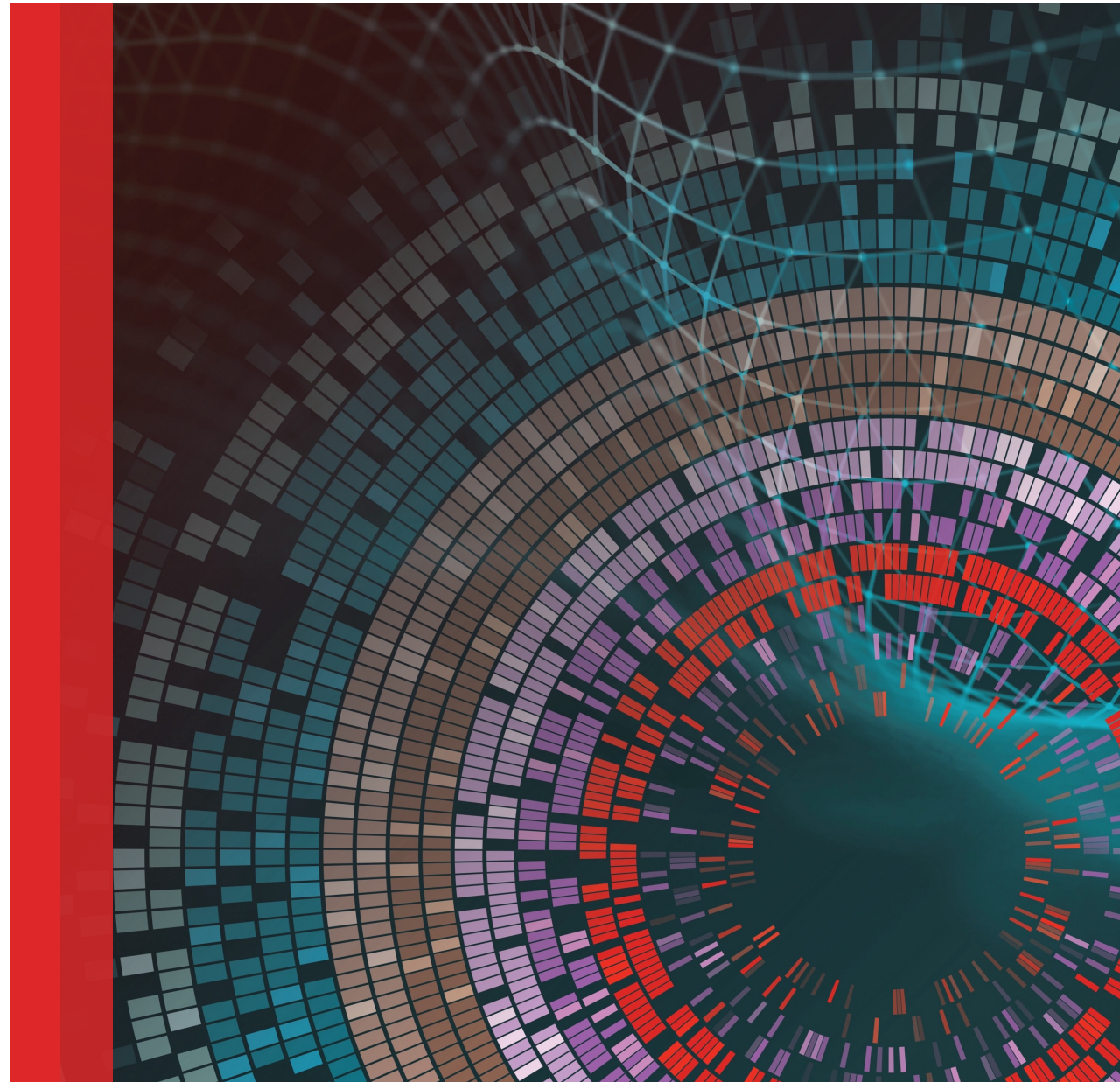


2024 Annual Litigation Trends

ACC Dallas Presentation

March 7, 2024



Speaker



Beau Cox

Partner

Dallas

+1 214 855 7494

beau.cox@nortonrosefulbright.com

Mr. Cox maintains a nationwide trial and appellate practice focused on helping businesses solve their most difficult problems and win their most important commercial disputes. Over the last several years, he has represented private equity companies, commercial real estate developers, oil and gas companies, renewable energy companies, hospital systems, and several brand-name, publicly traded retailers and motion picture theatre companies.

Across these industries, he has tried numerous cases to final verdict or award, including:

- A six-week jury trial in California (defending antitrust claims brought against publicly traded theatre company);
- A three-week jury trial in Austin, Texas (defending breach of contract/negligent misrepresentation claims brought against hospital development company);
- A one-week bench trial in New Mexico (defending statutory claims brought against private-equity backed technology company);
- A two-week AAA arbitration in Houston, Texas (defending fraud/breach of fiduciary duty claims brought against oil and gas company);
- A one-week arbitration in Austin, Texas (pursuing breach of contract claims against multi-family real estate developer);
- A one-week arbitration in Dallas, Texas (defending breach of contract claims brought against multi-family real estate developer); and
- Five different FINRA arbitrations spread across the country (customer-member disputes against banks).

Annual Litigation Trends Survey overview



Longest-running, litigation-focused survey of in-house counsel



Maps litigation landscape and spots trends



Representative sample of 400 + inhouse litigation leaders representing all major industry sectors and company sizes

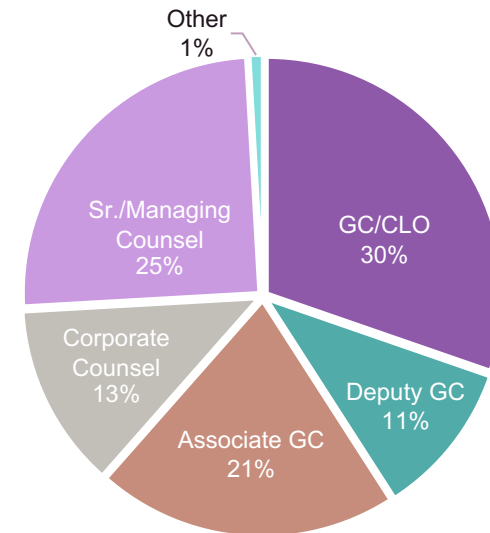


United States and Canada



Enriched by in-depth interviews among key clients/contacts

Respondent roles



Key findings



Cybersecurity exposure increased for 40% of respondents and remains the top litigation concern ahead



Proportion of respondents involved in **regulatory proceedings rose to 61%** from **50%** the year prior



Concern over class action risk is up, as are class actions involving antitrust, bank fraud and securities



ESG remains a growing area for litigation and class action activity, with pro and anti-ESG forces at play. On the environmental side, greenwashing is expected as a top contributor to disputes

