NORTON ROSE FULBRIGHT

2024 Annual Litigation Trends Survey

PERSPECTIVES FROM CORPORATE COUNSEL

2024 Annual Litigation Trends Survey
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More than 50 locations, including Houston, New York, London, Toronto, Mexico City, Hong Kong, Sydney and Johannesburg.

Executive summary

Risks and evolving regulation around technology and cybersecurity dominated corporate counsel concerns heading into 2024, as mounting cyberattacks and a patchwork of data privacy laws deepen litigation exposure for organizations. At the same time, rapid developments in artificial intelligence (AI) have contributed to cybersecurity risk and increased intellectual property (IP) risks, with regulators moving to develop new policies around AI as the dramatic growth of generative AI tools like ChatGPT outpaces existing legal frameworks.

Organizations faced more regulatory proceedings in 2023 compared to the previous year. Class actions around securities and bank and financial fraud are also on the rise, while environmental, social and governance (ESG) issues pose a growing concern for both class actions and litigation more generally.

These are among the key findings from Norton Rose Fulbright's Annual Litigation Trends Survey. For 19 years, our research has tracked changes and trends defining the litigation landscape, from dispute types and exposure to litigation preparedness and in-house legal staffing, by surveying legal professionals at organizations of all sizes across key commercial sectors.

In September 2023, we surveyed more than 400 general counsel and in-house litigation leaders based in the United States and Canada in industries including financial services, technology, retail, healthcare, real estate and construction, energy, logistics and transportation, consumer markets, and food and beverage. We also conducted in-depth interviews with in-house counsel across a diverse range of industries to supplement quantitative survey data, guide our exploration of emerging trends and add unique insights concerning the litigation challenges industry leaders are facing in 2024.

> *"Alongside more perennial dispute risks such as class actions and regulatory investigations, 2023 brought rapid-fire developments in artificial intelligence. In-house counsel are eager both to respond to new uncertainties around generative AI and to take advantage of the efficiencies it promises. This tension informs many of the trends we highlight for 2024, including cyber risk, IP and expectations for outside counsel."*
>
> **Steven Jansma**
> Head of Litigation and Disputes, United States

Highlights of findings

Cybersecurity and data protection has become a major dispute area for organizations.

Forty percent of organizations saw their cybersecurity dispute exposure grow in 2023 – more than any other area – as cyberattacks reached record levels and the patchwork of data protection regulations grew in complexity. Cybersecurity, data protection and data privacy also top the list of litigation concerns in the year ahead amid the challenges posed by data management and AI.

Artificial intelligence poses cyber and IP risks.

AI is a leading contributor to both cybersecurity exposure and IP vulnerabilities, with roughly half of respondents saying that the increased use of AI technology will grow their exposure in both areas in 2024. At the same time, the potential downsides may not outweigh the technology's benefits, as more than a third of respondents support the use of generative AI by their outside counsel.

Concerns about regulatory proceedings are borne out.

A greater proportion of organizations were involved in regulatory proceedings in 2023 versus the previous year, with 61% of respondents involved in at least one, compared to 50% in 2022. The average number of proceedings these organizations encountered also grew – reaching 3.9, as compared to 3.5 in 2022 and 2.9 in 2021 – and respondents are bracing for a further uptick in regulatory matters in 2024.

Class actions involving antitrust, securities and bank and financial fraud proliferated.

In the wake of last year's banking crisis, the share of organizations involved in bank or financial fraud class actions more than doubled, to 21% of those that experienced class actions in 2023, from 9% in 2022. In addition, 18% experienced a securities class action last year (up from 10% in 2022), and it is an area of future concern for 31% of organizations that experienced class actions in 2023.

Environmental, social and governance issues are a growing litigation concern.

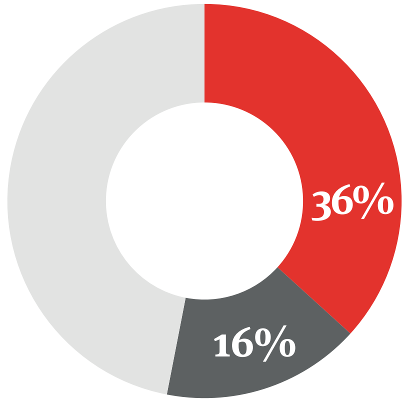
As regulatory requirements around climate and ESG disclosures take shape while anti-ESG sentiment grows, organizations are increasingly finding themselves caught in the middle. One in 10 respondents experienced ESG-related litigation last year (compared to just 2% in 2022) – a development we anticipated in our 2023 report. Thirty-eight percent of organizations are also concerned about future ESG class actions as issues from greenwashing to diversity policies to regulatory compliance go under the microscope.

In-house legal teams are likely to grow.

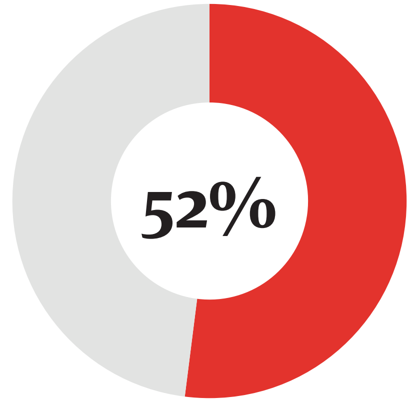
As organizations expect more legal disputes across the board in 2024, more than half (52%) expect to hire internally to meet demand – much higher than the 36% who said the same in 2022. In 2023, most in-house disputes teams were small, with the majority having 10 or fewer lawyers, while organizations tended to spread their litigation work among multiple law firms.

Key statistics

Average litigation spend for companies with US$1bn or more in revenue

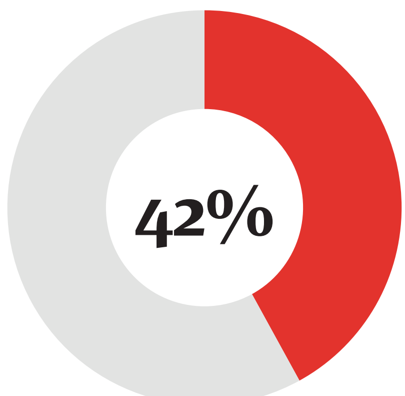


Generative AI usage by outside counsel to bolster their company's litigation work was supported by 36%, with only 16% of respondents opposed to its use

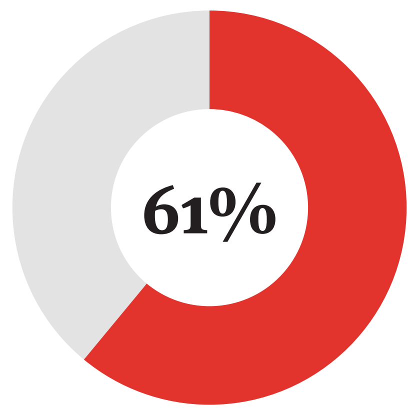


Expect to increase the number of in-house litigators, up from 36% in 2023

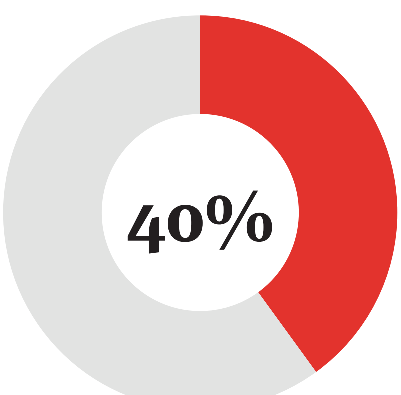
Median number of lawsuits reported by respondents in 2023, up from five in 2022



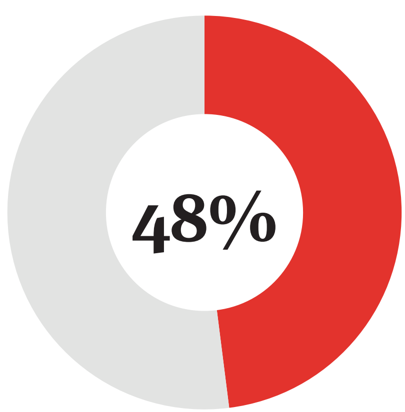
Expect volume of lawsuits to rise in 2024, while only 14% expect volume to decrease



Were involved in at least one regulatory proceeding in 2023, compared to 50% in 2022



Felt more exposed to cybersecurity and data protection disputes in 2023; only 13% felt less exposed



