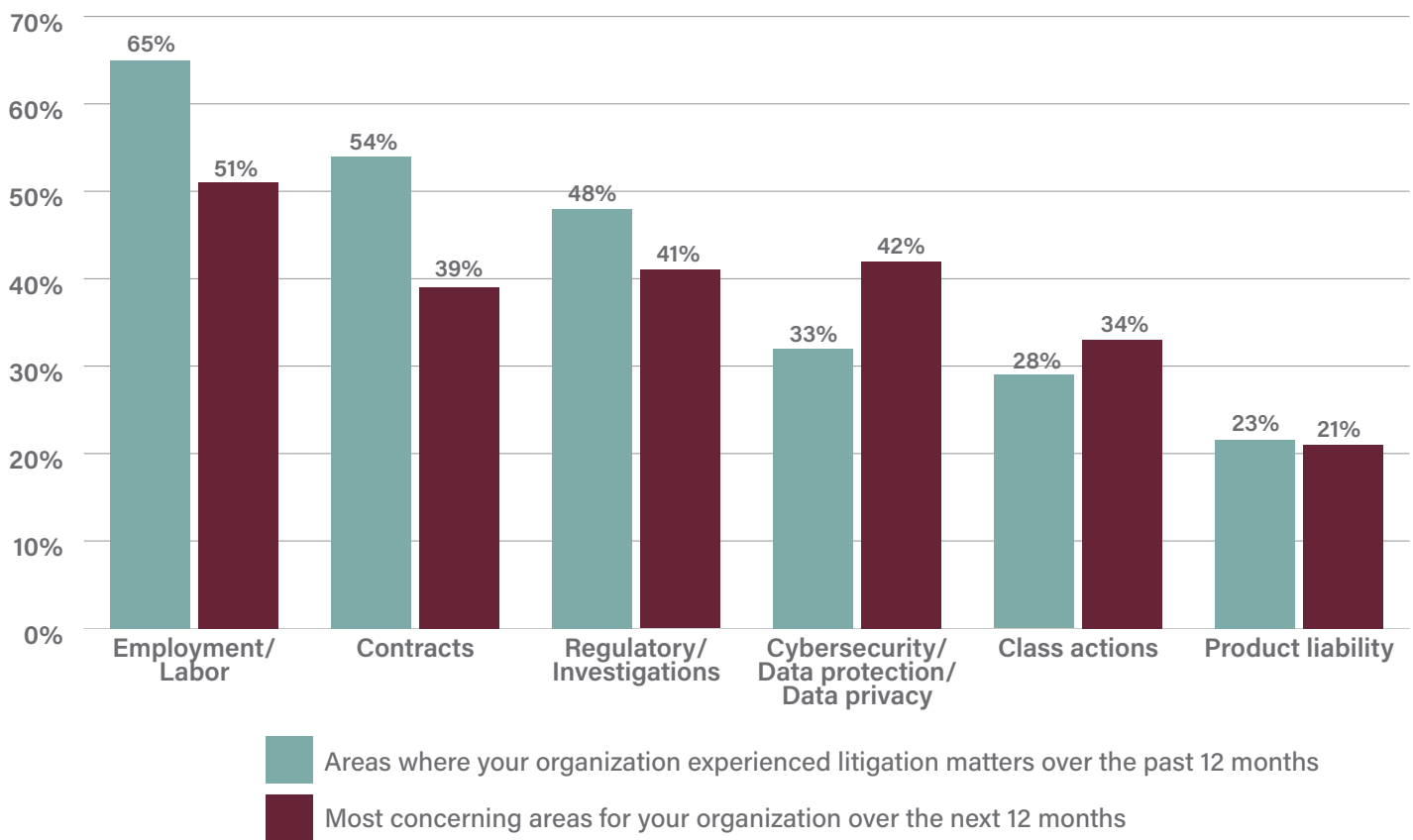


Said cybersecurity, data protection
and data privacy will be the
most concerning area for their
organization in 2023

Major trends

Employment and labor disputes dominate the current litigation landscape. Sixty-five percent of respondents experienced such litigation in 2022, and 51% said it was among the most concerning areas for their organization in the year ahead. Cybersecurity, data protection and data privacy, along with regulation and investigations, also ranked as areas of high concern in 2023.

Litigation areas over the past 12 months versus the most concerning areas for 2023



Regulatory proceedings increased last year, with half of respondents involved in at least one such matter; this is the only type of dispute to rise in 2022, reflecting a likely stepping up of in enforcement after an intense period of commercial activity in 2021. In comparison, the number of lawsuits and arbitrations fell.

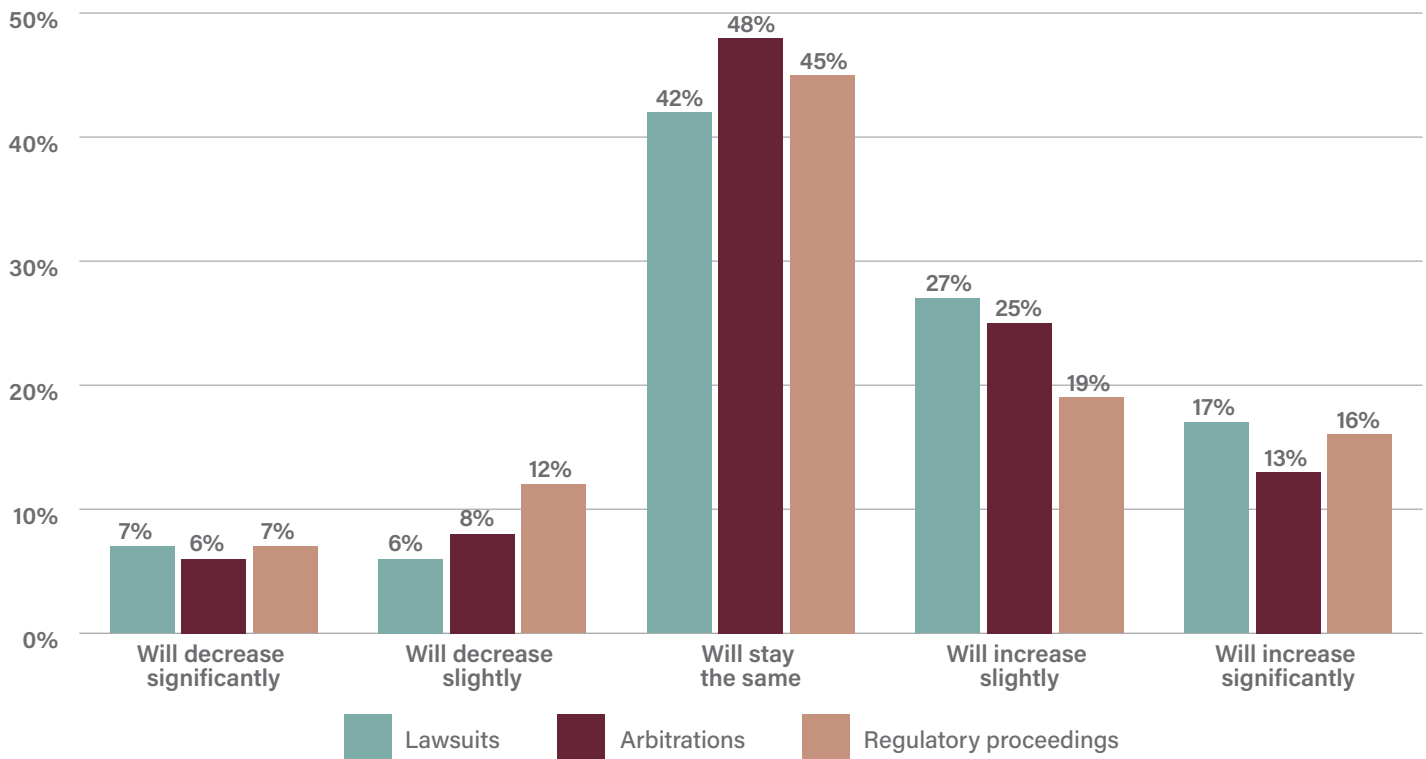
“Activity from state attorney generals, the Department of Justice and the SEC continues to ramp up,” said Norton Rose Fulbright partner Christopher Pelham, whose practice focuses on regulatory investigations. “With a divided Congress, we’re expecting more investigative activity. State regulatory agencies will also likely increase their activity in the year ahead.”

Disputes outlook

For 2023, the majority of respondents expect all legal dispute types to stay the same or increase (86% for lawsuits and arbitrations and 80% for regulatory proceedings). Nearly half (44%) expect lawsuits to increase. Factors contributing to the overall forecast for the coming year include an increasingly aggressive plaintiffs' bar, product liability issues and a host of workplace matters encompassing everything from pay and unionization to social justice and DEI.

Expectations for legal disputes (by type) in the coming year

Change in dispute volume



Q. What is your expectation for this type of dispute over the next 12 months?

"It seems to be getting more and more treacherous out there," said an assistant general counsel at a company that operates casual-dining restaurants. "Claimant demands are getting higher, and they are willing to take claims further. Expenses associated with litigation and arbitration also seem to be increasing."

In the face of these pressures, 87% of respondents said settling disputes before trial is important. Legal departments are also shifting their budget priorities. In 2022, 22% of respondents' annual litigation spend was allocated to in-house expenses, up from 14% the previous year.