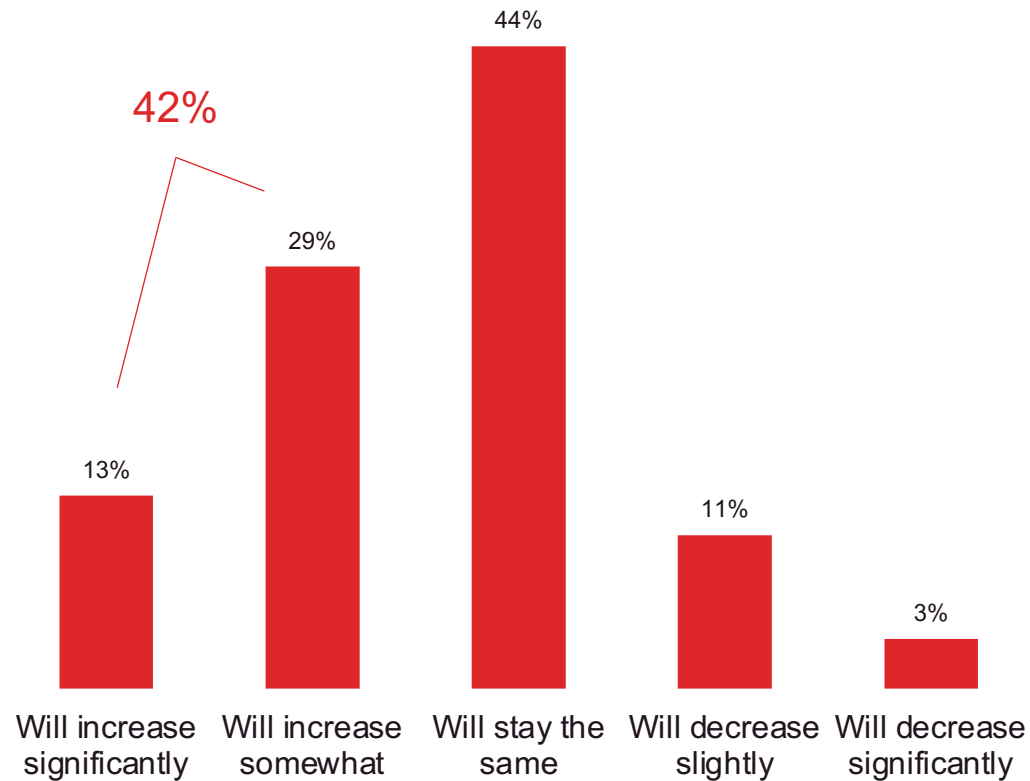


The impact of artificial intelligence on the litigation landscape is undeniable with cybersecurity exposure and concern over IP risk weighing against the prospect of transforming the practice of law

Litigation landscape

Most expect number of lawsuits against them to increase or stay the same

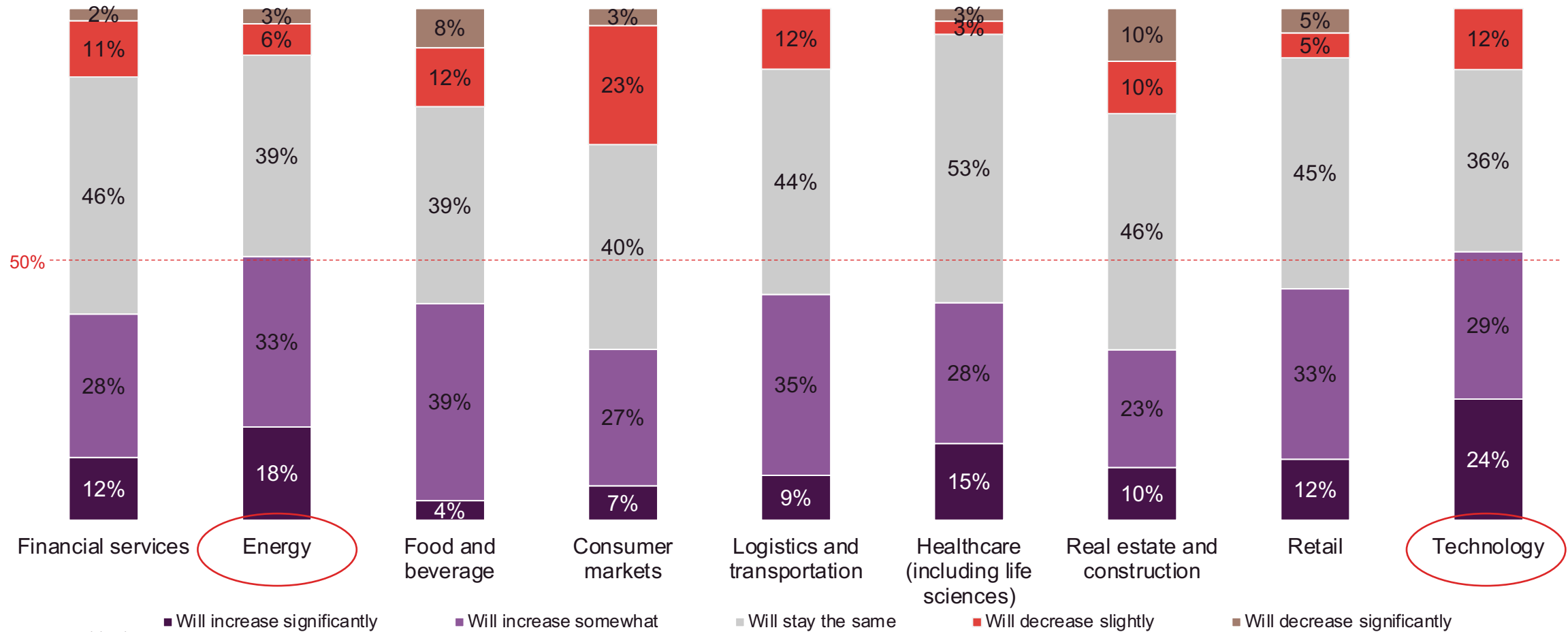
Expectations for lawsuits, total



- More than 40% expect more lawsuits against their organizations in the coming year
- Similar proportion expect the number will remain unchanged
- Only 14% anticipate a decrease

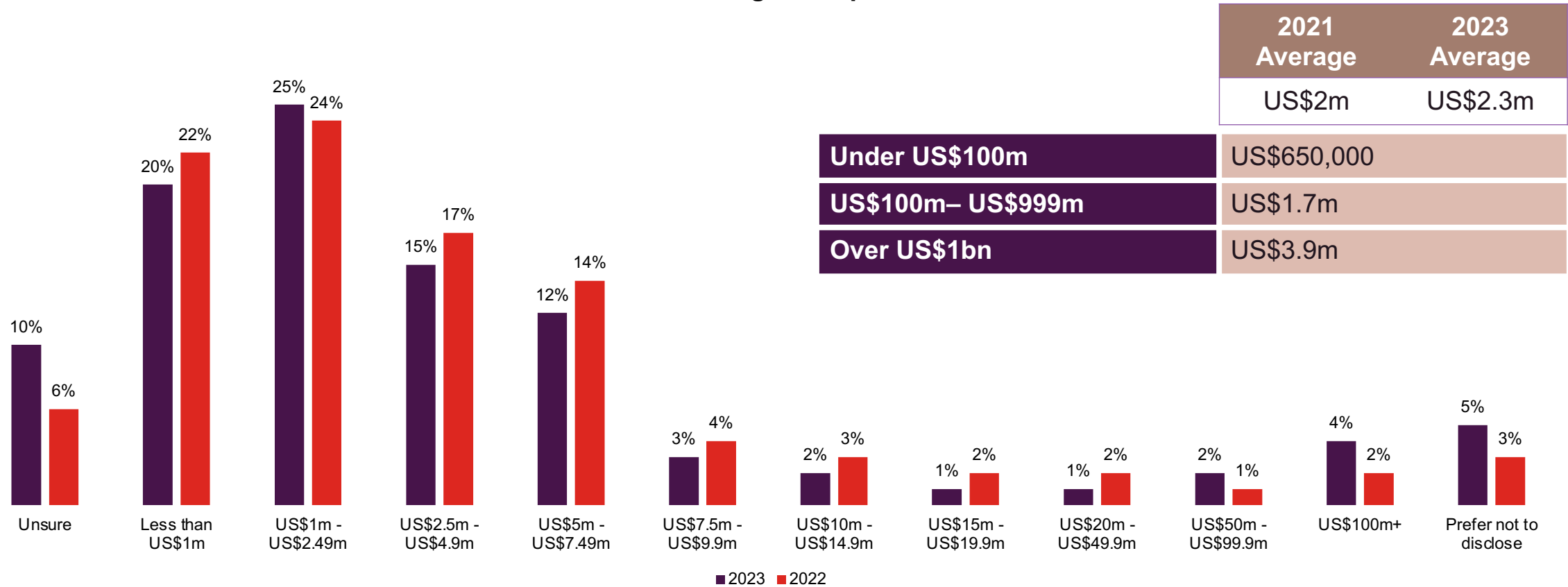
Technology and energy industries expect greater likelihood of lawsuits against their organizations