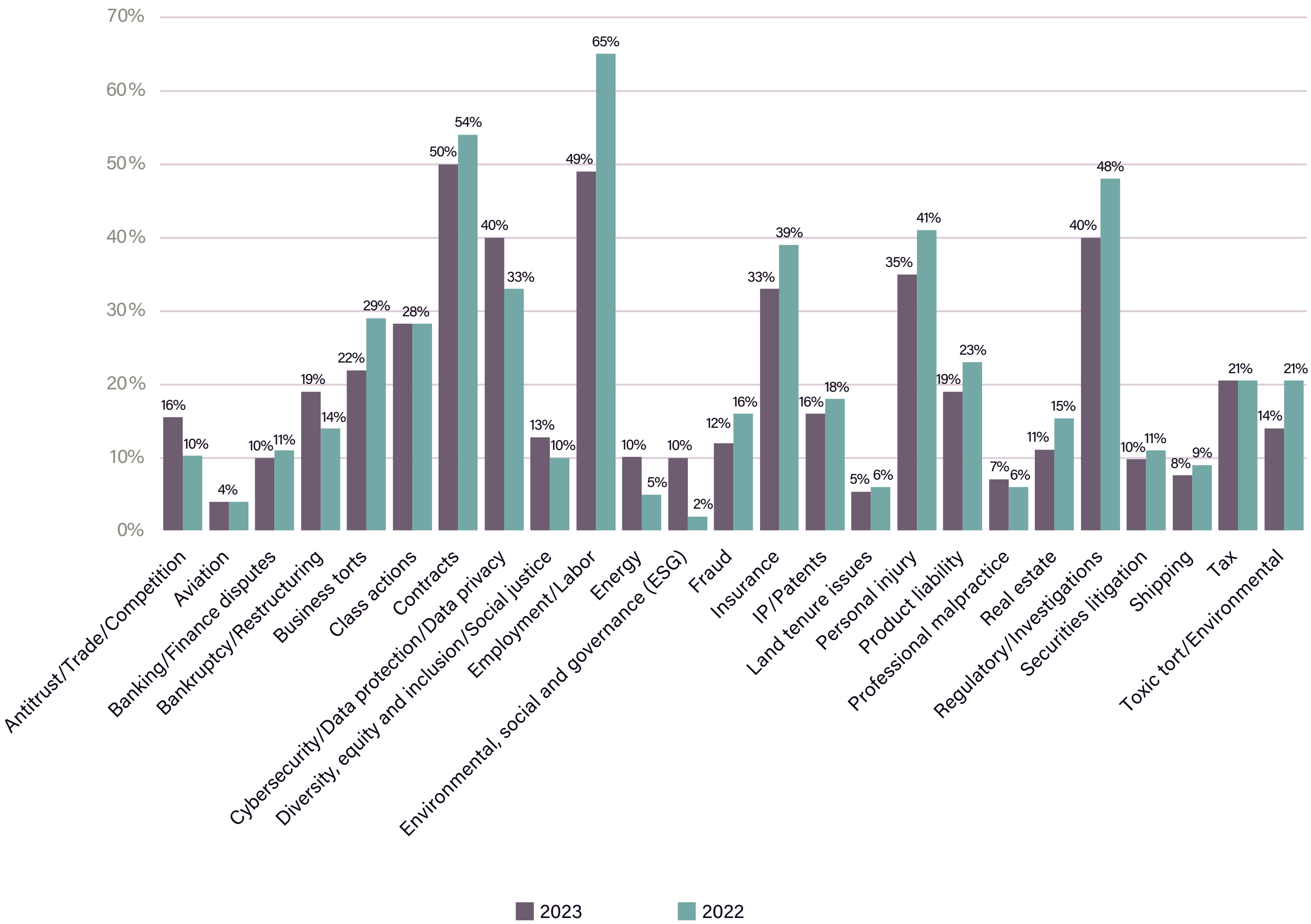
Share of those concerned with class actions in the year ahead who say employment and labor is the area of highest concern

Uptick in incidence of bank or financial fraud class actions over the past year, which is expected to increase further in 2024

Major trends

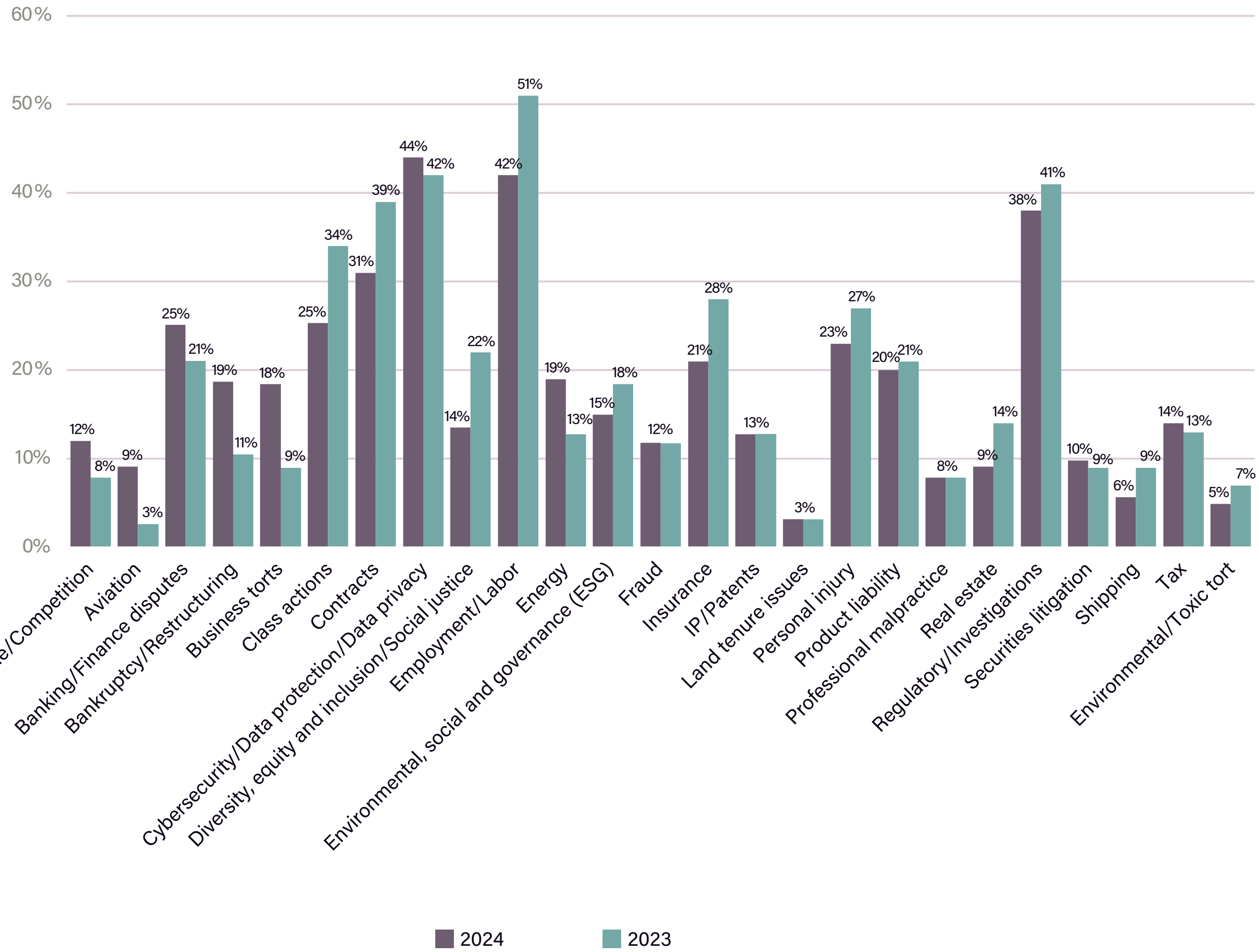
Cybersecurity, data protection and data privacy was a major theme in 2023. Forty percent of organizations experienced litigation in that area, up from 33% the previous year. It tied with regulatory matters as the third most common type of litigation last year and may soon overtake other issues – 44% of respondents say they are concerned about cybersecurity litigation in 2024, higher than any other litigation category.

Litigation areas experienced over the past 12 months



Q. In which of the following areas did your organization experience litigation matters over the past 12 months? Please select all that apply.

Areas in which litigation is expected over next 12 months



Q. In reviewing the full list of litigation areas below, what are the most concerning areas for your organization in the year ahead? Please select all that apply.

Other areas also saw notable increases. The incidence rate of bankruptcy and restructuring grew, as did that for antitrust, trade and competition matters.