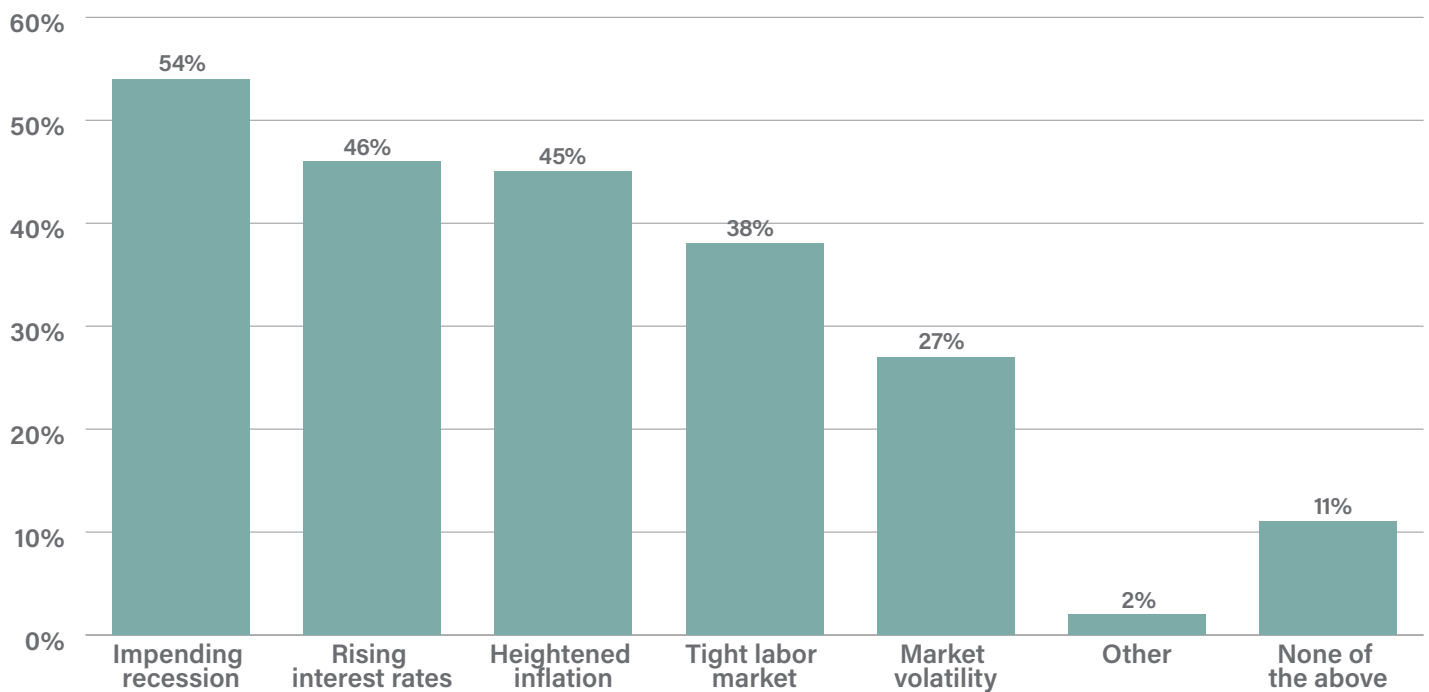
Legal professionals are also monitoring how macroeconomic factors may drive litigation in the coming year. More than half (54%) cited an impending recession, along with rising interest rates (46%) and heightened inflation (45%), as factors that give their organization cause for concern and may influence litigation across several areas.

“Hitting a recession, interest rate hikes and a down economy will have a big impact on the average person,” said a deputy general counsel in the energy industry. “You’ll see employment and labor lawsuits, commercial disputes coming out of disruptions in markets, as well as bankruptcy litigation.”

87% of respondents said settling disputes before trial is important

Recession, interest rates and inflation increase litigation concern

Macroeconomic concerns driving litigation



Q. Which macroeconomic factors give your organization cause for concern with regard to litigation?

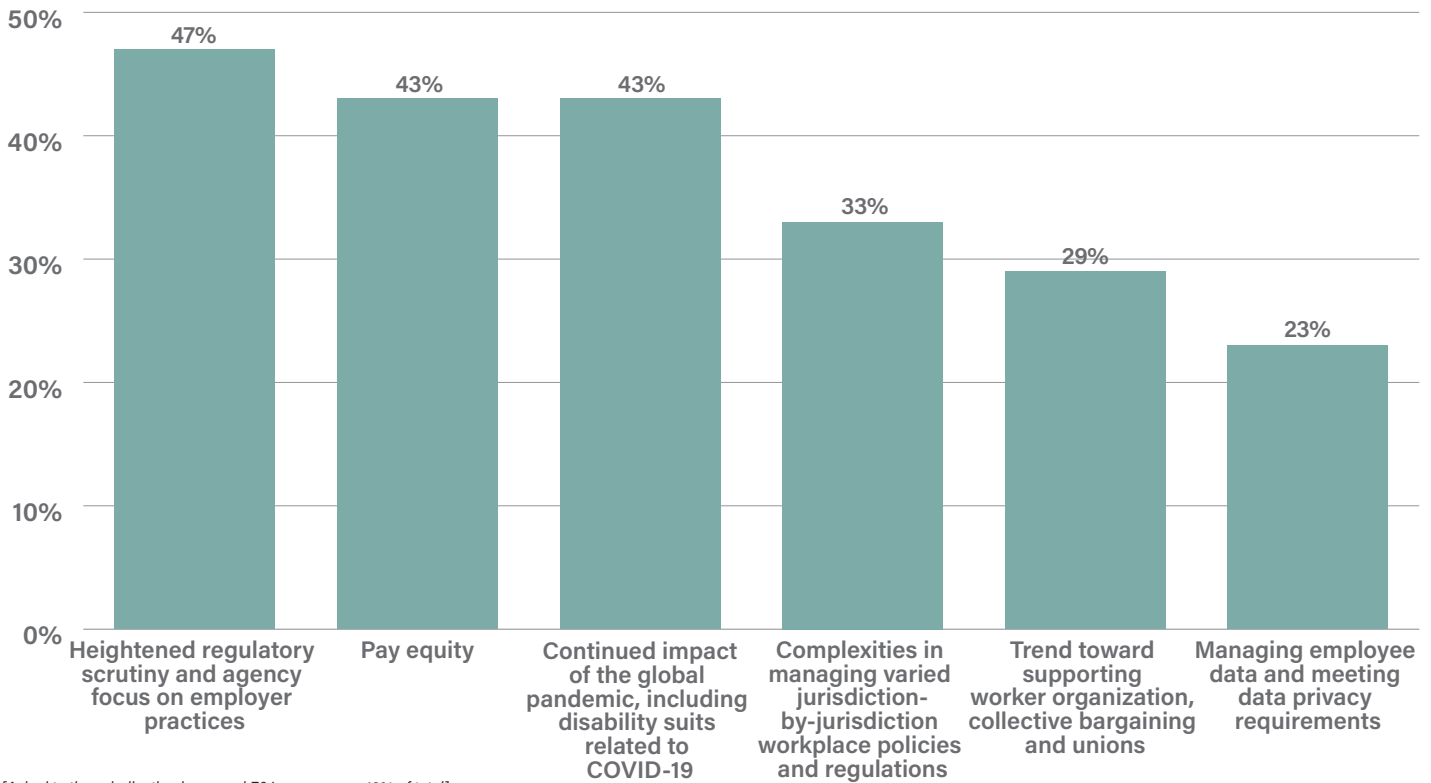
Key disputes areas

Employment and labor

Amid rising tensions over return-to-work policies and unionization efforts, 35% of respondents anticipate more exposure to employment and labor disputes in 2023, making it the leading area for expected exposure as well as the top-cited area of litigation concern in the year ahead. Heightened regulatory scrutiny, pay equity and lingering COVID-19 issues stand as the top trends driving that vulnerability.

Heightened regulatory and agency scrutiny to increase E&L dispute exposure

Employment trends increasing dispute exposure



[Asked to those indicating increased E&L exposure = 48% of total]

Q. Which of the following trends or issues do you expect to contribute to this expected increase in E&L dispute exposure?

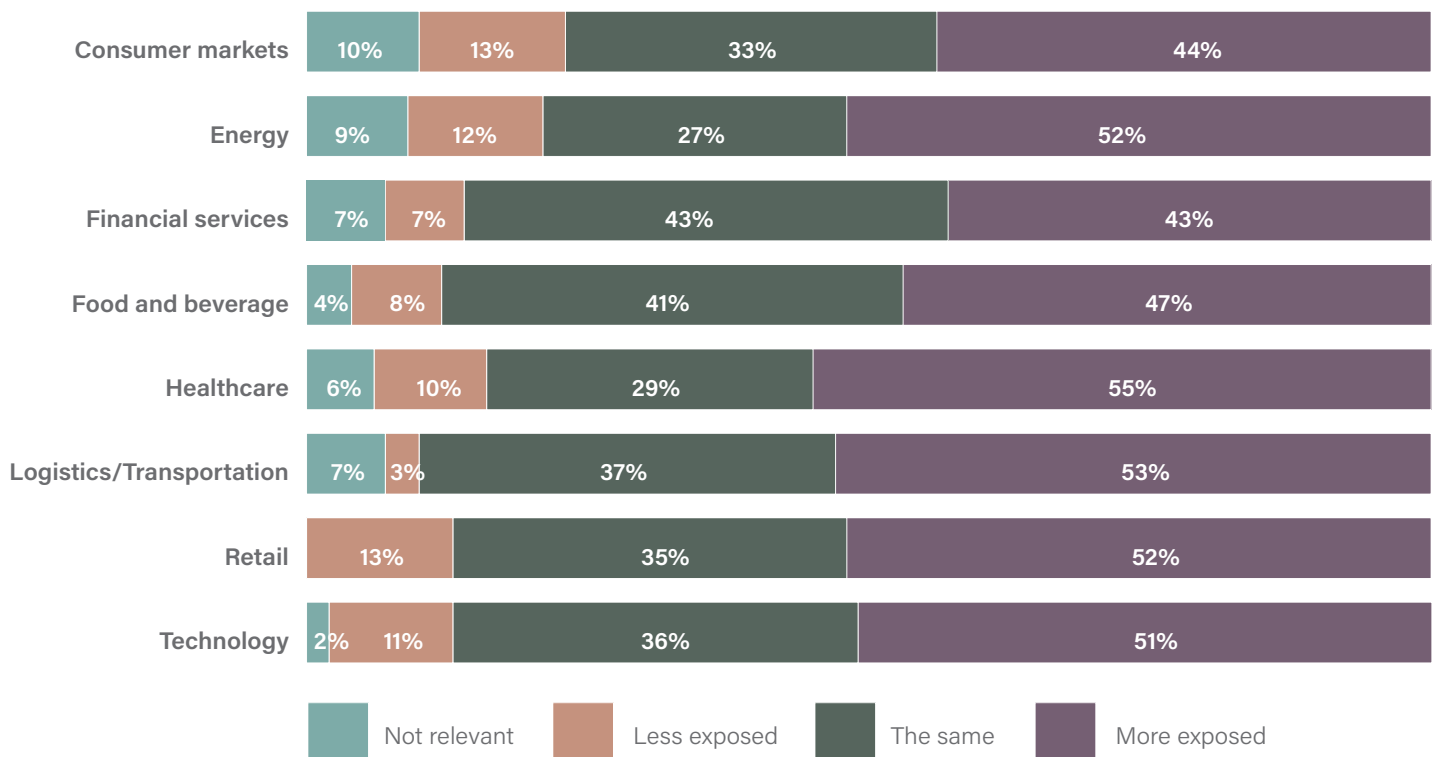
Norton Rose Fulbright employment partner Jamila Mensah and senior employment counsel James Hughes said the return to in-office work as the pandemic eases provides an opportunity for more litigation, including around discrimination and harassment. Hybrid and remote work also present new challenges regarding employment termination. "This includes everything from trade secret theft to complaints going out the door and severance negotiation," Mensah said.