Expectations for lawsuits by industry



Litigation spend relatively similar to 2023

Annual litigation spend

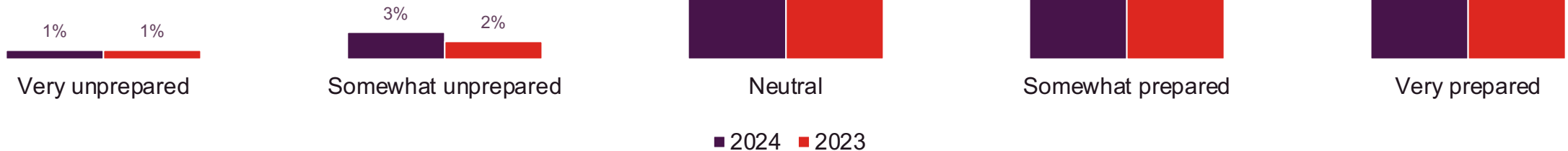


Litigation landscape

Only 29% say they are very prepared to address litigation in the year ahead

Level of preparedness in addressing litigation over next year

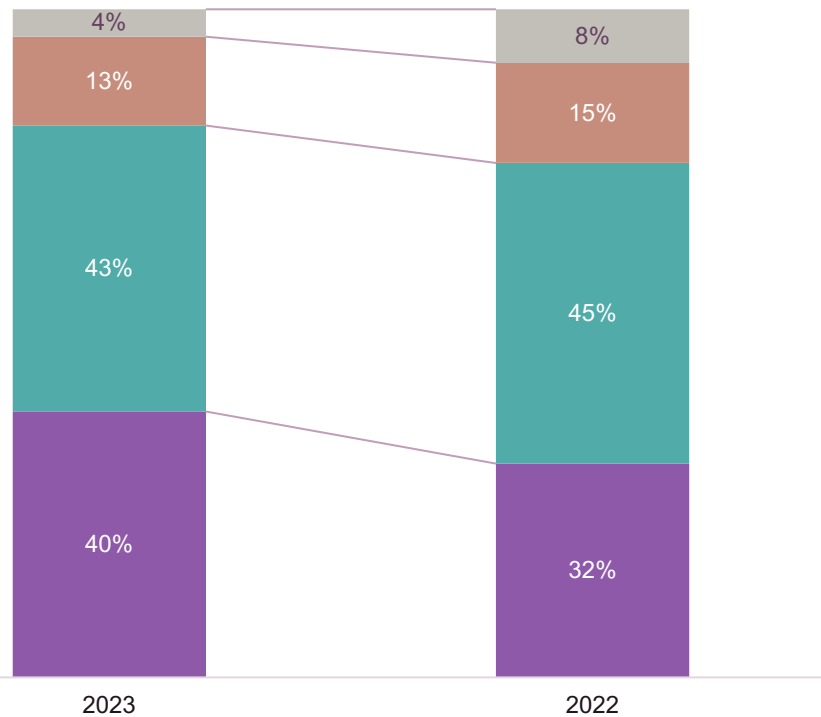
Reason they don't feel prepared	2024 Rank	2023 Rank
Rising fees of outside counsel limit engagement	1	1
Uncertainty of macroeconomic factors	2	3
Not enough staff in legal department	3	2
Don't have the internal technology/tools that we need	4	4
Lack of confidence in outside suppliers	5	N/A



Cybersecurity and data protection

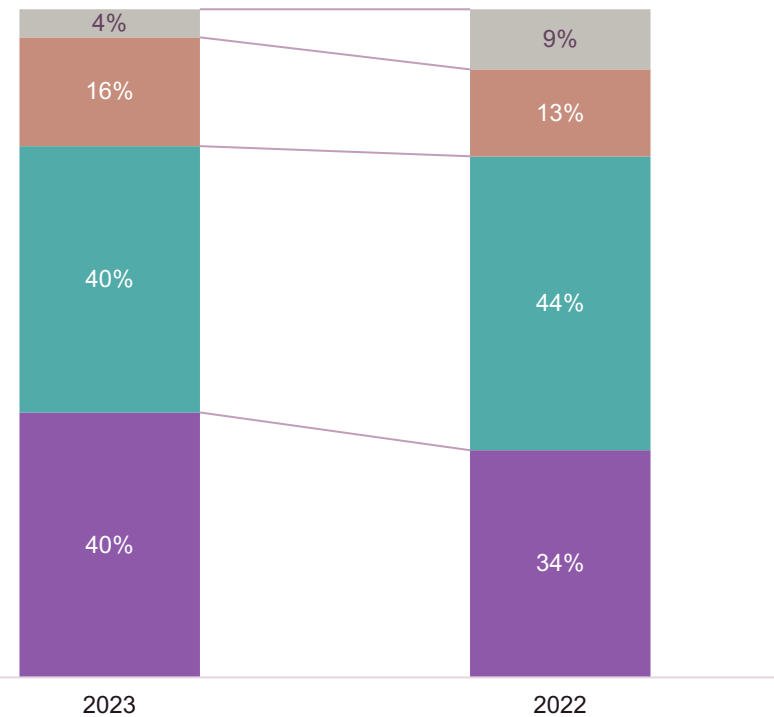
Cyber/data protection exposure increased for 40% of organizations over past 12 months

Cyber exposure: Past 12 months



■ More exposed ■ The same ■ Less exposed ■ Not relevant

Cyber exposure: Next 12 months



■ More exposed ■ The same ■ Less exposed ■ Not relevant

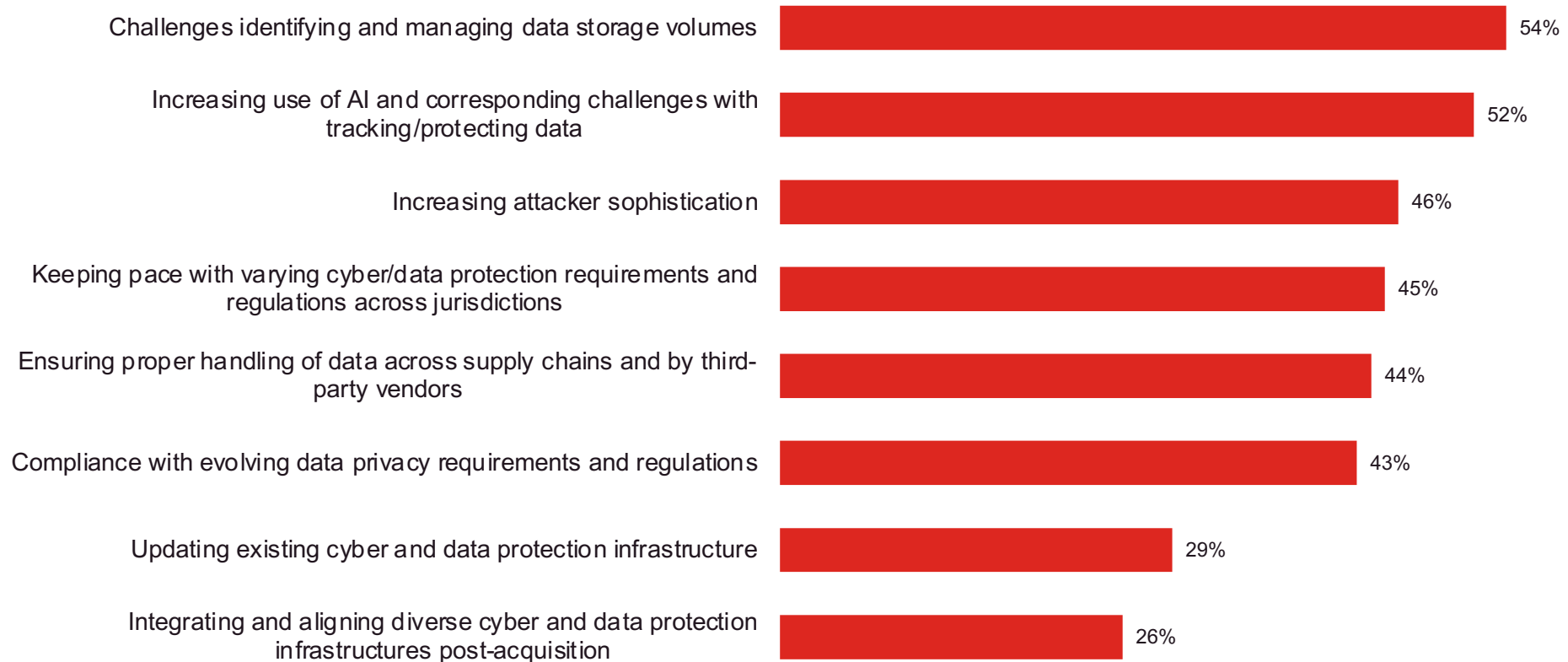
Cybersecurity and data protection

Financial institutions, life sciences and healthcare and media/entertainment respondents reported elevated cybersecurity exposure over past 12 months