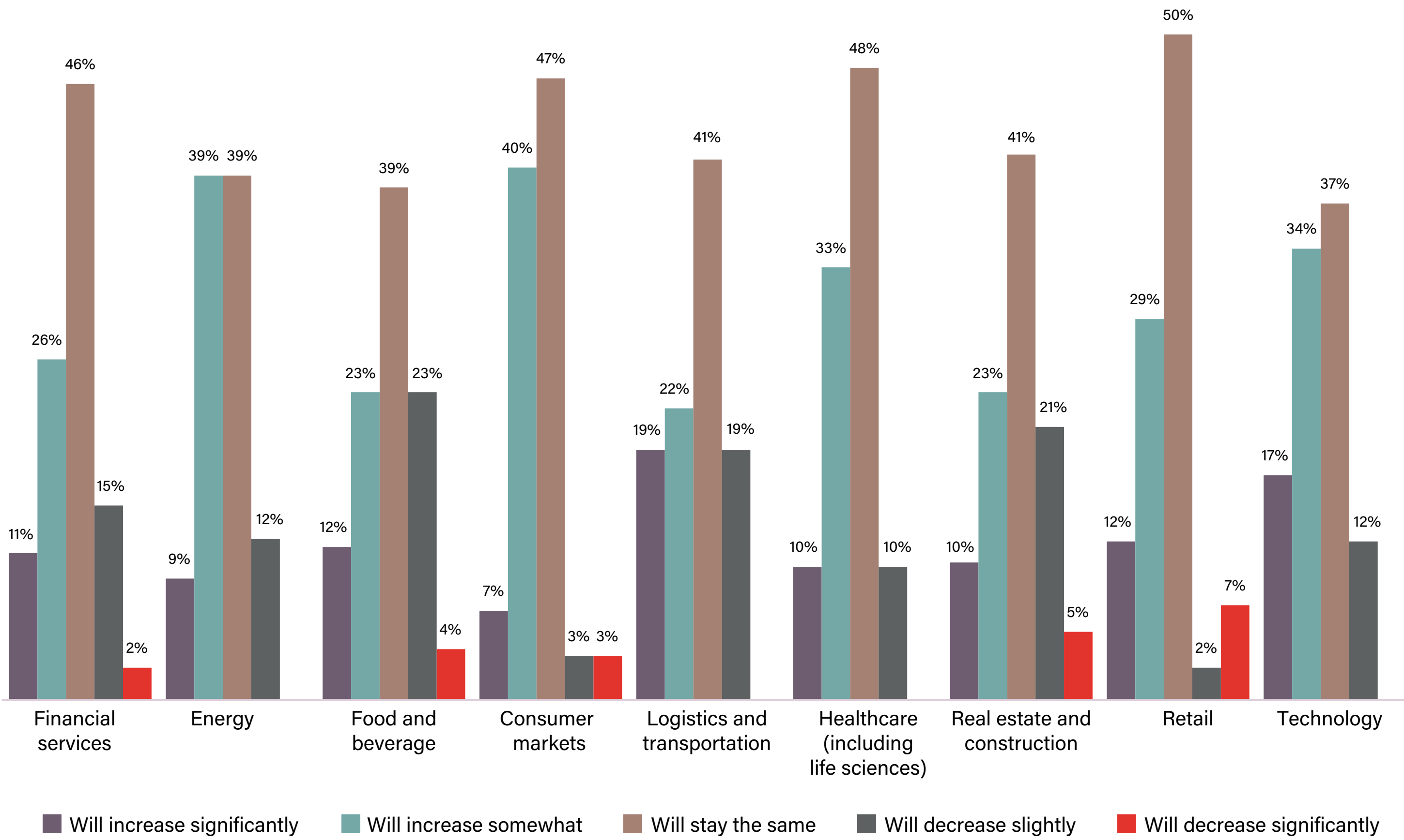
One in 10 organizations also experienced ESG litigation in 2023, compared to just 2% the year before. The share of respondents involved in energy-related litigation also doubled. One assistant general counsel for litigation at an energy company acknowledged that "the climate change docket – involving 15 to 16 cases brought by states and municipalities regarding fuel combustion's impact on climate change – is worrisome, and we're spending an ever-increasing amount of time and money to manage that."

While employment and labor remained a leading issue in the litigation landscape – experienced by approximately half (49%) of respondents – the incidence rate slipped from the previous year, when nearly two-thirds of respondents reported such litigation. "This drop may be attributed to factors such as better training and more sophisticated reporting and investigation practices among employers, which allow clients to avoid or minimize litigation risk," Norton Rose Fulbright employment and labor partner

Jamila Mensah said. "The latter has borne out with our clients as we have seen an increase in our confidential investigation work, as well as more willingness from clients to engage in severance negotiations and other pre-litigation resolution strategies."

Regulatory proceedings and investigations also remain a concern. Four in 10 organizations experienced such matters in 2023, down from 48% the previous year, but more activity looms as the current administration and state agencies continue to push for enforcement action in areas such as banking, antitrust and consumer protection. Forty-three percent of respondents say they expect regulatory investigations and proceedings to increase in the year ahead, with the technology, energy and consumer markets industries bracing for more action in 2024.

Expectations for regulatory investigations/proceedings by industry



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

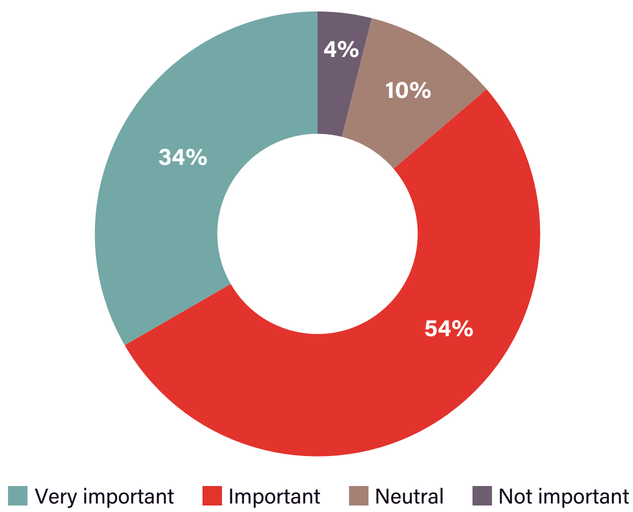
Disputes outlook

In 2024, the vast majority of respondents expect legal disputes to either stay the same or increase across the board (86% for lawsuits, 89% for arbitrations, 85% for regulatory investigations and proceedings). Expectations around lawsuits are particularly heightened in the technology and energy industries, where more than half expect an increase in litigation against their organizations.

Signaling that economic anxieties may have tempered somewhat, only about a third of respondents cite market volatility (36%) or inflation levels (31%) as a concern with regard to litigation – a contrast to the previous year when more than half (54%) pointed to an impending recession as cause for concern. The regulatory environment (40%) is the leading factor cited in 2023, and the political landscape (36%) is also salient as macroeconomic concerns were down across the board compared to 2022.

As in previous years, the majority of organizations want to avoid the expense of going to court. Eighty-eight percent of respondents say that settling disputes before trial is important.

Importance of settling disputes before they go to court



Q. On a scale of 1 to 5, where 1 = not important at all and 5 = very important, how important is it to your organization to settle disputes before they go to court?

Key disputes areas

Cybersecurity and data protection

As data volumes grow exponentially, on top of the new challenges posed by AI and a record number of cyberattacks in 2023, organizations are increasingly taking note of cybersecurity, data protection and data privacy as a potential dispute driver.

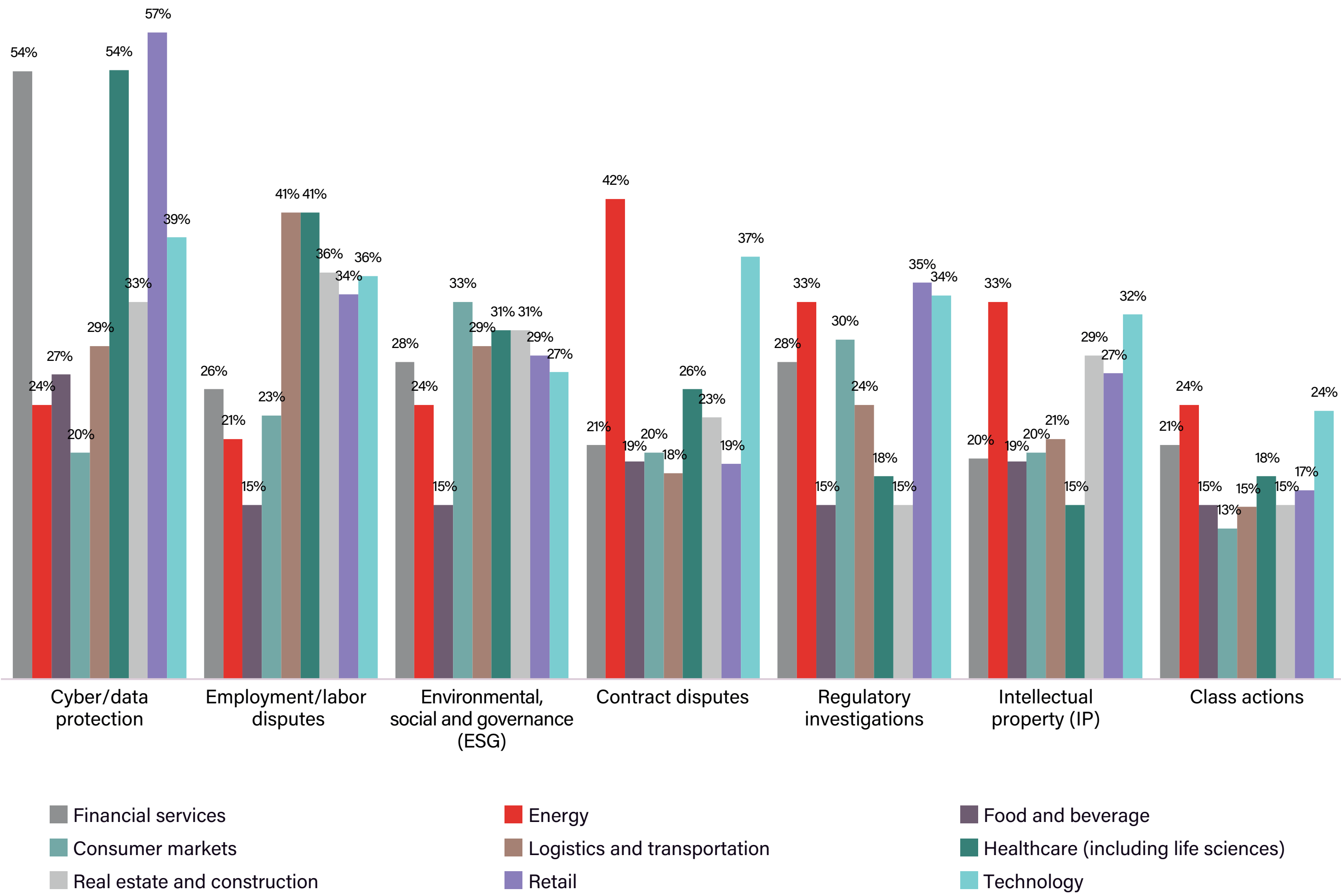
Forty percent of respondents say their businesses saw an increase in cyber and data protection dispute exposure over the previous 12 months – the greatest increase in any dispute category – with the same share expecting their exposure to deepen in 2024. That vulnerability is particularly notable for industries tasked with managing sensitive information and large volumes of customer data. More than half of respondents in financial services (54%), healthcare (54%) and retail (57%) say their organizations were more exposed last year, and 44%, 46% and 50%, respectively, anticipate greater vulnerability in the coming year.