The heightened focus on social justice and DEI may also be prompting more people to raise issues and complaints that can turn into lawsuits. That area ranked third among those where respondents expect increased exposure to disputes, cited by 30% of respondents. Meanwhile, Mensah and Hughes feel that increased activity from the US Equal Employment Opportunity Commission is also fueling more workplace-related litigation around discrimination, harassment and retaliation, as well as on wage-and-hour issues.

Employment and labor concerns span a wide range of sectors. It was the leading area where industries felt more exposed in 2022, selected by more than half of respondents in healthcare and life sciences (55%), logistics and transportation (53%), energy (52%), retail (52%) and technology (51%). While fewer respondents overall expect an increase in exposure to workplace-related disputes in 2023, it remains a top concern in some sectors, including real estate and construction (47%), food and beverage (44%) and financial services (43%).

“Many clients are concerned about unionization,” Norton Rose Fulbright employment and labor partner Josh Henderson said. “You’re seeing that activity in industries that have historically been immune to it.”

Employment and labor exposure by industry in 2022



Q. Please indicate any change in employment/labor dispute exposure that your business experienced over the past 12 months.

Diversity, equity and inclusion

DEI and social justice concerns have assumed greater prominence after a period of racial reckoning during the pandemic. One-third of our survey respondents said they were more exposed to DEI and social justice disputes in 2022, led by the logistics and transportation sector and the real estate and construction sector (38% of respondents from each industry cited increased exposure), as well as the financial services and retail sectors (37% each).

Catalysts for DEI-related litigation and disputes included heightened awareness, racism in the workplace, publishing of pay equity data and ties to other labor and employment issues. Going into 2023, a greater share of respondents in real estate and construction (41%) and retail (40%) expect their organizations' exposure to deepen compared to 2022. Overall, just over one in five (22%) selected DEI as among the most concerning areas for their organization in the year ahead.



[Asked to those indicating increased DEI/social justice exposure = 30% of total]

Q. You indicated you expect to be more exposed to diversity, equity and inclusion/social justice disputes in the next 12 months. In just a few words, please share what you feel the catalyst for such disputes would be?

Cybersecurity

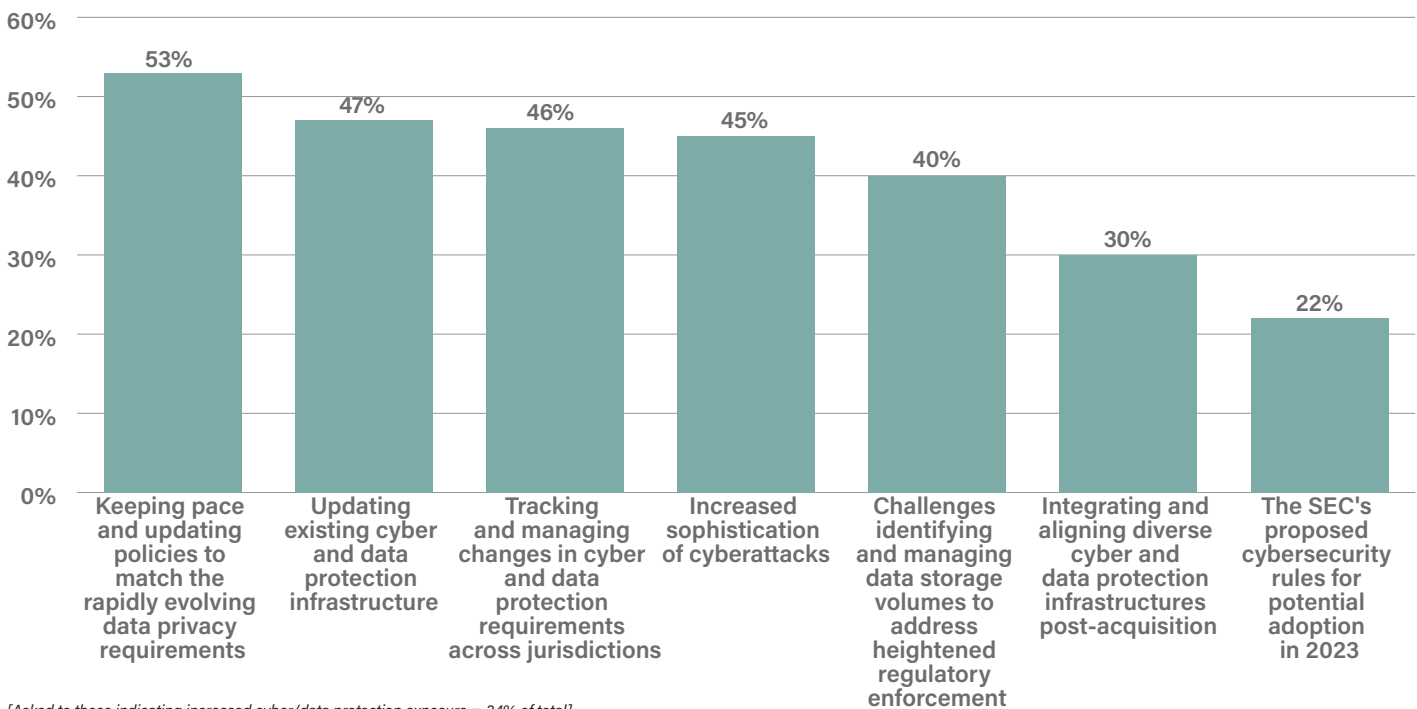
Mounting data breaches, ransomware and other cyberattacks are providing ample fodder for cyber-related disputes, while a slew of new and varying state data privacy laws complicates compliance efforts. Related litigation ranges from claims of negligence and fraud to criminal prosecutions over efforts to conceal cyberattacks.

Forty-two percent of respondents cite cybersecurity, data protection and data privacy as among the most concerning areas of litigation their organizations will face in the year ahead—second only to employment and labor. Retail and technology respondents led those who expect greater exposure to cybersecurity and data protection disputes in the coming year, with half from each sector voicing that concern.

The corporate counsel we interviewed noted the challenges of keeping up with a patchwork of state regulations, with some discussing efforts to update data management systems in a bid to ensure ongoing compliance. Survey respondents also cited the growing sophistication of these attacks as a factor contributing to the expected increase in cyber exposure.

Keeping pace with data privacy requirements and policy updates could increase dispute exposure

Cyber/data protection trends increasing dispute exposure



[Asked to those indicating increased cyber/data protection exposure = 34% of total]

Q. Which of the following trends or issues do you expect to contribute to this expected increase in cyber exposure?

Norton Rose Fulbright cybersecurity partner Anna Rudawski said more cybercriminals are engaging in data extortion attacks on middle-market companies with cybercrime insurance—and that the uptick in cyberattacks of all kinds is making it more difficult and costly for companies to purchase those policies. Breaches also make it easier to bring lawsuits, she said. “One new tactic is filing securities lawsuits based on cybersecurity failures, though as of yet not many have been successful”

Environmental, social and governance

While disputes related to environmental, social and governance (ESG) aren't yet a significant problem for many businesses, in-house legal professionals are bracing for future impacts—and seeking guidance around ESG disclosure requirements to US and European Union regulators that could potentially open the door to litigation if not addressed properly. These concerns come as more companies face lawsuits over ESG-related issues such as greenwashing or the alleged use of slave labor in supply chains.