More than half of those expecting increased cyber/data protection exposure say that storage volumes and AI are leading catalysts

Trends contributing to increased cyber/data protection exposure



Class actions

Class actions landscape

**Class action
litigation is on
the rise
worldwide**

**The United
States has more
class actions
than any other
country**

**DOJ's
aggressive
enforcement
creates a public
regulatory
foundation**

There are three prominent areas driving class action lawsuits

1
Antitrust

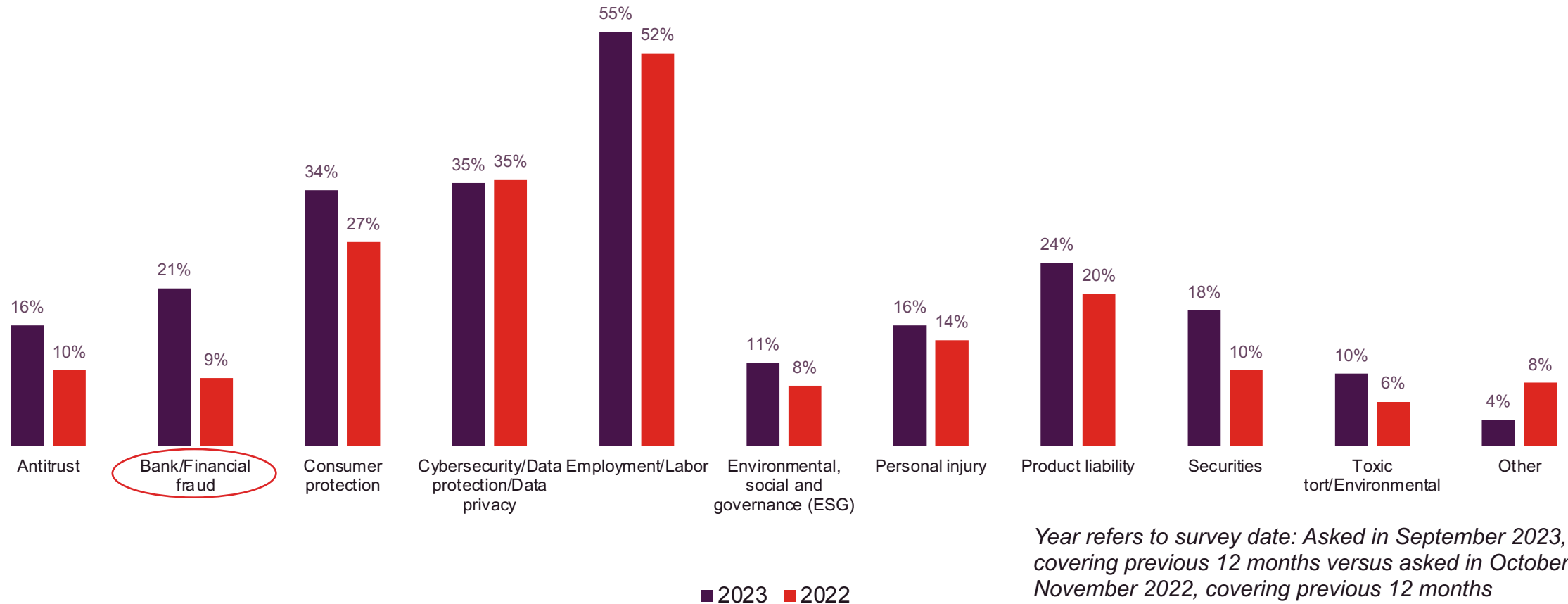
2
**Securities and
shareholder
derivative
claims**

3
**Personal injury
spinoff
litigation**

Class actions

The previous 12 months saw greater diversity in the types of class actions, with the high increases seen in bank/financial fraud and ESG

Class action involvement over previous year

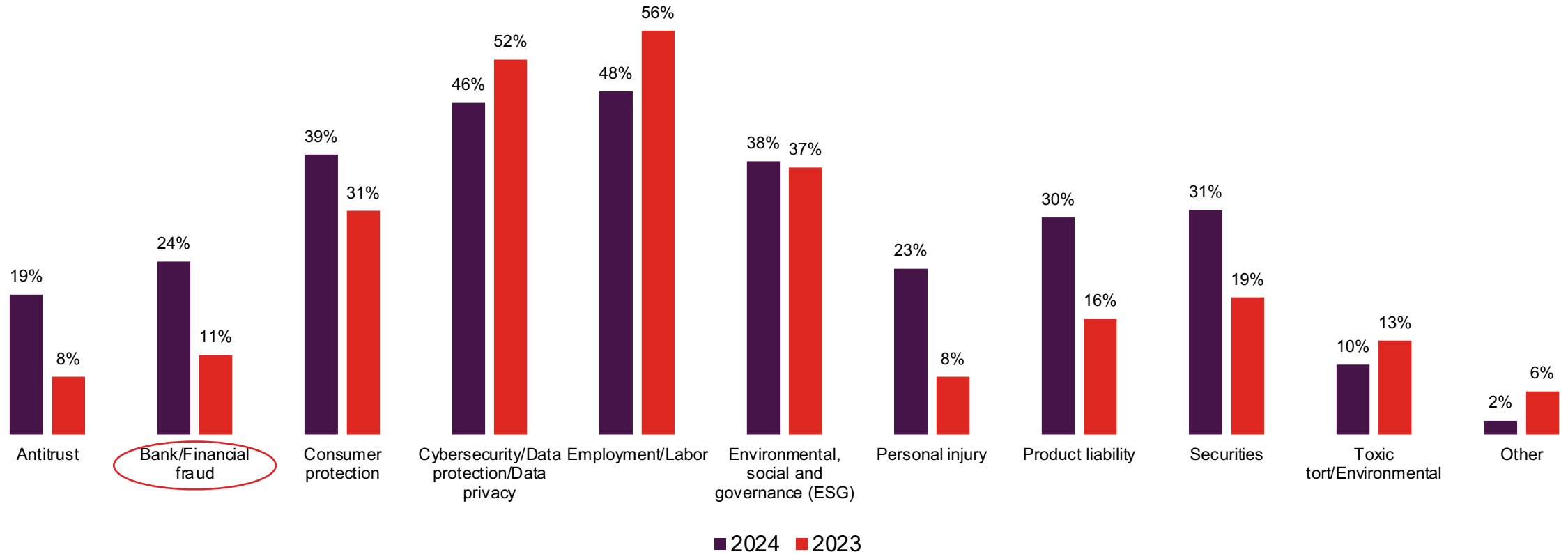


Year refers to survey date: Asked in September 2023, covering previous 12 months versus asked in October – November 2022, covering previous 12 months

Class actions

Bank-related class actions are increasingly top of mind

Class actions of future concern



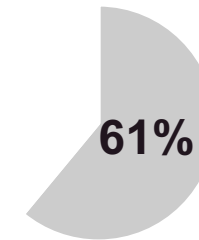
Survey question asked about next 12 months,

Regulation and investigations

Regulation and investigations

Regulatory proceedings continue to climb, as has the proportion of respondents involved in one or more

Type	Measure	2023	2022	2021
Regulatory proceedings	Median	1	1	0
	Mean	3.9	3.5	2.9