"Within the retail sector, the continued expansion of eCommerce, integration of technology into retail practices, shifts to remote workforces following COVID-19, and proliferation of data privacy and cybersecurity laws and regulations – coupled with unprecedented levels of cyberattacks – have collectively created a perfect storm of risk for cyber and data protection disputes," said Norton Rose Fulbright partner Will Troutman, who heads the firm's consumer markets practice in the US.

The biggest trends contributing to increased exposure in this area were the challenges in identifying and managing data storage volumes, and the increasing use of AI and corresponding issues with tracking and protecting data, selected by 54% and 52% of respondents, respectively. These trends loomed larger than the leading catalysts in last year's survey – keeping pace with and updating policies to match rapidly evolving data privacy requirements and updating existing cyber and data protection infrastructure. Compliance tools such as Norton Rose Fulbright's NT Analyzer can assist with identifying privacy and security risks associated with consumer-facing apps or websites.

"The evolving data privacy regulatory landscapes, both in the US and internationally, persist as big challenges for our clients," said Norton Rose Fulbright's US Head of Technology and US Head of eDiscovery and Information Governance Andrea D'Ambra. "However, their prominence as primary concerns have diminished, likely due to the rapid ascendancy of generative AI. The complexities and challenges of regulating the use of such AI technologies have redirected our client's focus and resources, marking a significant shift in the priorities of organizations and regulatory bodies alike."

Change in dispute exposure over the past 12 months by industry: "Increased" responses

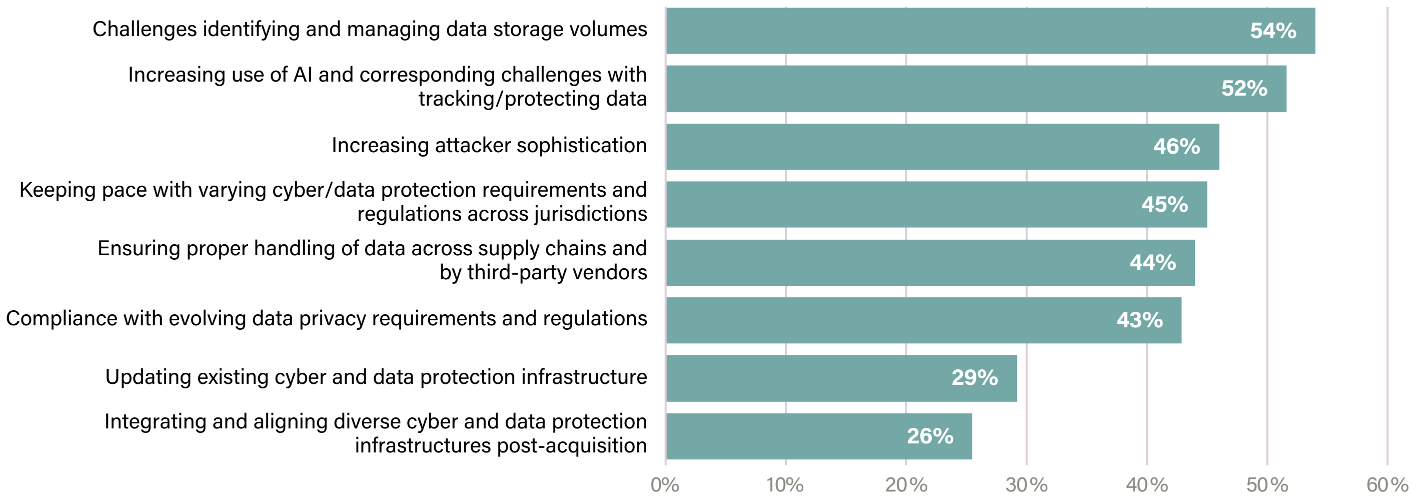


Q. Please indicate any change in dispute exposure that your business experienced over the past 12 months.

Risks inherent in managing large volumes of data can lead to data breaches, which are often followed by expensive litigation and reputational damage. "Data security remains the number one risk," said the deputy general counsel at an insurance company. "If companies with profiles like ours are going to end up in the papers, it's going to be because of a cyber leak."

Other in-house counsel say the real exposure risks with large data volumes lie in litigation costs, with one technology general counsel explaining that, "I don't consider the retention of data something that is going to actually cause litigation, but I do think it's going to make any litigation you have more painful because you have a bigger volume of likely irrelevant data that you will have to sift through."

Trends contributing to increased cyber/data protection exposure



Q. You indicated you expect to be more exposed to cyber/data protection disputes over the next 12 months. Which of the following trends or issues do you expect to contribute to this increase in exposure? Please select all that apply.

Still, between billion-dollar settlements for biometric privacy violations and new regulations in place under the EU-US Data Privacy Framework, organizations must continue to navigate a highly complex and evolving data privacy regulatory climate. This is top of mind for in-house counsel, who said they would welcome a uniform data privacy framework.

Third-party vendors are also a significant source of dispute exposure. The majority of organizations say working with outside vendors and suppliers increases the likelihood of a cyber or data breach and related disputes, with just 3% of respondents disagreeing. "That is where cybersecurity issues really emerge – not with the actual company, but with vendors down the chain," said an assistant general counsel in the telecommunications industry. "We use a vendor who uses a vendor who uses some other vendor, and, inevitably, someone on the chain is not as sophisticated as us on some of these issues. That's where the risk lies."

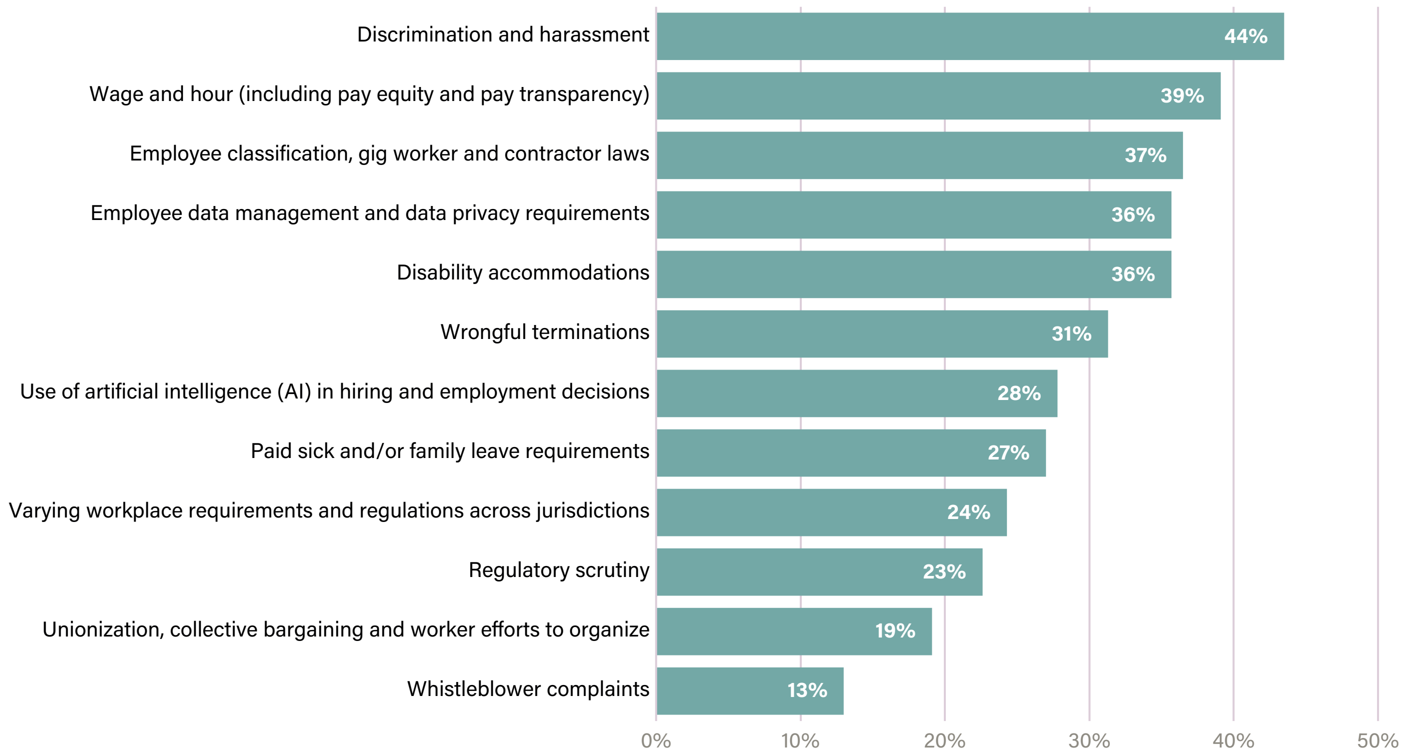
Employment and labor

For organizations of all sizes and across industries, employment and labor remains a key dispute exposure area, with 30% reporting increased exposure over the last year. Increases were especially notable in the logistics and transportation and healthcare sectors, which continue to suffer from staffing challenges post-pandemic.