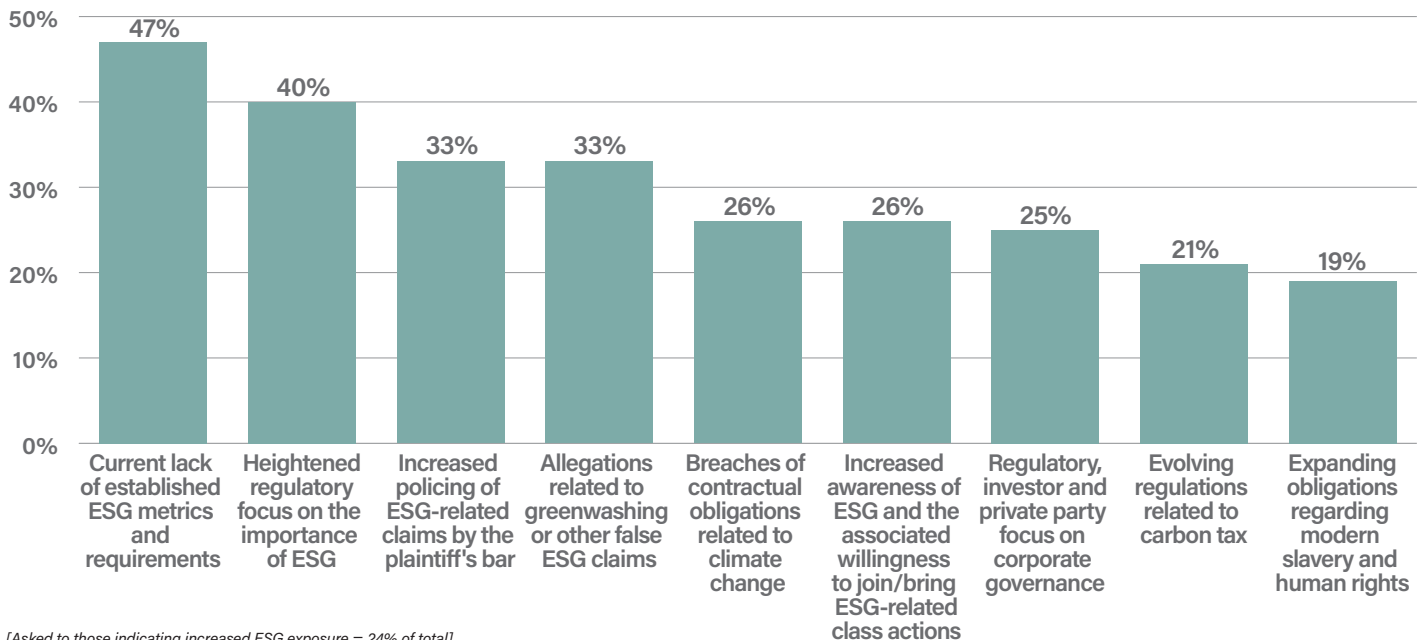
“Many people think of climate change and the energy industry when they think of ESG. But the physical and transition risks of climate change are not limited to one industry, and stakeholders are pushing for more information on a variety of other ESG topics, like waste management, DEI efforts and risk management practices,” said Norton Rose Fulbright disputes partner Rachel Roosth.

“Across industries, our clients are feeling pressure from customers, shareholders and regulators, among others, to increase their disclosures of their ESG goals and performance,” she said. “If these disclosures are perceived as false, misleading or insufficient, litigation may ensue. So while the kinds of litigation risk may vary across industries, companies in all sectors can benefit from assessing their ESG-related litigation risks and how to mitigate them.”

Twenty-eight percent of respondents said their ESG dispute exposure increased in 2022, and 24% expect it to deepen in the coming 12 months, with the latter group citing factors that include the current lack of established ESG metrics and requirements. However, the majority said their ESG dispute exposure remained the same as last year and don't expect it to change in 2023.

Lack of established ESG metrics and heightened regulatory scrutiny may drive dispute exposure

ESG trends increasing dispute exposure



[Asked to those indicating increased ESG exposure = 24% of total]

Q. Which of the following trends or issues do you expect to contribute to this expected increase in ESG exposure?

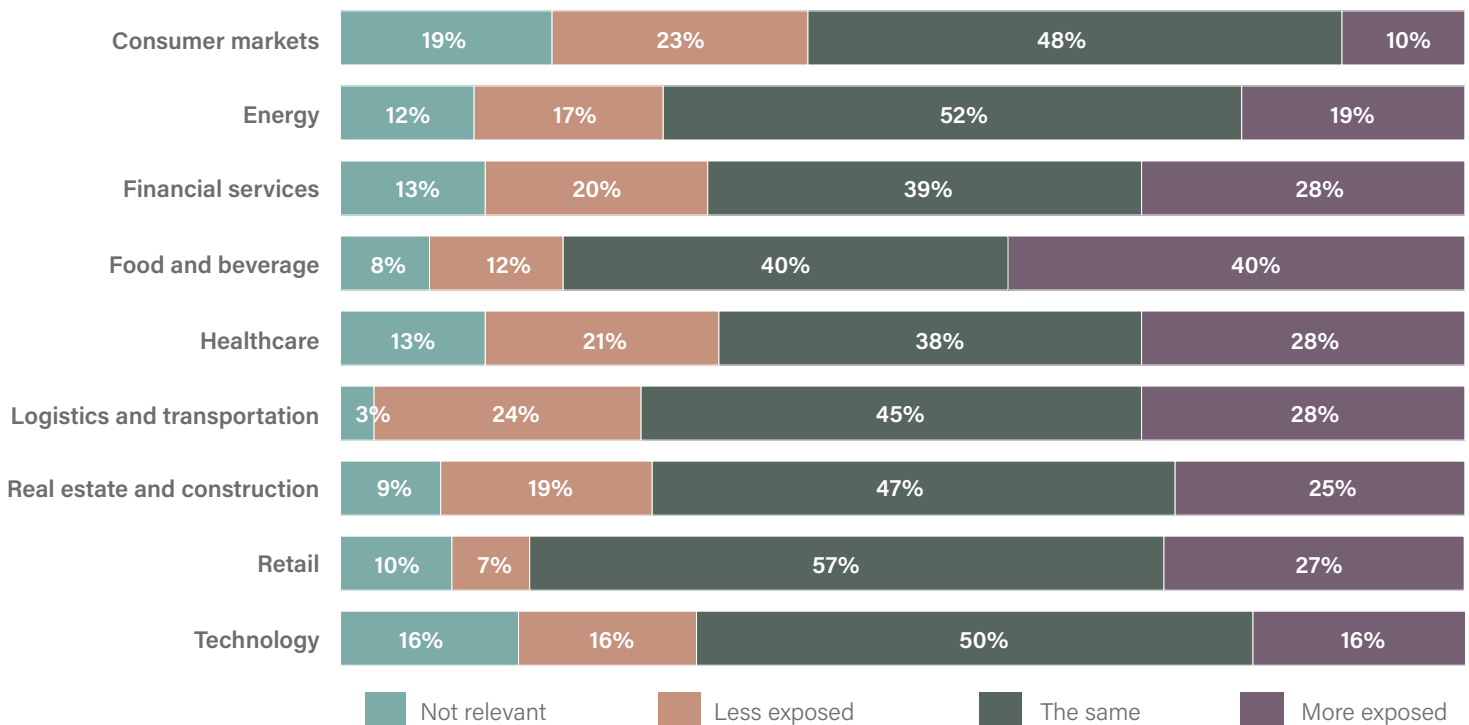
In the meantime, organizations are assessing their potential vulnerability. For example, one senior legal counsel at a science and technology company said their business is considering what litigation could potentially arise from ESG goals and disclosures in areas such as supply chain and fair labor. “A lot of this is still uncharted territory,” added the assistant general counsel at the casual-dining restaurant operator. “People are trying to figure out what ESG means.”

The general counsel of a large nonprofit health system said that the organization has long been concerned about community impact and health disparities among different groups and is shifting its approach to a longstanding community benefit report to incorporate more ESG-centric language. The health system is also assessing its environmental footprint and looking to bring on more diverse board members. “ESG is already what we do, but we are working on making sure it’s properly communicated,” the general counsel said.

At the same time, anti-ESG pressure is rising, with some US stakeholders questioning whether ESG actions are appropriate investments, especially as it relates to shareholder value, said Norton Rose Fulbright partner Will Troutman. “Clients are receiving mixed messages. On the one hand, many investors, customers, employees and regulators are demanding implementation of positive ESG measures; on the other hand, other investors and certain regulators, especially at the state level, are demanding that only monetary factors be considered,” he said. “That sentiment has formalized over the past six to eight months. From the securities and disclosure side, companies have seen heightened risk in saying there’s a focus on sustainability.”


















































The food and beverage sector had the highest proportion of respondents (40%) who expect increased exposure to ESG disputes in the coming year. That could reflect litigation concerns around lawsuits tied to recycling and single-use plastics, Norton Rose Fulbright’s Roosth said.

Change in ESG dispute exposure over the next 12 months



Q. Please indicate any change in ESG dispute exposure that your business expects to experience over the next 12 months.

Industry breakdown: concerns and exposures

	Areas of greatest disputes exposure (2022)		Areas of greatest concern in the coming year (2023)		Greatest macroeconomic concerns	
	1st ranked	2nd ranked	1st ranked	2nd ranked	1st ranked	2nd ranked
Financial services						
Energy						
Healthcare						
Technology						
Consumer markets						
Real estate and construction						
Retail						
Logistics and transportation						
Food and beverage						

	Employment and labor		Impending recession		Signifies one area or concern
	Cyber/data protection		Rising interest rates		Signifies a tie in rank
	ESG		Heightened inflation		
	Diversity, equity and inclusion		Tight labor market		
	Regulatory				

Class actions

When it comes to class actions, workplace-and cyber-related issues once again dominated. Among the 28% of respondents exposed to such litigation in 2022, more than half said these cases involved employment and labor, while 35% selected cybersecurity, data protection and data privacy. Consumer protection ranked third (27%).

However, our survey also revealed some notable differences between areas where respondents were involved in such litigation in 2022 and the types of class actions they see as a concern in the coming year. The biggest divergence was in ESG—even though just 8% said they were involved in ESG-related class actions last year, more than one in three (37%) view it as an area of future concern.

Norton Rose Fulbright’s Troutman said ESG-focused class actions around greenwashing are gaining traction in part because “the California plaintiffs’ bar has figured out the blueprint for how to bring these cases.” Brands that put out generalized ESG statements have sometimes become targets for product-specific cases, Troutman said, citing as an example when a nonprofit advocacy group “tests a product, detects chemicals and then a lawsuit ensues.”