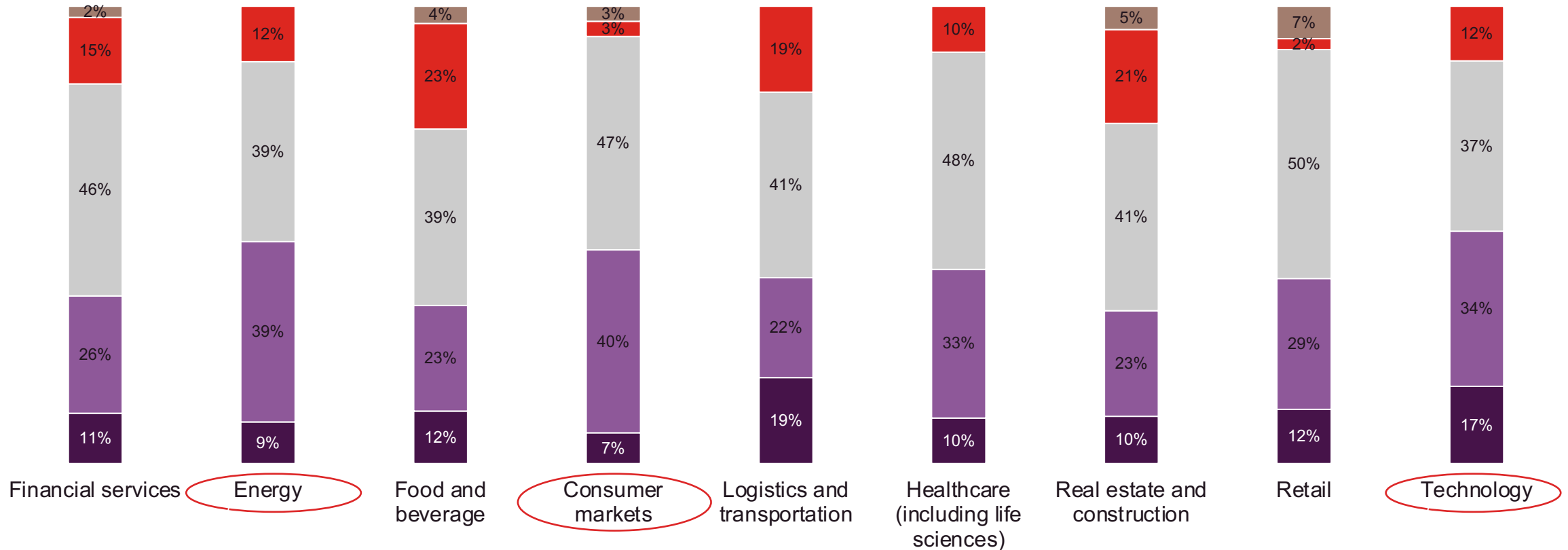


Were involved in at least one regulatory proceeding in 2023 (versus 50% in 2022)

Regulation and investigations

About half of technology, energy and consumer market respondents expect an uptick in regulatory investigations/proceedings against their companies

Expectations for regulatory investigations/proceedings by industry

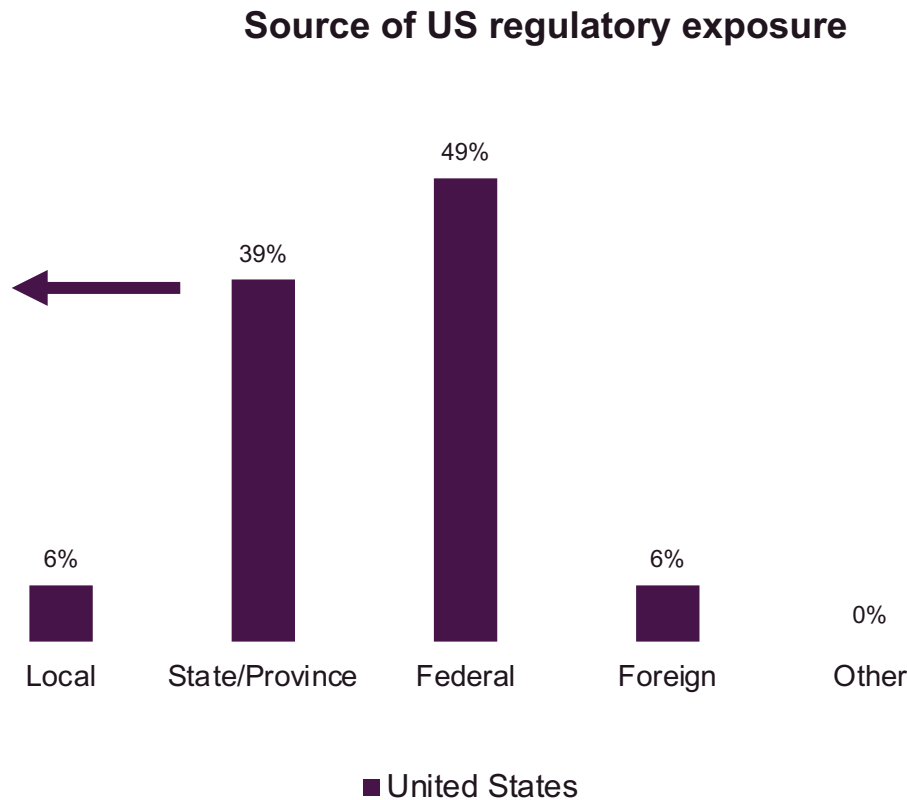


Regulation and investigations

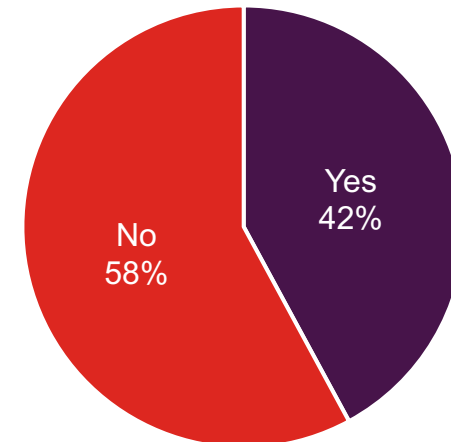
Regulatory exposure is most likely to be impacted by federal followed by state/province changes

US respondents choosing "State" with at least 1% overall participation:

	Selected "state"	Total respondents	Proportion
Connecticut	3	4	75%
North Carolina	2	3	67%
New York	15	34	44%
California	17	40	43%
Florida	4	11	36%
Delaware	1	3	33%
Indiana	1	3	33%
Ohio	2	6	33%
Washington	2	6	33%
Virginia	2	8	25%
Illinois	7	29	24%
Georgia	3	13	23%
Alabama	2	9	22%
Michigan	2	9	22%
Texas	7	36	19%
Arizona	1	6	17%
Maryland	1	6	17%
Massachussetts	2	13	15%