Twenty-eight percent of respondents expect that vulnerability to increase in 2024, as the US Equal Employment Opportunity Commission continues to take a more active role in pursuing workplace litigation. Retail led the way among sectors most likely to anticipate increases in employment and labor exposure in the coming year, at 40%, followed by healthcare at 36% and transportation and logistics at 32%.

Discrimination and harassment is the top contributing factor, according to that group, with wage and hour matters (including pay equity and pay transparency) and employee classification, gig worker and contractor laws also ranking as leading dispute catalysts (39% and 37%, respectively).

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

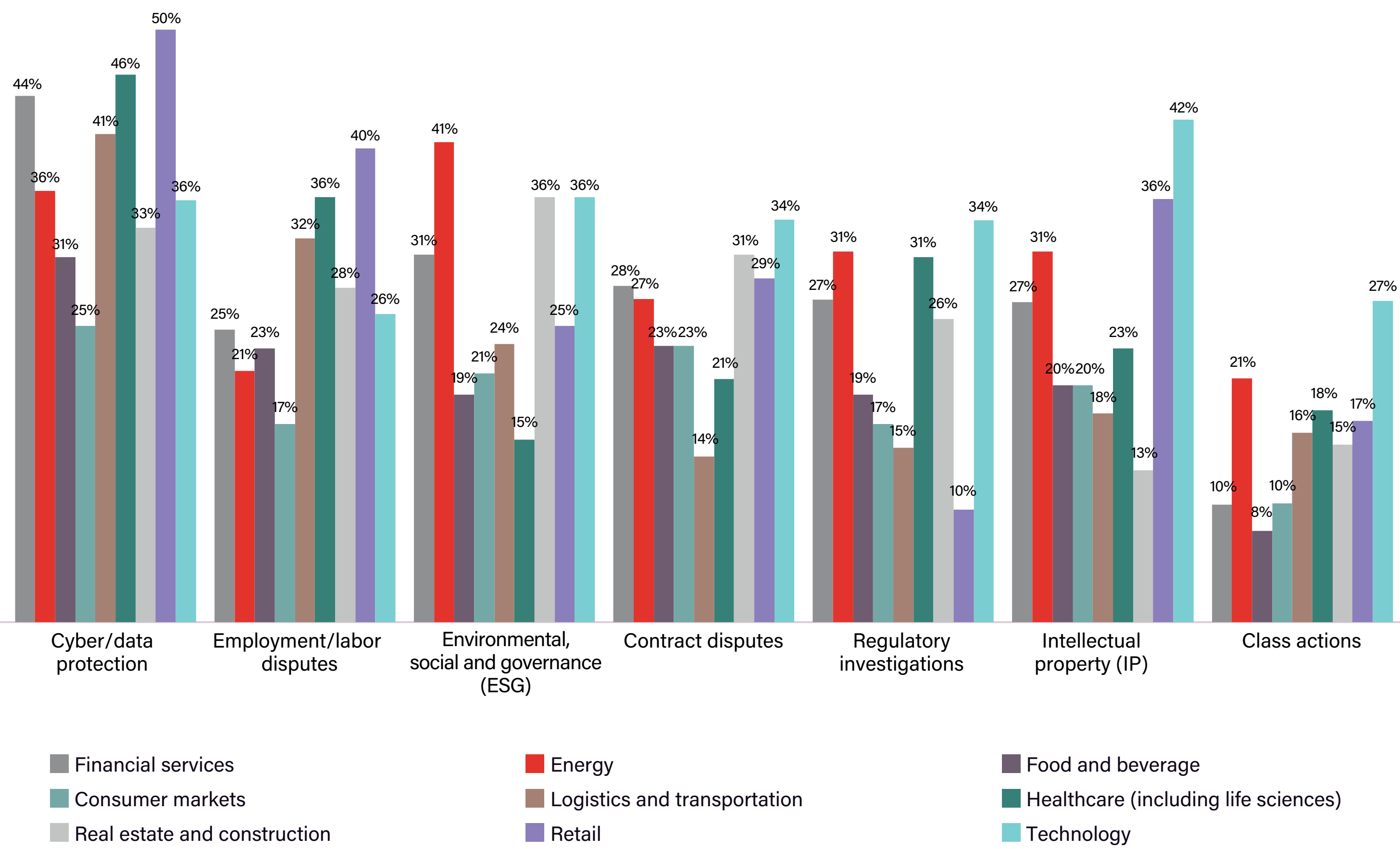


Q. You indicated you expect to be more exposed to employment/labor disputes over the next 12 months. Which of the following trends or issues do you expect to contribute to this expected increase in exposure? Please select all that apply.

That landscape could get more complicated in the coming year. "It's going to be interesting to see how employment law evolves in the wake of the Supreme Court's decision on affirmative action," said one in-house interviewee, a general counsel in the healthcare industry.

> *"When it's suddenly mandatory to do things in one state and illegal to do them in another, it then becomes impossible to truly operate in a compliant manner."*
>
> **Healthcare industry general counsel**

Expected change in dispute exposure over the next 12 months by industry: "Increased" responses



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

Intellectual property

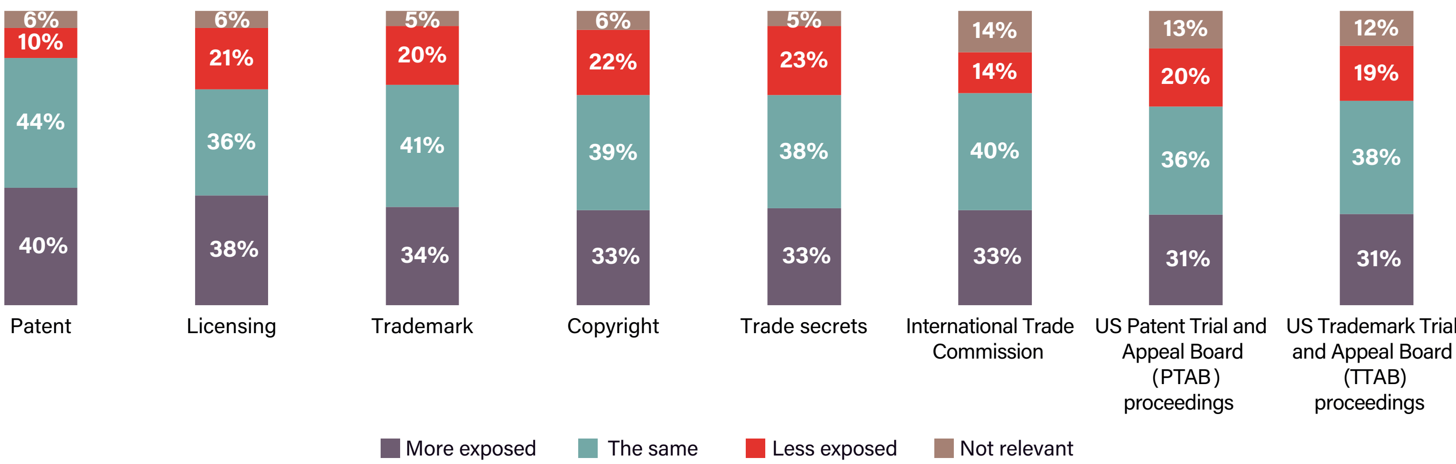
As the Supreme Court examined major IP questions in 2023, just over one-quarter of organizations (26%) report experiencing an increase in IP dispute exposure over the last year, with patents appearing to drive the upward momentum.

Forty percent of respondents say that their patent dispute exposure grew in 2023, with 45% expecting their exposure to grow even more next year. This may reflect economic concerns, with organizations attempting to monetize the value of their IP portfolios through patent litigation to preserve or grow their market share when earnings weaken.

Relatedly, 31% saw their US Patent Trial and Appeal Board (PTAB) proceeding dispute exposure grow in the last year, despite a drop in the number of post-grant proceedings in 2022. "While the PTAB will remain an important venue in which parties can challenge the validity of US patents, the US Patent Office's proposed rulemakings and interim guidance concerning issues such as the discretionary denial of petitions may begin to push some challenges back to the district courts," noted Norton Rose IP partner Art Licygiewicz. "Given the changing landscape, patent challengers will have to more carefully weigh the risks and rewards of using the post-grant proceeding process to resolve validity issues."

Licensing followed closely behind patents as 38% report an increase in exposure. Roughly one-third of respondents also report growing dispute risks around trademarks (34%), copyrights (33%) and trade secrets (33%) last year.