Class action concerns in ESG and cybersecurity for 2023 show notable differences versus level of involvement in 2022

Class action involvement in 2022 versus class actions of concern in 2023



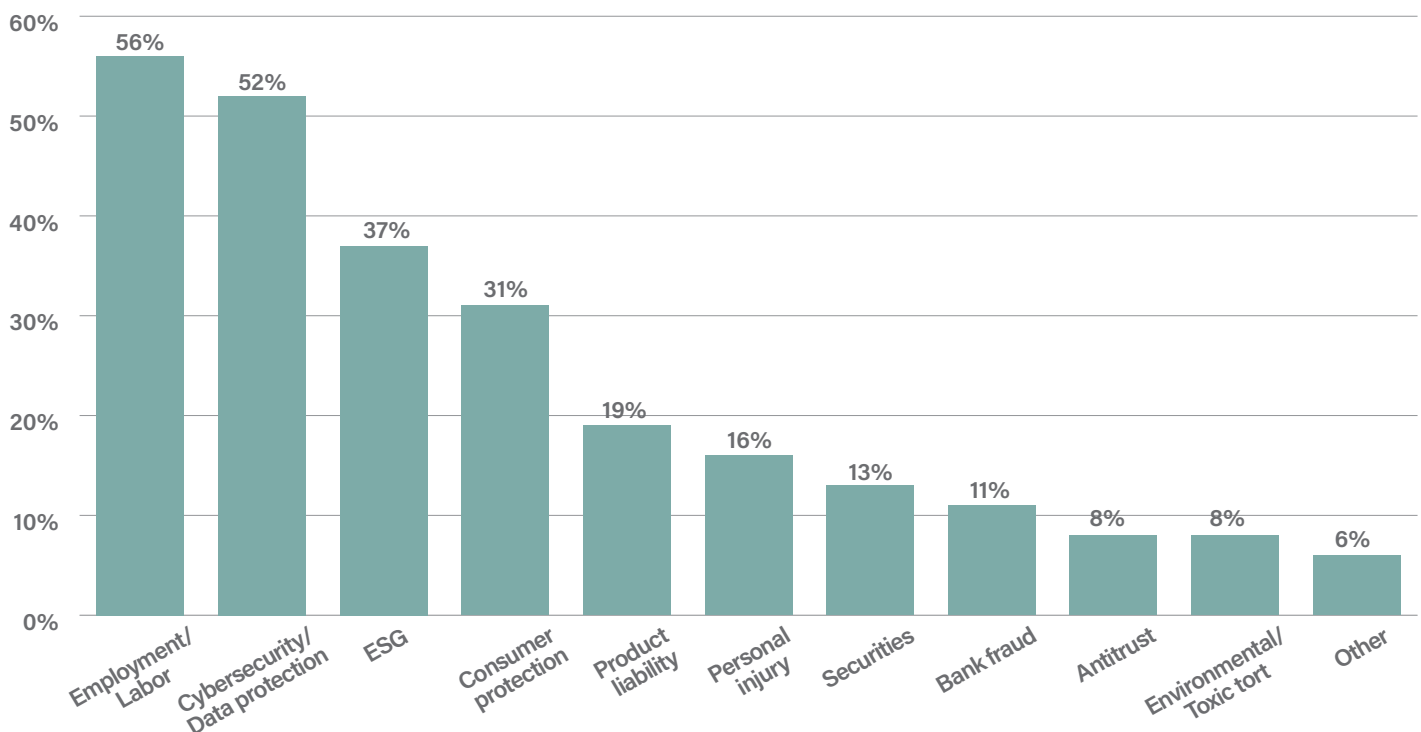
1. Among those who reported experiencing class action litigation in 2022
 2. Among those who listed class actions among the most concerning litigation areas ahead in 2023

Cybersecurity and workplace class actions

Concerns about the looming threat of cyber-related class actions come as escalating corporate data breaches and ransomware attacks against organizations present additional opportunities for litigation. As one general counsel said: "I think that the general sentiment is, 'If you have one class action data breach, everyone will have one. If you have another, then maybe you have a problem.' It is something we continue to focus on and are regularly reporting to our board on efforts to avoid issues on that front."

A proposed SEC rule on mandatory cybersecurity disclosures could deepen exposure for publicly traded companies, Norton Rose Fulbright's Rudawski said, adding: "The largest cyber- and data-related class action areas right now are around the Biometric Information Privacy Act in Illinois and the California Consumer Privacy Act."

Class action areas of future concern



Q. Which area(s) of class actions is/are of future concern?

On the employment and labor front, Norton Rose Fulbright's Mensah said heightened scrutiny around pay equity could have employers on edge, noting that "pay is an area in labor and employment that lends itself to class actions." Some in-house counsel said companies often attempt to mitigate the risk of class actions by having workers sign arbitration clauses.

A senior attorney at a large producer of construction aggregates said that the organization is watching class actions around employee misclassification claims in the wake of California's AB5, a law that came into effect in 2020 that limits the ability of some companies to use independent contractors. "I'm paying particular attention to the attack on the independent contractor business model and what that means for our trucking fleets divisions that use independent truckers," the counsel said.

Regulation and investigations

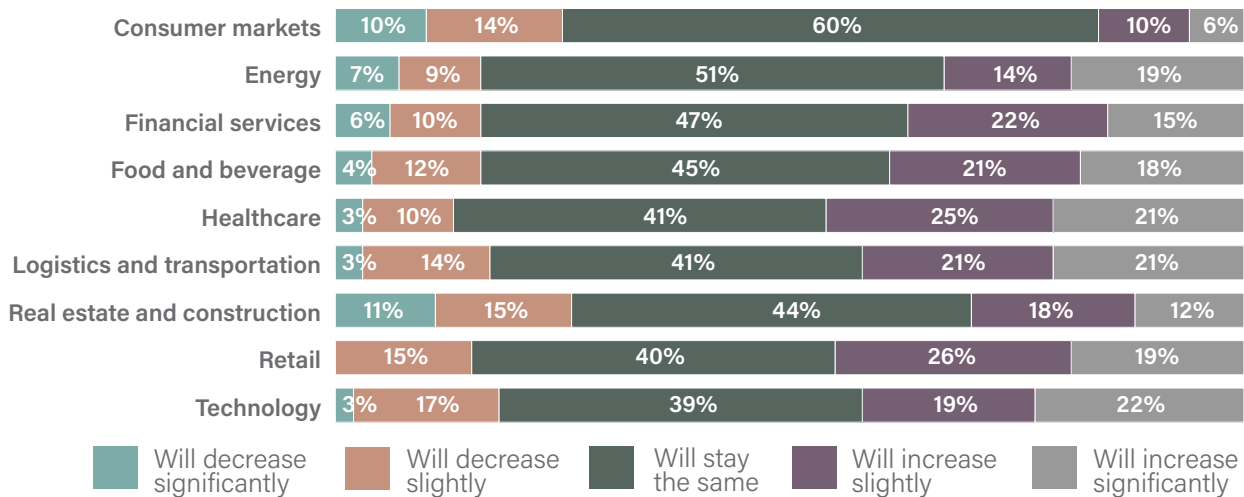
Heightened regulatory scrutiny under President Biden’s administration is rippling across industries as the SEC, DOJ and other agencies implement new rules and take a more active role in enforcement. The Federal Trade Commission, for example, is pursuing more antitrust lawsuits, investigating significantly more merger deals and enforcing stricter settlements.

“What we’re seeing from regulators is very muscular enforcement,” said Sandeep Savla, Norton Rose Fulbright’s US co-head of regulatory, investigations, securities and compliance. “This focus is not just on companies but on gatekeepers such as lawyers and accountants.”

Fallout in once-hot areas, including cryptocurrency and special purpose acquisition companies, has also drawn regulatory attention, Norton Rose Fulbright’s Pelham noted.

Healthcare respondents foresee an increase in regulatory proceedings, as do several other prominent industries

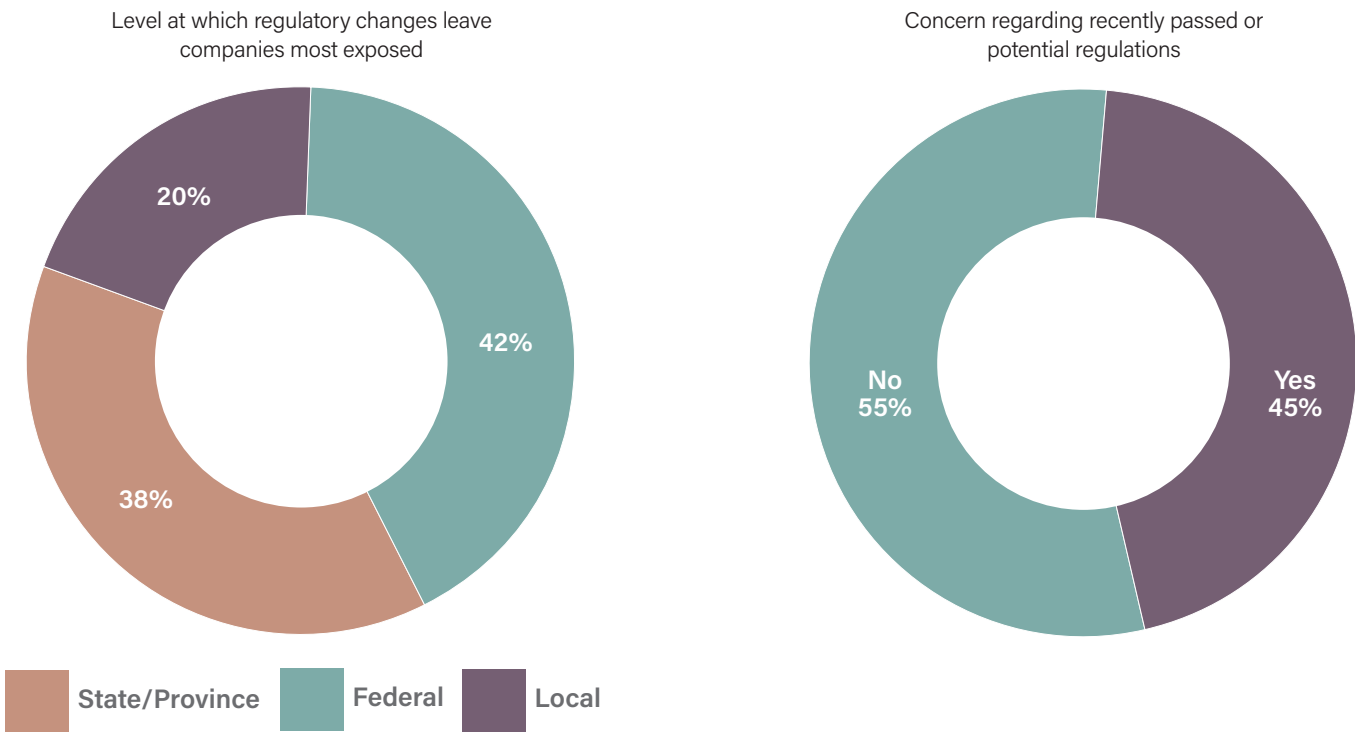
Expectations for regulatory proceedings by industry



Q. What is your expectation for regulatory proceedings over the next 12 months?

Regulation and investigation matters were the third most common type of litigation last year, according to our survey, with 48% of respondents saying their organization experienced this type of litigation and 41% citing it as among the most concerning litigation areas in 2023. Healthcare and life sciences, retail, technology, and logistics and transportation were the leading sectors in which the majority of respondents expect an increase in regulatory proceedings over the next 12 months.