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

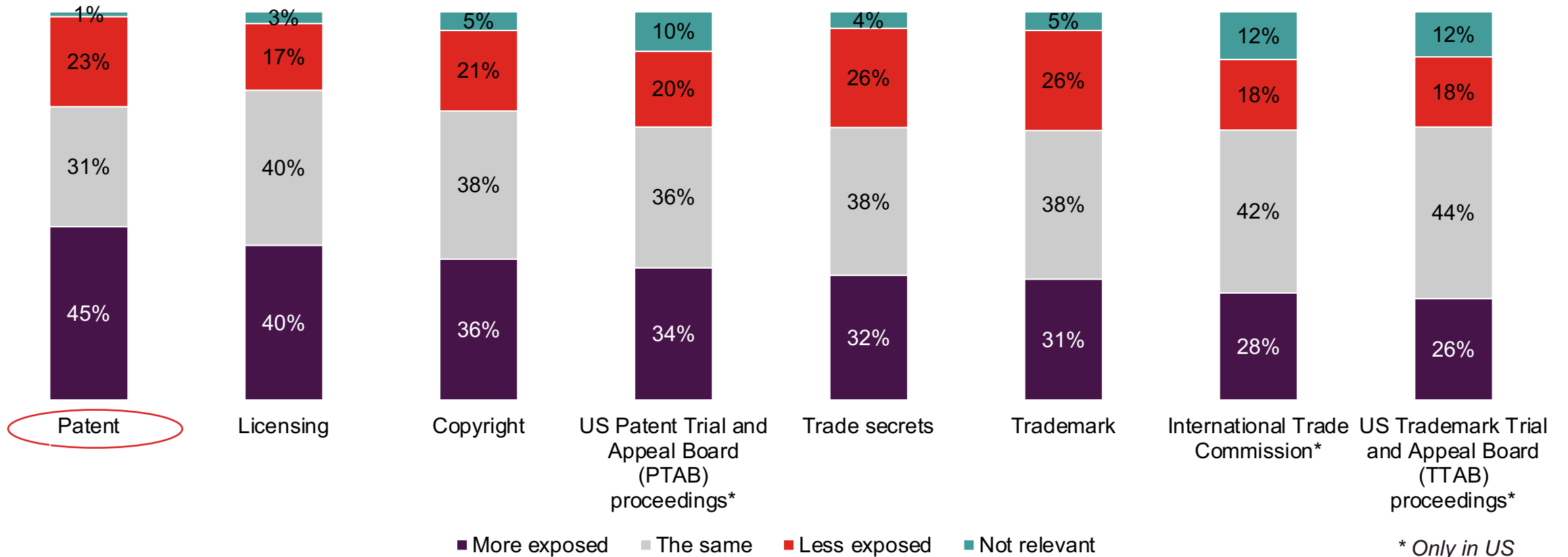


Intellectual property

Intellectual property

Patent risk is top exposure area for next 12 months, although 23% expect to be less exposed

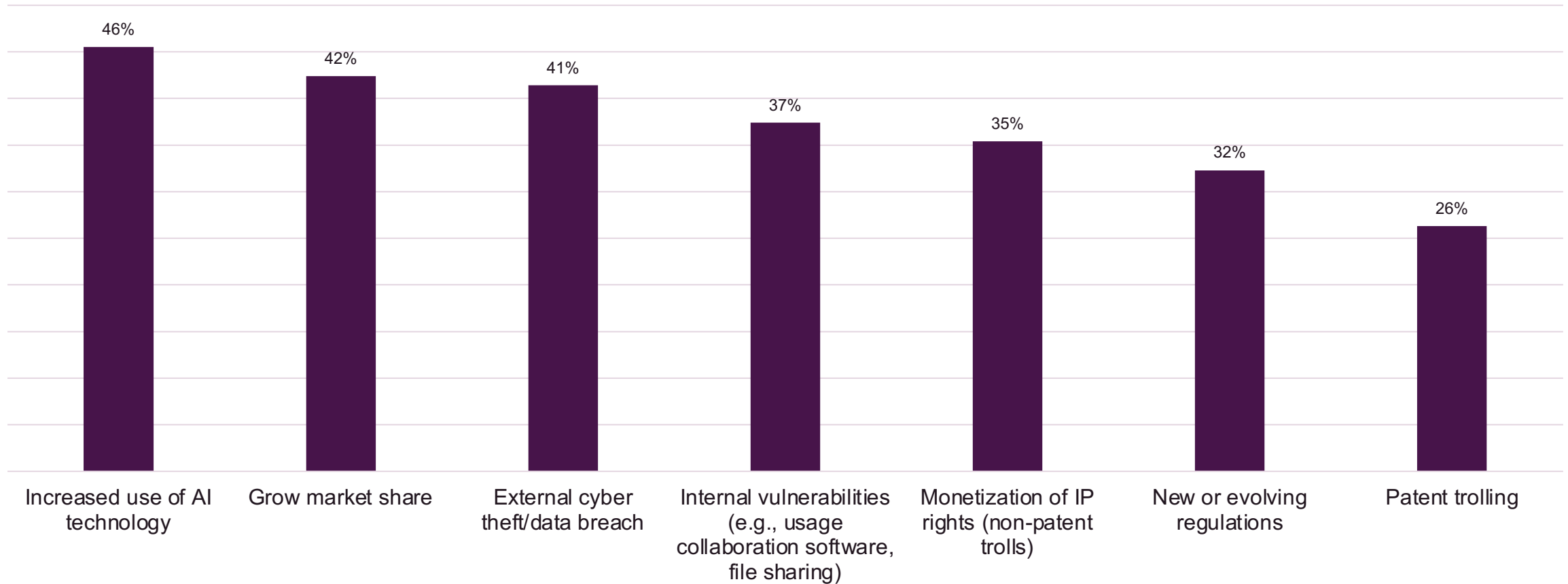
Expected change in level of exposure in specific IP areas over next 12 months



Intellectual property

Just under half (46%) expect AI technology to contribute to IP exposure over the next year

Trends or issues contributing to IP exposure



Environmental, social and governance

What is ESG?



Environmental

- Sustainability
- Climate change
- Carbon neutrality
- Waste management
- Plastic pollution
- Biodiversity



Social

- Modern slavery
- Health and safety
- Diversity, equity and inclusion (DEI)
- Customer and products
- Community engagement

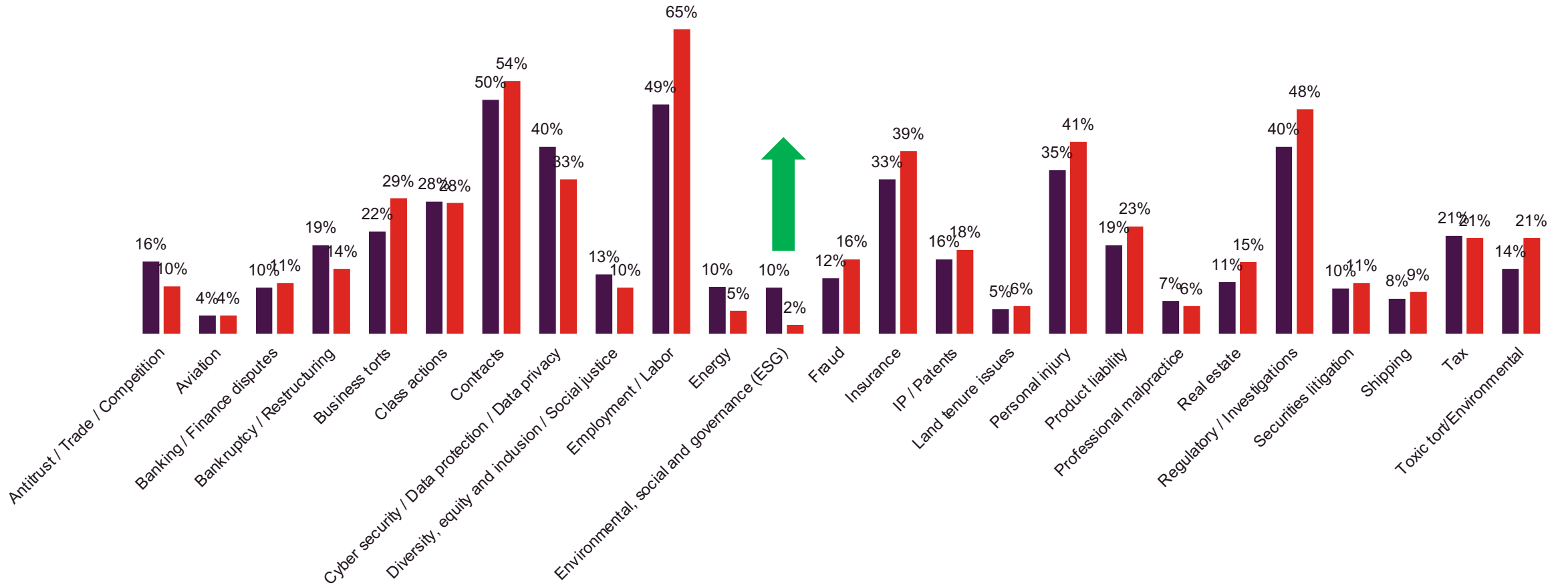


Governance

- Executive compensation
- Board diversity
- Business ethics
- Risk management
- Cybersecurity and data privacy