Change in level of exposure in specific IP areas over the past 12 months

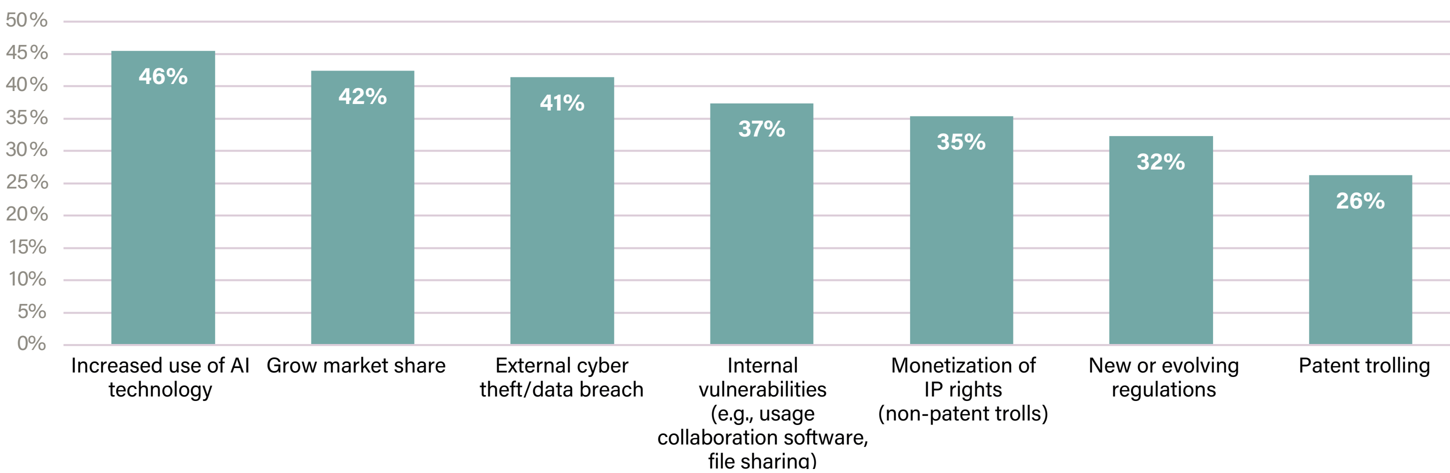


Q. You indicated an expected change in IP dispute/proceeding exposure over the past 12 months. Specifically, how did the following areas of IP change in exposure?

IP concerns cast a significant shadow over retail, technology and energy organizations, which saw the greatest increases in their dispute exposure over the last year – and are also the industries with the highest expectations around future dispute vulnerabilities.

Nearly half of respondents (46%) expect the increased use of AI technology to contribute to IP exposure over the next year – making it the leading contributor – though concerns may be reflecting the lack of certainty around AI's role in patent inventorship, copyright ownership and fair use cases. Approximately four in 10 respondents say that growing market share (42%) and external cyber theft or data breaches (41%) will also play a role.

Trends or issues contributing to IP exposure



Q. You indicated you expect to be more exposed to IP dispute/proceeding exposure over the next 12 months. Which of the following trends or issues do you expect to contribute to this increase in exposure? Please select all that apply.

Environmental, social and governance

As ESG issues become politically polarized, organizations are increasingly finding themselves stuck in a tug-of-war between ESG regulatory pressure and vocal opposition from stakeholders.

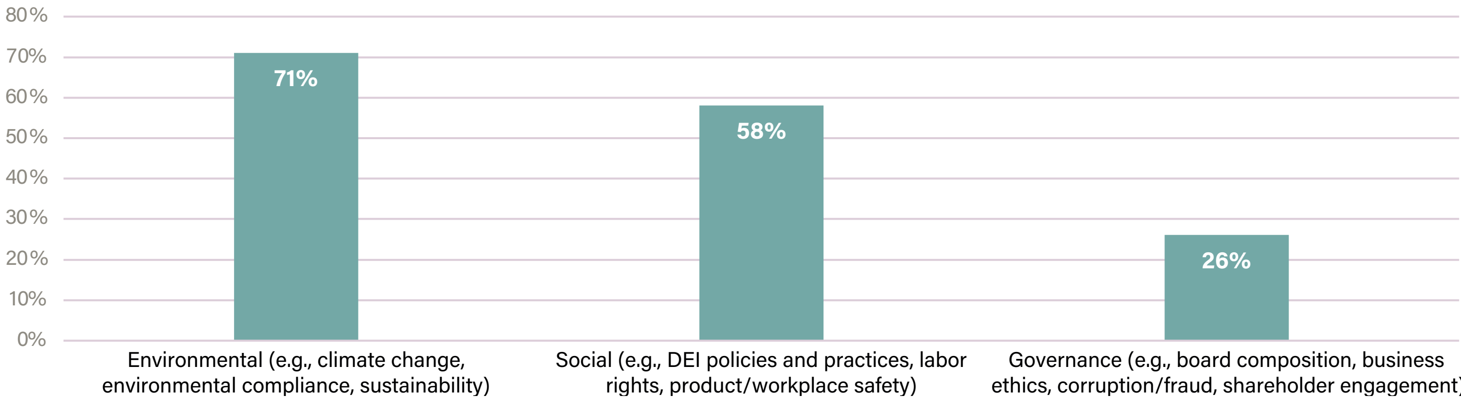
Nearly one-quarter (24%) of respondents saw their ESG dispute exposure increase over the last year, with 27% expecting more exposure in 2024. The latter group includes significant proportions of respondents in energy (41%), real estate and construction (36%) and technology (36%).

Two conflicting trends appear to be driving the increase in dispute potential. Pro-ESG regulatory pressures are the leading issue (40%), followed by anti-ESG sentiment from stakeholders (37%). These competing forces pose a thorny problem for organizations that are navigating compliance with ESG disclosure requirements like the European Union's Corporate Sustainability Reporting Directive while also trying to temper opposition flaring among conservative political circles in the US.

The anti-ESG bark may be bigger than its bite, however. Only 29% of respondents say anti-ESG regulatory pressures are contributing to an increase in exposure. Similarly, pro-ESG sentiment from stakeholders may be less of an issue than ESG and climate-related regulations themselves – just a third (33%) say it is a factor increasing dispute exposure.

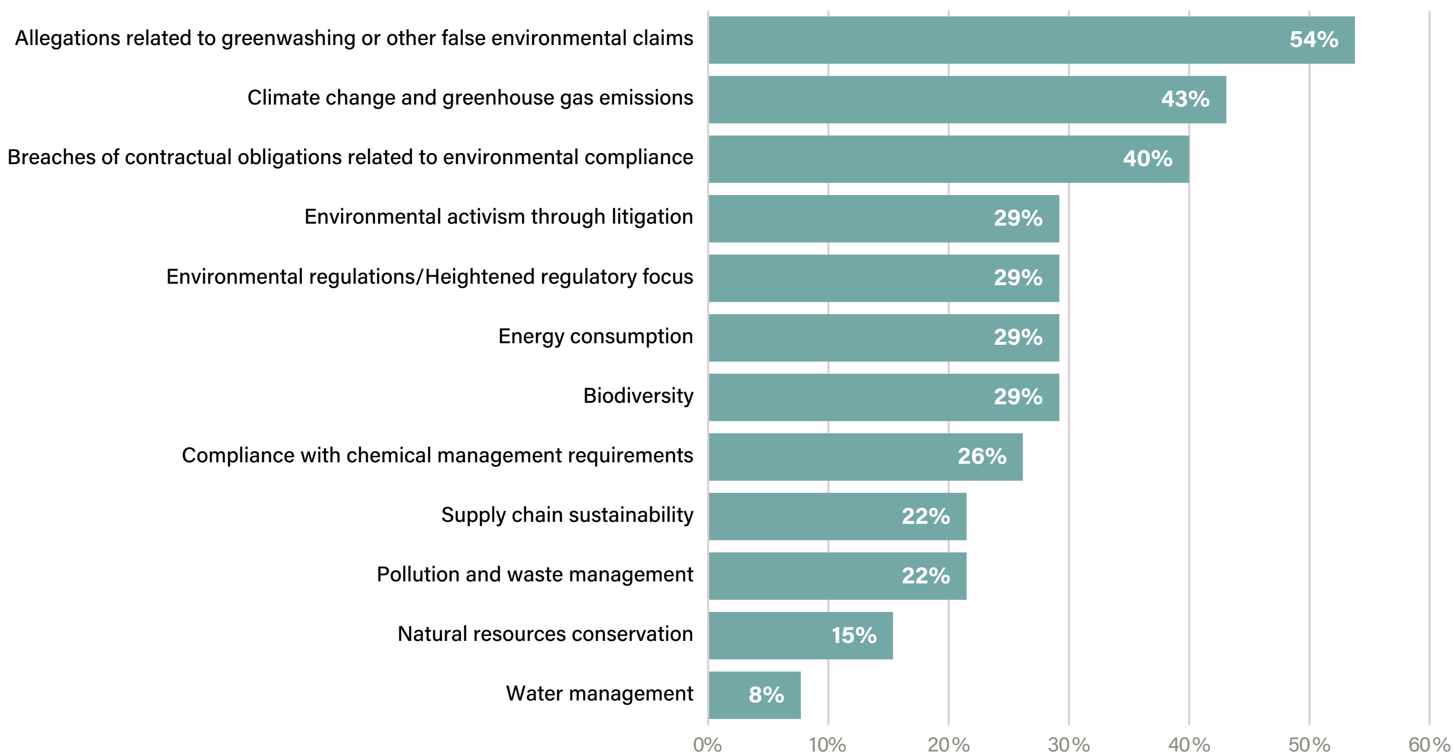
Within ESG issues, environmental concerns again rank as the most prominent area expected to drive disputes in 2024, selected by 71% of respondents. Among respondents who expect their environmental exposure to increase in the coming year, more than half (54%) identify allegations related to greenwashing or other false environmental claims as a contributor. "This comes as regulators like the Securities and Exchange Commission (SEC) focus on greenwashing in relation to ESG," said Norton Rose Fulbright disputes partner Rachel Roosth, "and as activists continue to target the accuracy of corporate environmental claims in statements and advertising." Exposure to disputes and litigation surrounding climate change and greenhouse gas emissions rank second (43%), followed by breaches of contractual obligations related to environmental compliance (40%).