While federal exposure is most concerning, state/province regulatory changes are also top of mind



[Asked to those indicating more regulatory exposure = 27% of total]

Q. You indicated you expect to be more exposed to regulatory disputes over the next 12 months. Do you expect your company to be most impacted by local, state/province or federal regulatory changes?

[Asked to those indicating more regulatory exposure = 27% of total]

Q. Are there any recently passed or potential regulations you are most concerned about increasing your company's litigation exposure over the next 12 months?

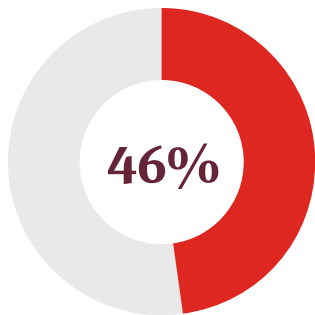
The corporate counsel who expect their organization to be more exposed to regulatory disputes in 2023 were most concerned about shifting federal requirements, though changes at the state and province level are also top of mind. Forty-two percent said their companies would be the most impacted by regulatory changes at the federal level, while 38% selected state/province and 20% selected local.

Healthcare

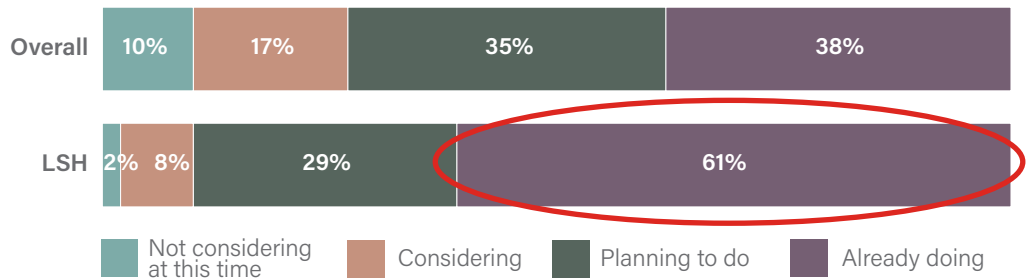
“The Biden administration is also eyeing increased healthcare regulation, particularly around Medicare and Medicaid enforcement in areas like nursing home safety and care,” said Norton Rose Fulbright partner Jay Dewald, US head of healthcare investigations. Yet healthcare and life science respondents’ concern over increased exposure to regulatory disputes in the coming year is lower (28% of respondents in the sector) than those who felt more exposed in 2022 (38%).

“Life sciences and healthcare organizations already believe they have a number of procedures in place to help weather this storm,” Dewald said. Healthcare is a heavily regulated industry, and many companies have robust systems in place because “they’re familiar with the challenges of repeat audits from payers and regulatory agencies—so their existing compliance programs likely have them ahead of the curve.” For example, 61% of life sciences and healthcare respondents said they were already reviewing potential governance weak points as a measure to help prevent litigation.

Life sciences and healthcare (LSH) respondents expect more regulatory issues in the near future



Share of healthcare respondents that expect more regulatory proceedings, compared to 35% overall



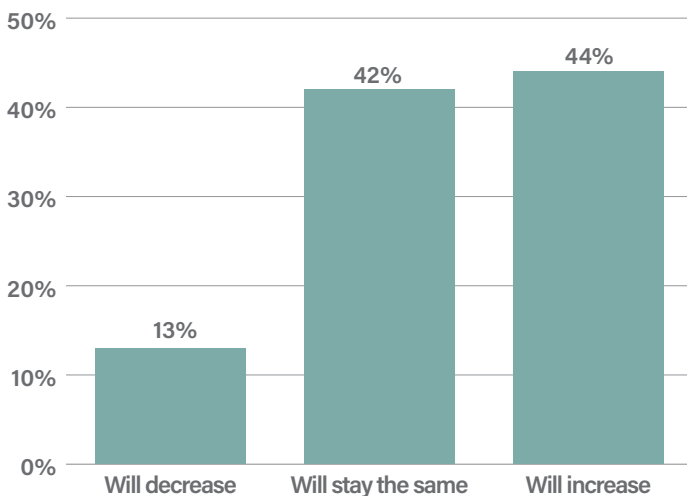
Q. Which of the following measures do you expect to employ as a means of preventing litigation in the year ahead?: Reviewing potential governance weak points as a measure to help prevent litigation

Differences in Canada

Canadian respondents indicate more concern about litigation in the coming year than their US counterparts on multiple fronts. Fifty-five percent predict an increase in lawsuits in 2023, compared to 42% of US respondents, and 56% foresee a rise in arbitrations, versus 34% in the US. A greater share of Canadian legal professionals also expect more exposure to regulatory and cyber disputes than legal professionals in the US—41% and 46%, respectively, compared to 24% and 32%.

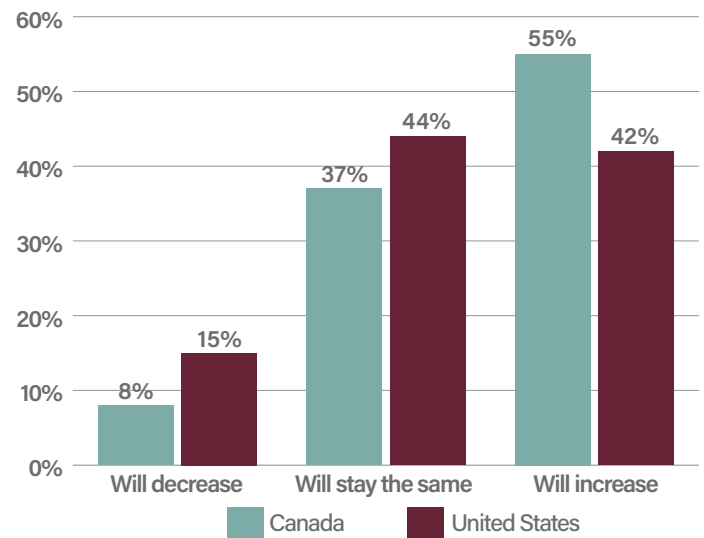
Canadian respondents are more likely to foresee an increase in lawsuits in 2023

Overall expectations for lawsuits



Q. What is your expectation for lawsuits over the next 12 months?

Expectations for lawsuits by country



These concerns appear to be driving increased investment in litigation prevention measures among Canadian respondents, who are more focused on such measures than their US counterparts in most of these areas. The majority of Canadian counsel said they plan to tighten contracts and embed lawyers into business operations to monitor for risk exposure (53% and 41%, respectively). A smaller share of US respondents reported such plans, most likely because around half already employ these types of measures (52% and 45%, respectively). However, a significantly larger share of Canadian respondents already employ staff training around litigation risks and prevention tactics—57% compared to 42% of US respondents.

“There’s a definite trend with Canadian counsel wanting to increase efforts around litigation risk training. There is an enhanced focus on negotiation, and it’s about tightening contracts and embedding lawyers into the process to address risk sooner.”

Jennifer Teskey

National Chair, Litigation and Disputes and
Head of Financial Institutions, Canada

Preparedness and tools

While many respondents expect dispute activity to increase in 2023, the majority of legal professionals we surveyed expressed confidence in their organizations' ability to handle these challenges. More than 80% said they are somewhat or very prepared to address litigation in the coming year. Respondents in the latter group cited experienced in-house legal staff, trial-ready outside counsel and robust internal risk mitigation measures as factors bolstering their confidence, along with legal technology tools.

"We are well staffed for anything that could come at us," said a senior legal department vice president at a solar energy service provider. "We don't expect to spend more dollars on outside counsel."