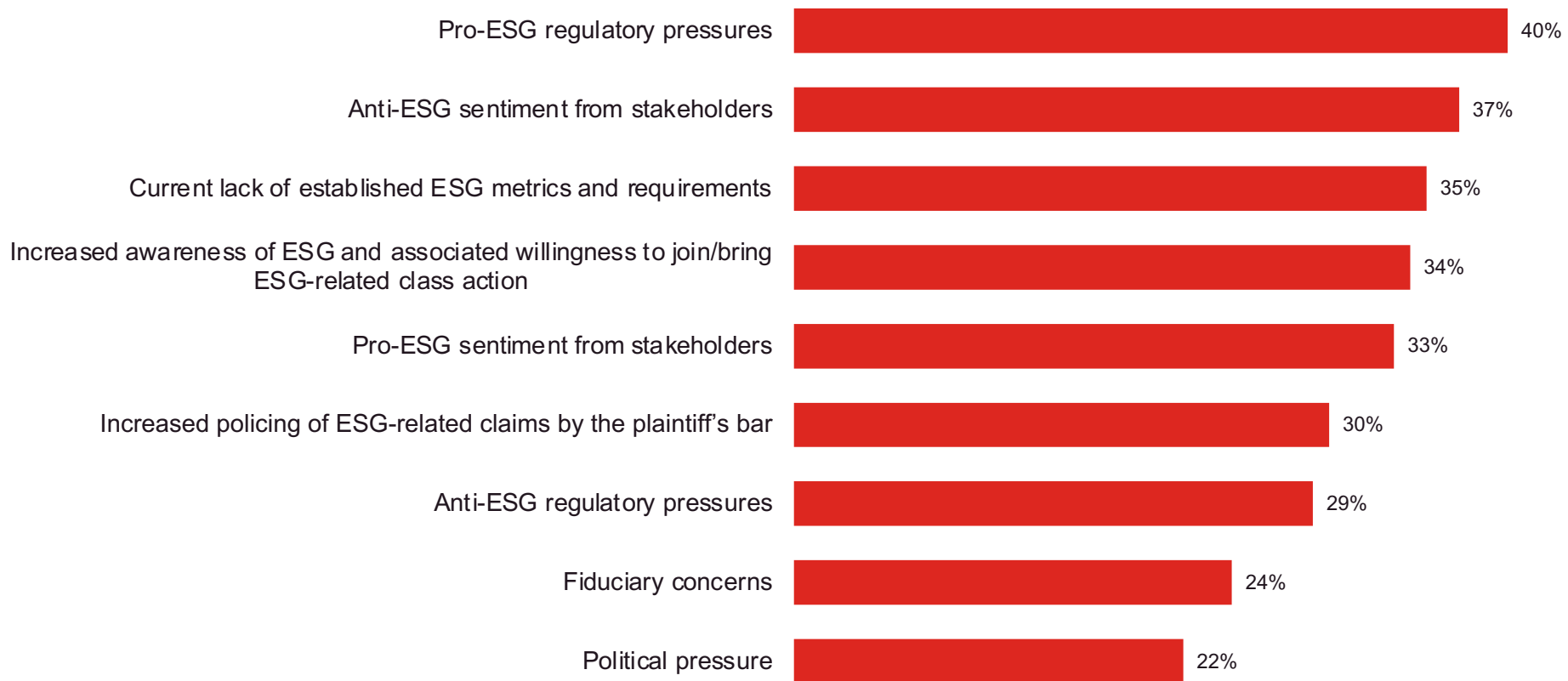
Though still limited, ESG litigation increased significantly among respondents

Litigation matters experienced over past 12 months



ESG dispute exposure is potentially driven by pro-ESG and anti-ESG pressures

Trends or issues expected to drive ESG disputes over next 12 months



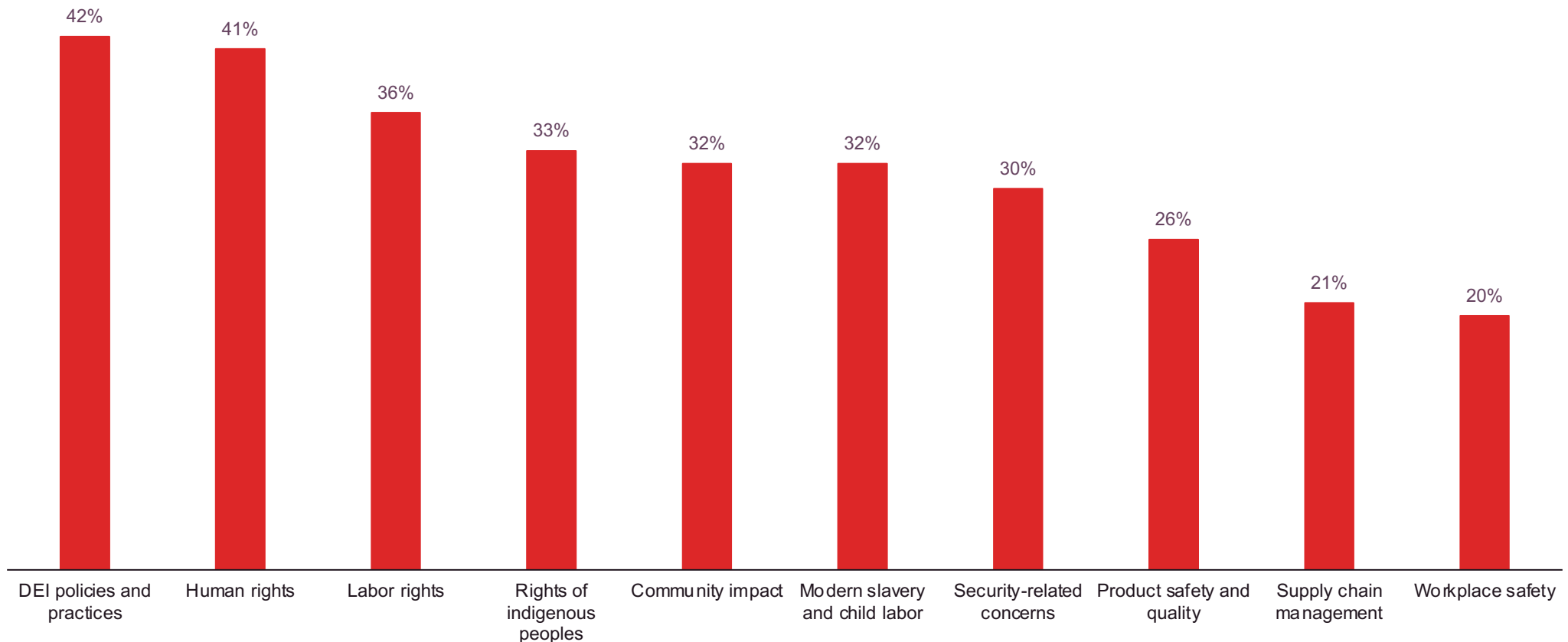
Allegations related to greenwashing are expected to contribute to increased environmental disputes by more than half

Trends or issues expected to contribute to increase in environmental disputes over next 12 months



DEI and Human Rights are the areas most expected to increase social dispute exposure

Areas or issues expected to contribute to an increase in social dispute exposure over the next 12 months