ESG areas expected to drive disputes over the next 12 months



Q. Which of the following areas that comprise ESG do you expect to be an increasing driver of disputes in the next 12 months? Please select all that apply.

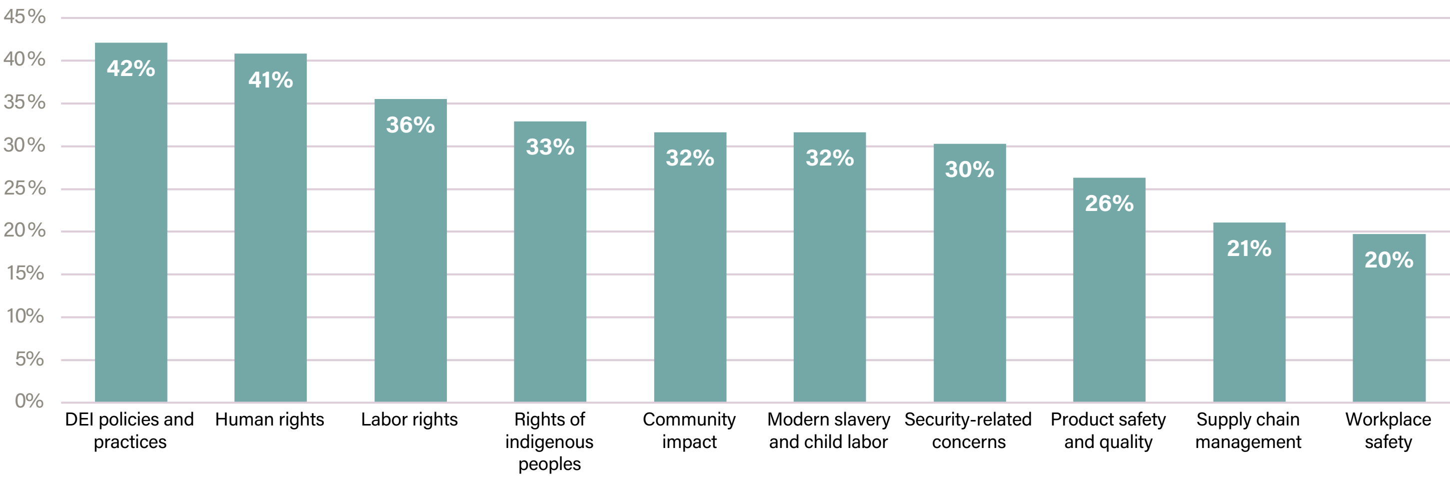
Trends or issues expected to contribute to increase in environmental disputes over next 12 months



Q. You indicated you expect to be more exposed to environmental disputes over the next 12 months. Which of the following trends or issues do you expect to contribute to this increase in exposure? Please select all that apply.

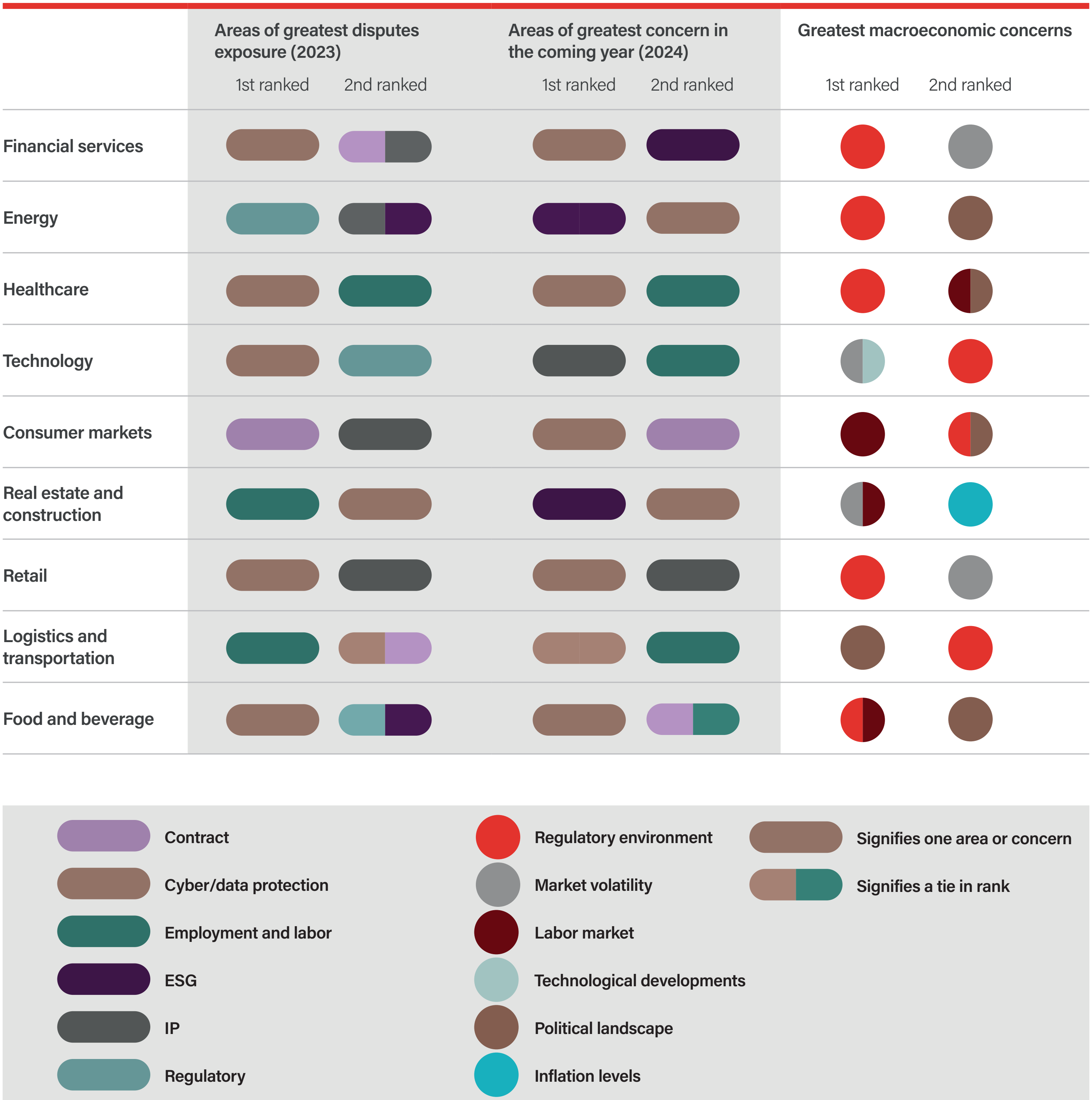
Social issues falling under the ESG umbrella are also an area of future concern for more than half (58%) of respondents, thanks in large part to the recent controversies surrounding diversity, equity and inclusion (DEI) programs after the Supreme Court struck down higher education affirmative action policies in 2023. Among organizations that expect greater exposure to social disputes, DEI policies and practices rank as the leading contributor (42%), followed by human rights (41%), which may reflect the spotlight cast by congressional investigations into forced labor allegations tied to corporate operations in China. On a related note, 36% of that group cite labor rights as a factor, results that come amid continued activity by labor unions – including a months-long strike by the Writers Guild of America in the spring and a major strike among autoworkers in the fall.

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



Q. You indicated you expect to be more exposed to social disputes over the next 12 months. Which of the following areas or issues do you expect to contribute to this increase in exposure? Please select all that apply.