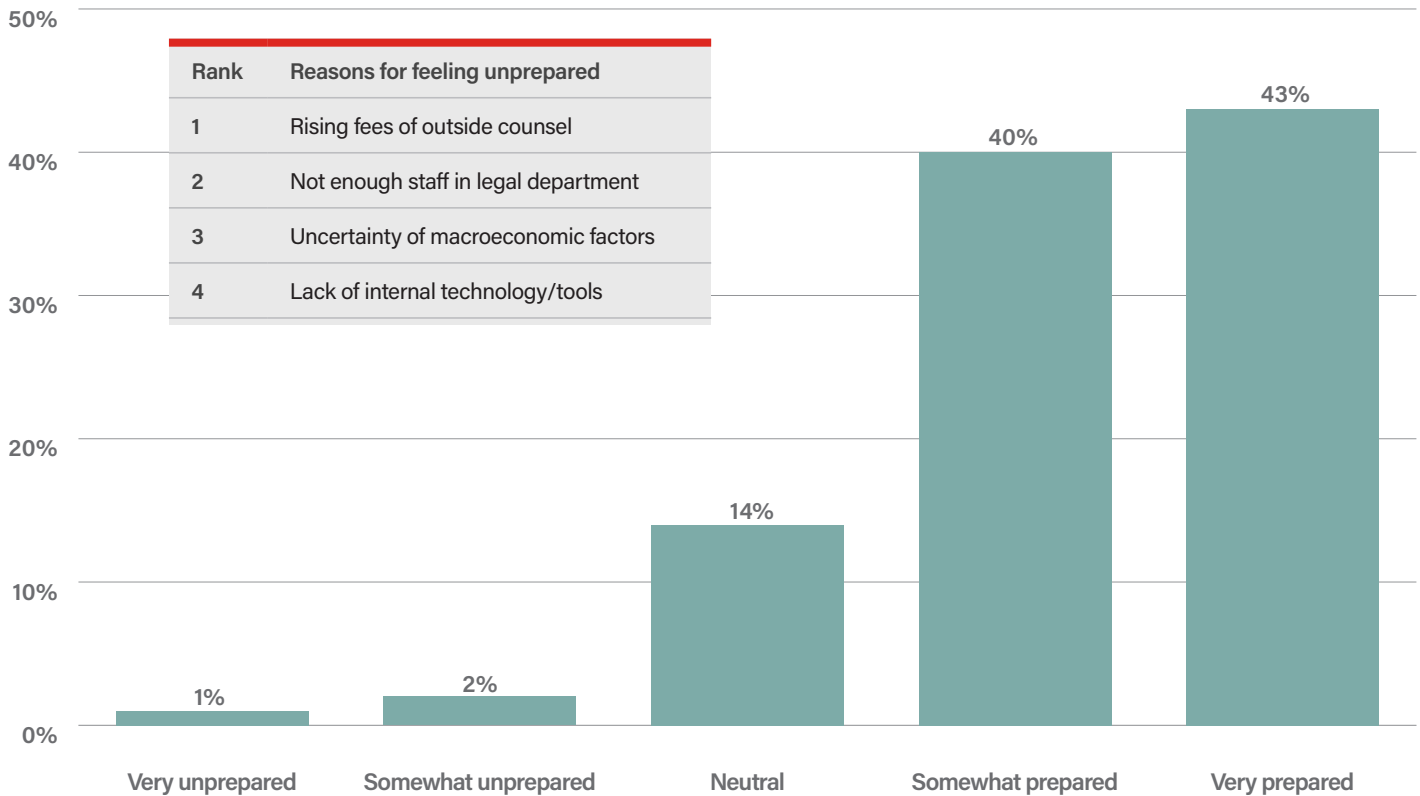
"Companies have become very sophisticated in connection with risk mitigation, litigation management and retention of highly skilled in-house counsel and outside trial attorneys to prosecute or defend cases which they face. Each typically uses technology tools in managing risk and budgeting costs, and expect that same level of tech-savvy expertise from outside counsel. All of these factors have likely led to a comfort among decision-makers that they are well prepared for foreseeable litigation risk."

Richard Krumholz

Global Head of Litigation and Disputes

Respondents largely feel prepared to address litigation in the year ahead

Level of preparedness in addressing litigation



Q. What is your level of preparedness in addressing litigation in the year ahead?

The top reason respondents cited for not feeling prepared was the rising cost of outside legal counsel, followed by inadequate staffing, broader economic uncertainty and the lack of internal technology and tools. However, one interviewee noted that outside counsel are increasingly volunteering to work through alternative fee arrangements, which can help keep down costs.

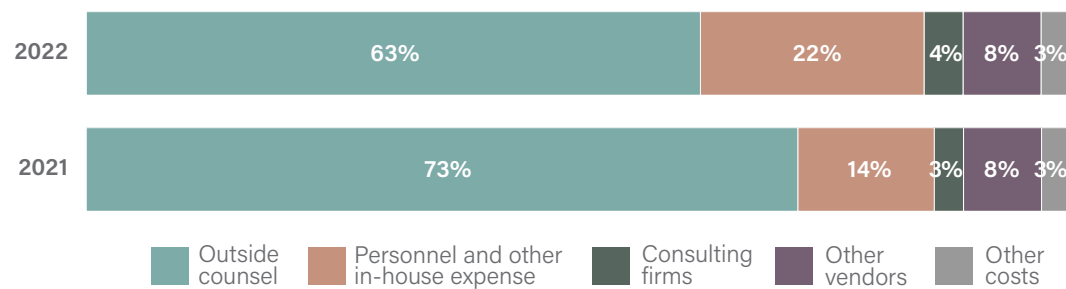
The majority of legal professionals we surveyed said their organizations either employ or plan to employ a number of litigation prevention measures in the year ahead. Among the most common: bolstering and tightening contracts, training employees on litigation risks and prevention, and embedding lawyers into business operations. In-house counsel are also tracking industry trends and bringing in outside help, such as contract lawyers and external advisors and consultants.

Litigation spending

When it comes to litigation spending, our survey showed that organizations are shifting their budgets toward in-house costs. In 2022, respondents allocated 22% of their annual litigation spend to personnel and other in-house expenses, compared to 14% in 2021, and spent a smaller share on outside counsel. In fact, more than one-third of respondents expect the number of in-house litigators at their companies to increase in 2023.

Outside counsel loses spend allocation to in-house costs

Breakdown of annual litigation spend



Q: Approximately what percentage of your annual litigation spend (excluding cost of settlement and judgments) is allocated to the following areas?

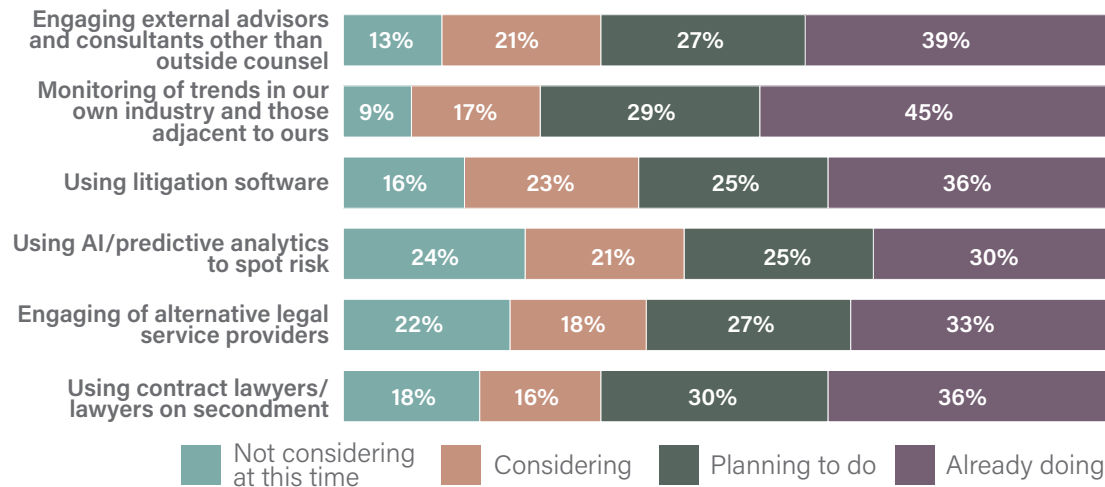
Overall, however, it appears litigation spending is going up. In 2021, the average litigation spend was US\$2 million. In 2022, four out of 10 companies reported a litigation spend exceeding \$2.5 million. The median average spend on disputes was US\$1.7 million per US \$1 billion in revenue, marking a \$200,000 increase in the last three years.

Legal technology

Our research revealed that a majority of legal departments expect to increase their spend on legal technology to both help reduce overall costs and to help identify and mitigate certain litigation risks. Forty-three percent of respondents called the use of technology a high priority for their legal department budget in 2023, while 35% deemed it a medium priority.

Litigation preparedness

Addressing litigation in the year ahead



Q. Which of the following do you expect to employ in addressing litigation in the year ahead?

One in-house lawyer for a company that makes baby products said the organization's investment in legal tools such as patent databases and an eDiscovery platform helps the legal department "nip problems in the bud—nothing leads to litigation more than letting a problem fester." Other interviewees noted their companies had set up document and matter management systems.

Some in-house legal operations have room to grow when it comes to technology. For example, nearly one-quarter (24%) weren't considering the use of artificial intelligence or predictive analytics to spot risk. Compliance tools like Norton Rose Fulbright's [NT Analyzer](#) can help detect privacy and security risks associated with mobile apps, websites and the Internet of Things (IoT) amid growing data privacy concerns and revamped privacy laws at the state level. California and Virginia have already enacted comprehensive privacy laws, and Colorado, Connecticut and Utah are expected to follow suit later this year. Sixteen percent of respondents said they weren't considering the use of litigation software, the same number of respondents that said the use of legal technology was a low priority.

Organizations today face increasingly complex challenges—from rapidly evolving regulatory requirements and changing consumer, investor and employee expectations to unprecedented cybersecurity threats and data privacy concerns.

Heightened regulatory scrutiny and the rise in regulator cross-border collaboration means incidents occurring in one jurisdiction can quickly impact operations in others. Amid these developments, corporate counsel must have a clear understanding of risk exposure and robust preventative measures and compliance tools in place to minimize risk and manage litigation.

Dispute resolution

Norton Rose Fulbright has one of the largest disputes legal practices in the world, with significant experience managing cross-border and multijurisdictional disputes across all sectors. We advise many of the world's largest companies and financial institutions on complex high-value disputes. Our lawyers both prevent and resolve disputes by providing practical and creative advice which focuses on our clients' strategic and commercial objectives.

Our global practice covers alternative dispute resolution, class actions, employment and labor, environmental, social and governance, fraud and asset recovery, information governance and cybersecurity, intellectual property, regulatory investigations and enforcement, risk management and white-collar crime.