Potential pressures for 2024

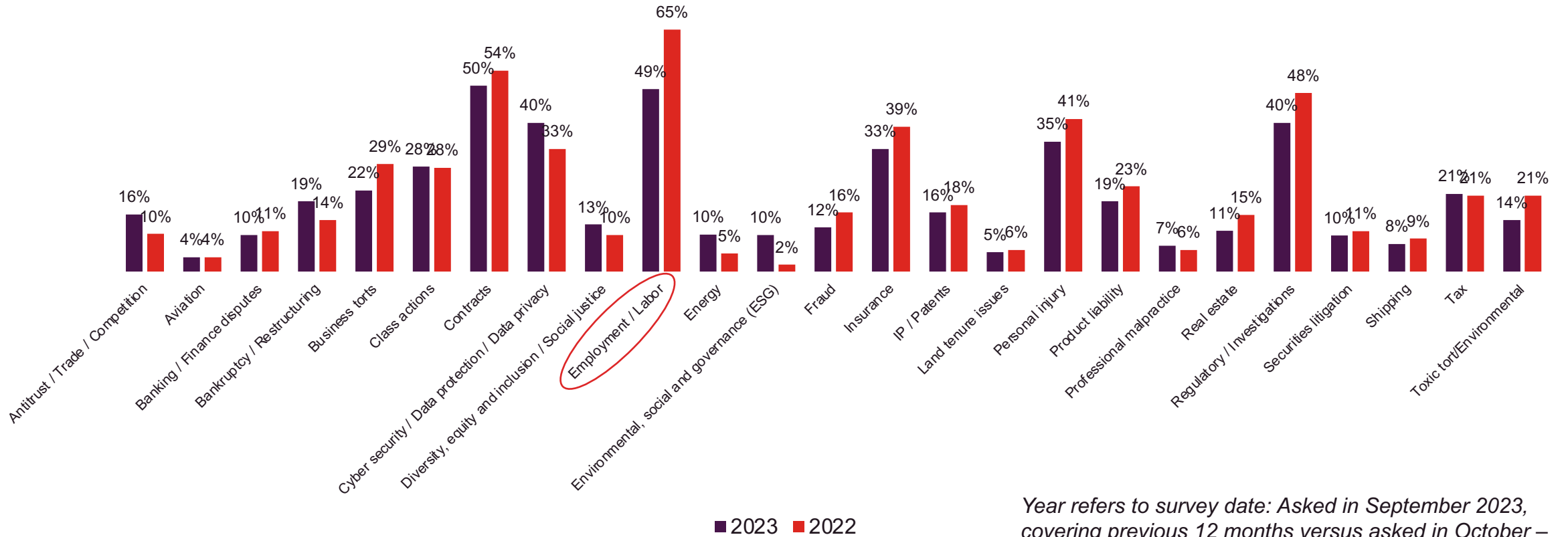
- New California ESG laws
 - SB 253 (climate emissions disclosures)
 - SB 261 (climate-related risk disclosures)
 - AB 1305 (public disclosures re: carbon neutral/net zero claims and marketing)
- DEI challenges following U.S. Supreme Court's *Students for Fair Admissions* affirmative action decision
- Increased focus on modern slavery and supply chain due diligence
- Investor and NGO focus on Conflict-Affected and High Risk Area (CAHRA) due diligence and policies

Employment and labor

Employment and labor

While employment and labor still dominates litigation, respondents report significantly fewer actions in 2023

Litigation matters experienced over past 12 months



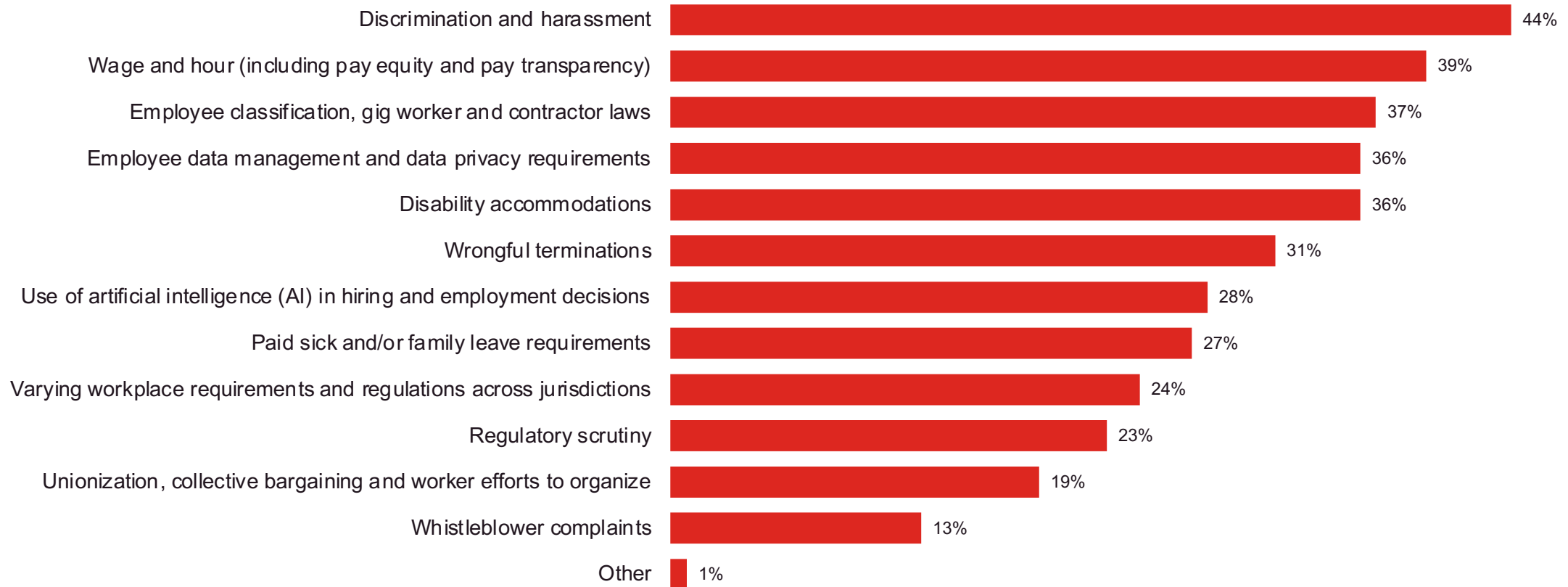
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Employment disputes – slower but still significant

- 49% of respondents engaged in employment disputes last year (compared to 2/3 of respondents from 2022)
- Decline may be attributed to several factors, including:
 - Better training
 - Improved reporting and investigation practices
 - “Levelling out” of hybrid/post-COVID workplace

Discrimination and harassment are leading catalyst for expected increases in employment/labor disputes

Trends/issues contributing to increased employment/labor dispute exposure over next 12 months



How do companies feel about their employment risks?

- Report reveals employment-related disputes remain a key concern for companies
- About half (48%) of companies reporting on class action risk identified employment as the primary area of concern
- Consistent across industries, with technology, healthcare, and transportation and logistics reporting the most significant level of concern

Trends in employment and labor disputes

- Discrimination and harassment claims
 - Increased activity by the EEOC
 - \$26 million increase in budget
 - Democratic control since July 2023
 - Focus on DEI programs post-SFAA
- Wage and hour litigation
 - Pay equity and transparency
 - Employee classification
- Paid leave

EEOC's FY 2024 Priorities

- “Advancing racial justice and combatting systemic discrimination on all protected bases”
 - Since 2019, nearly 1/3 of all charges filed have alleged some form of racial discrimination
 - Focus on “robust, strategic systemic enforcement”
- “Protecting pay equity”
 - Increased focus on the use of pay data collection as a tool to combat pay discrimination
- “Supporting diversity, equity, inclusion, and accessibility (DEIA)”
- “Addressing the use of AI in employment decisions”

EEOC's FY 2024 Priorities, cont.

- “Preventing unlawful retaliation”
 - Retaliation claims have increased every year for the last 20 years and represent the largest number of allegations filed with the agency
 - EEOC, DOL, and NLRB joint initiative to “raise awareness about retaliation issues when workers exercise their protected labor rights”
- Strengthening the agency
 - Commitment to hiring more staff

Focus on DEI initiatives following *Students For Fair Admissions v. President and Fellows of Harvard College*

- Filed by conservative rights group on behalf of Asian American plaintiffs claiming universities' use of race as a factor in the admissions process violated the Equal Protection Clause of the Fourteenth Amendment.
- The Court ruled that higher education can no longer use “affirmative action” to create more diverse student bodies by considering race, even as a “plus” factor for purposes of selecting students.
- Increased risk that employers with robust DEI initiatives may face litigation from employees, contractors, advocacy groups, and government agencies

Wage and hour trends

- Wage and hour filings have increased 450% in the last 15 years
- Downward trend in recent years, but in 2023 wage and hour filings started to increase again
- Top three states in 2023 where wage and hour lawsuits were filed: (1) New York, (2) Florida, and (3) Texas
- Trends include:
 - Filing arbitrations
 - Focus on state wage and hour law
 - Continued emphasis on independent contractor status
 - Change in conditional certification standards
 - Divide on jurisdictional scope of collective actions
 - Pay transparency laws

Questions





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