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Methodology and demographics

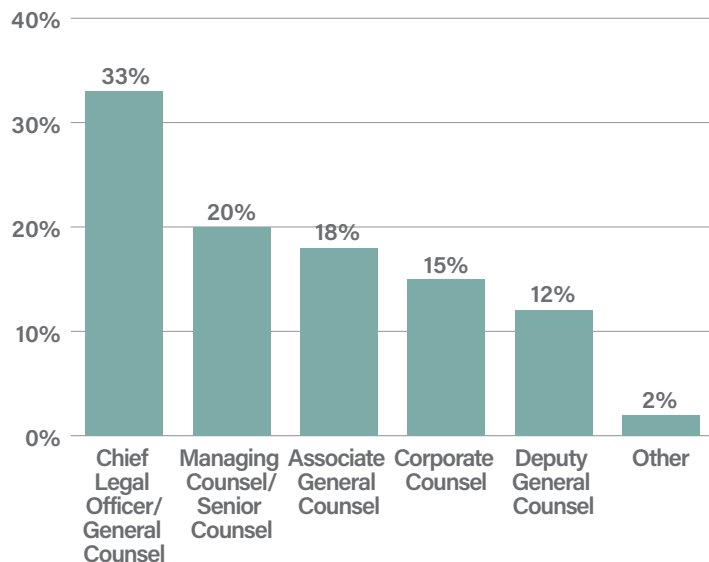
The 2023 Norton Rose Fulbright Litigation Trends Survey incorporates both qualitative and quantitative components.

On the qualitative side, we conducted more than a dozen interviews with corporate counsel. Interviews completed prior to the survey were used to develop this year's survey questions as well as update some of the year-over-year questions. The interviews that occurred after survey fielding provided context for the results.

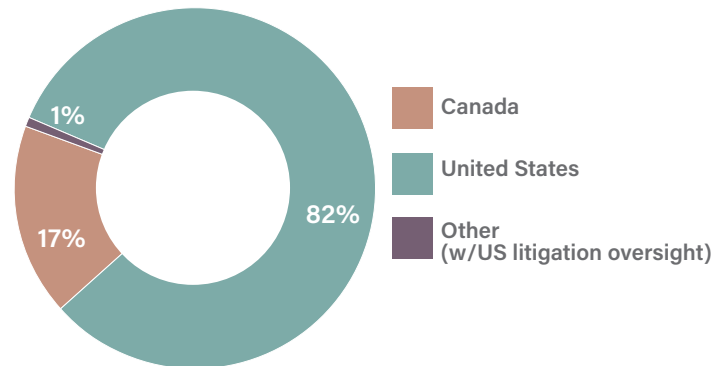
As it has for the previous 17 years, Norton Rose Fulbright used quantitative research to track litigation trends over the previous year and gauge perceptions of litigation leaders regarding what the next 12 months may bring. This year's survey was fielded from October 2022 through November 2022 and was conducted entirely online. The 430+ respondents answered a mix of quantitative and qualitative survey questions. The majority of respondents were from the US and Canada.

Survey demographics: Role and location

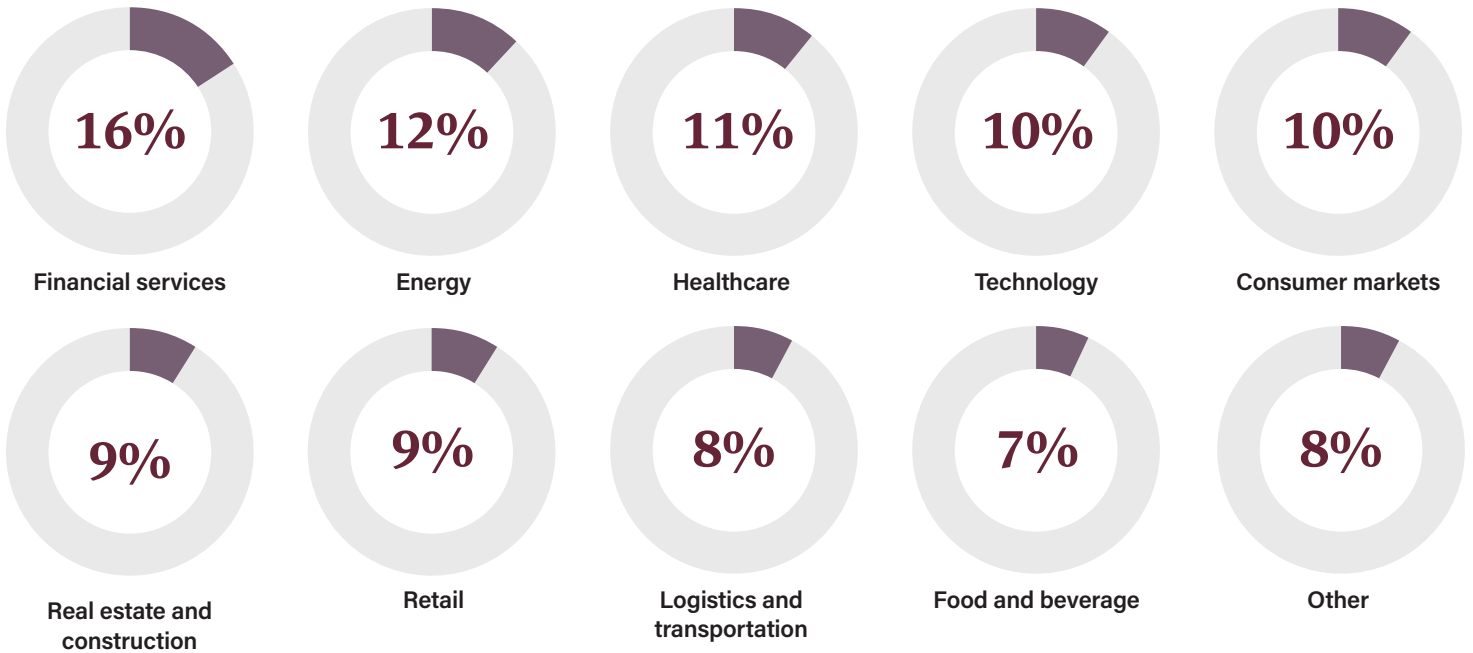
Respondent title/role



Respondent country



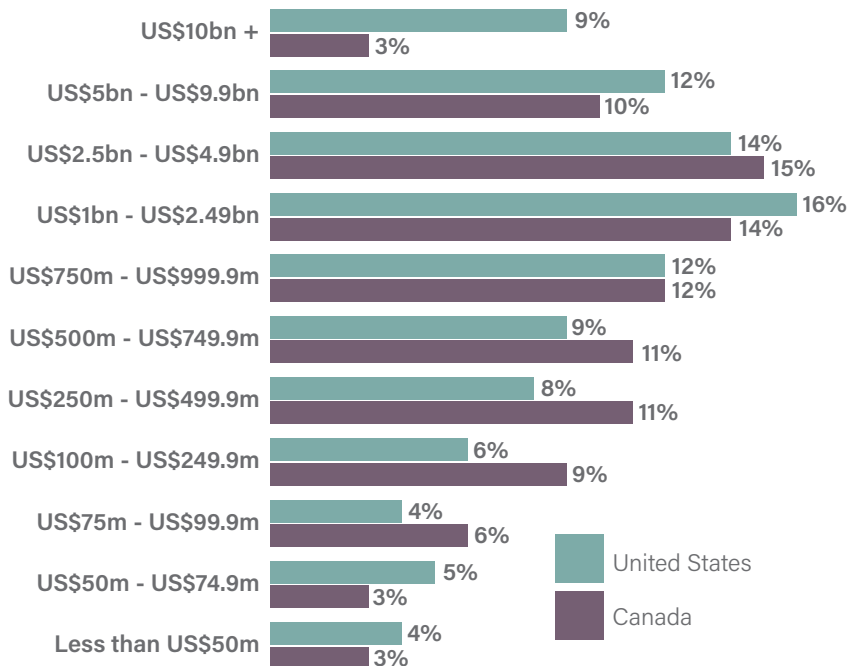
Survey demographics: Industry representation



Q. In which industry does your organization predominantly operate? In other words, what is your main area of focus?

Survey demographics: Industry revenue

Estimated 2021 gross revenue (US\$)



NT Analyzer

Companies are buried in digital privacy risk.
NT Analyzer empowers you to manage that risk at every level.

Existing legal obligations

All companies exchange or work with data in some form. Companies are legally obligated to know all of the data that they collect from the data subject and disclose to third parties. For example, laws such as the GDPR and CCPA require companies to provide the nature of the personally identifiable information (PII) they collect and share to the data subject. The failure to adhere to these laws can result in excessive fines, brand-damaging publicity and litigation.

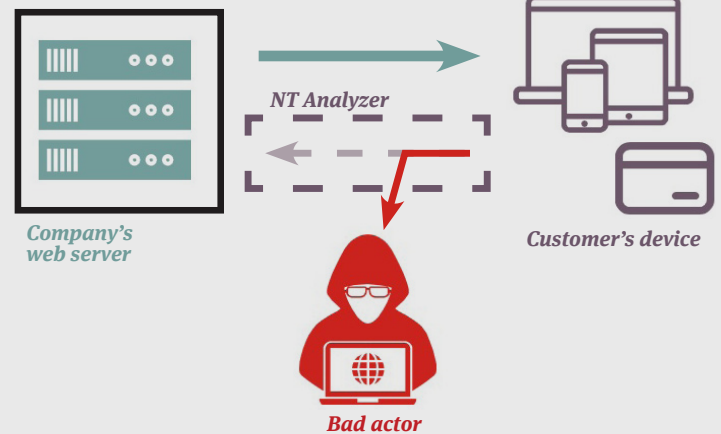
Problem

Almost 100% of all cybersecurity solutions are installed on company assets or act within the enterprise data center or enterprise cloud. Until now, there have been no data protection solutions that extend to companies' customer-facing interfaces—the real-time environment where customers and data subjects access company services, and where most data disclosure to third parties occurs. This is where NT Analyzer provides 360-degree visibility and direct line of sight. We address that risk using network traffic analysis and similar testing methods.

Solution

NT Analyzer steps into the shoes of a customer or data subject and removes that blind spot, allowing a company to catalog all of the collected and disclosed data and identify relevant risk. This bridges the gap for the legal and technology teams within a company, identifying the objective risk through the lens of a relevant law. This provides the technology or development team a more objective picture, empowering companies to mitigate their most glaring data protection issues.

Traditional cybersecurity model



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