Industry breakdown: Concerns and exposures



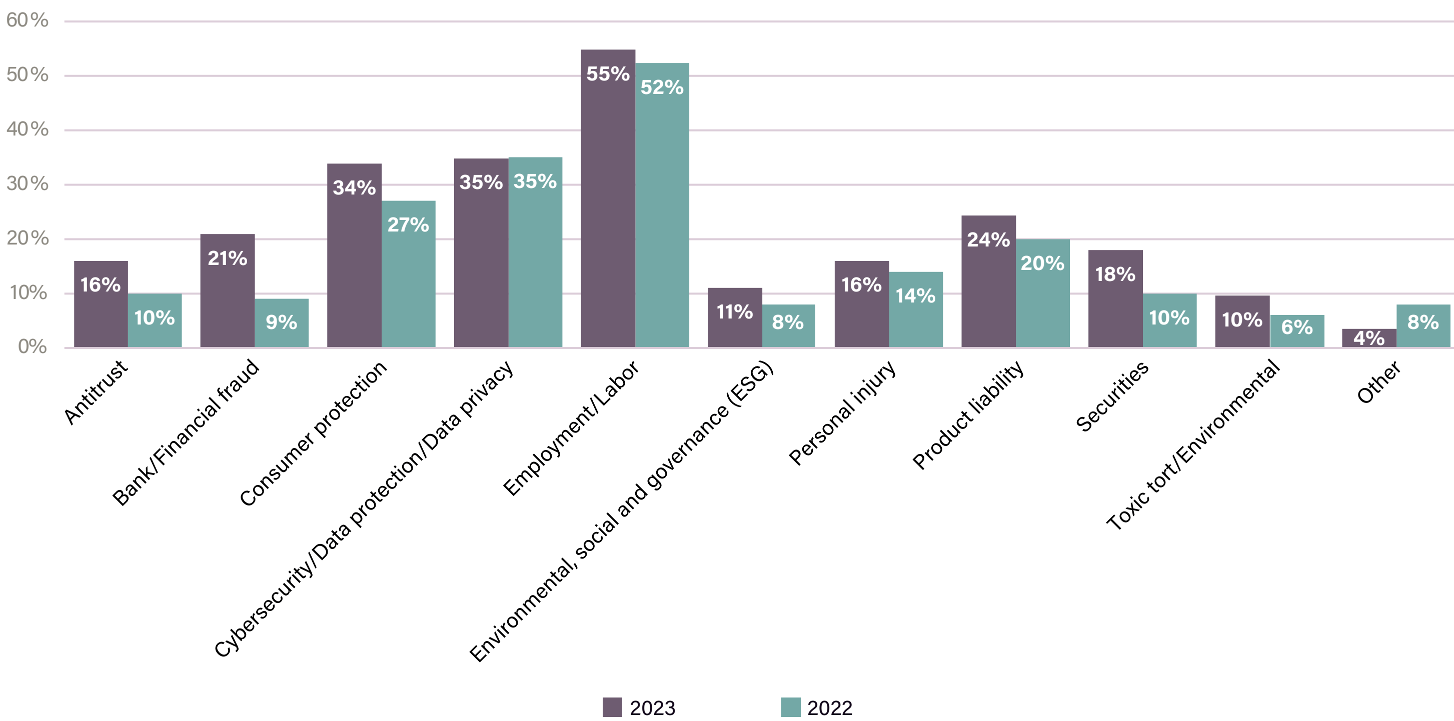
Class actions

Organizations experienced a wider array of class action issues in 2023.

Of the 28% of respondents who were involved in class action litigation over the past 12 months, employment and labor matters and cybersecurity and data protection/privacy issues were the most common such types, with 55% and 35% experiencing these in 2023. Both are likely to feature in future dispute activity, as they were also the two top areas of class action concern for 2024, at 48% and 46%, respectively.

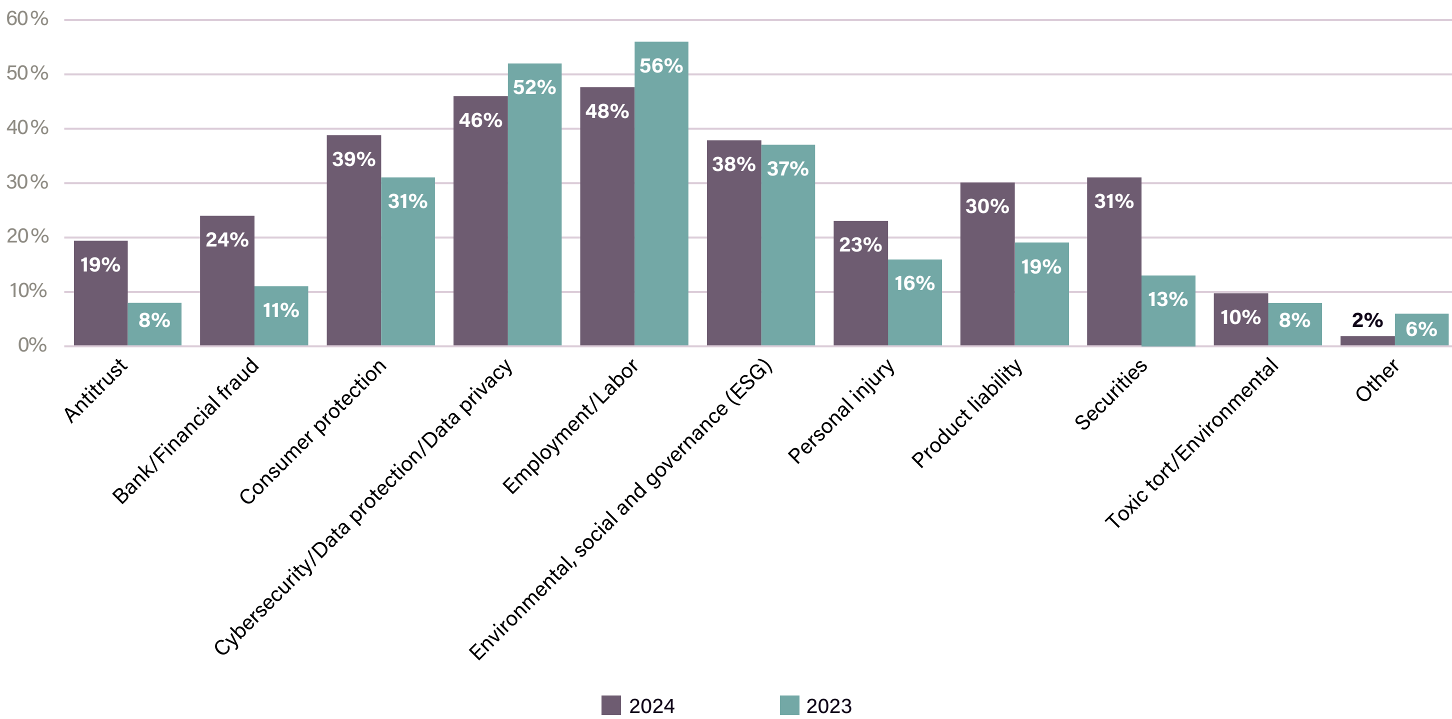
ESG was a growing focus for class actions in 2023, experienced by more than one in 10 (11%) organizations involved in class actions compared to just 8% in 2022. A regional general counsel from the financial services industry felt that investors would play a strong role in this uptick. Consumer protection also jumped seven percentage points, from 27% to 34%. These areas are likely to receive more attention this year, with 39% of those expecting class actions indicating that consumer protection is a particular area of concern and 38% saying the same of ESG. Similarly, concerns around product liability class actions increased to 30% this year from 19% at the beginning of 2023.

Class action involvement over the previous year



Q. Specifically, in which type(s) of class actions was/were your organization involved? Please select all that apply.

Class actions of future concern



Q. Specifically, which type(s) of class actions is/are of future concern? Please select all that apply.

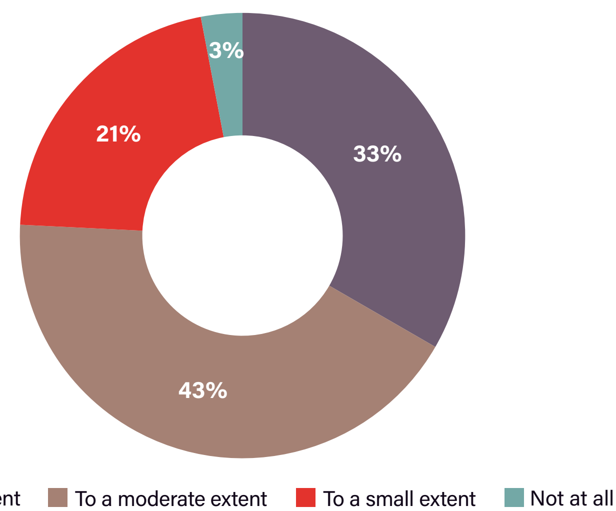
Banking and financial fraud class actions

The banking crisis that sank several banks and destabilized bank stock prices globally last year appears to have spurred activity from the plaintiffs' bar amid calls for accountability and investigations uncovering misconduct. Among the 28% of respondents who experienced class actions in 2023, one in five (21%) were involved in bank or financial fraud class actions – a 12-percentage point jump from 9% in 2022. Securities class actions also saw a notable increase in incidence rates, to 18% from 10% in 2022, while antitrust rose to 16% from 10%.

Nearly one-third (31%) of those concerned about class actions in the year ahead cite securities class actions as an area of focus, while nearly a quarter (24%) anticipate potential bank and financial fraud class actions in 2024, compared to just 11% at the beginning of 2023.

Reflecting concerns over real estate market volatility and rising interest rates, nearly all (97%) of those with banking and financial-fraud class action concerns agree that mortgage and loan asset portfolios present class action risks, with three-quarters (75%) moderately or significantly concerned. "The real estate market is still on edge," said Norton Rose Fulbright commercial litigation partner Mayling Blanco. "Recovery has lagged post–COVID-19 as hybrid work arrangements become the norm, creating a strain on real estate mortgages and loans."

Extent of concern regarding mortgage and loan asset portfolio-related class action risk



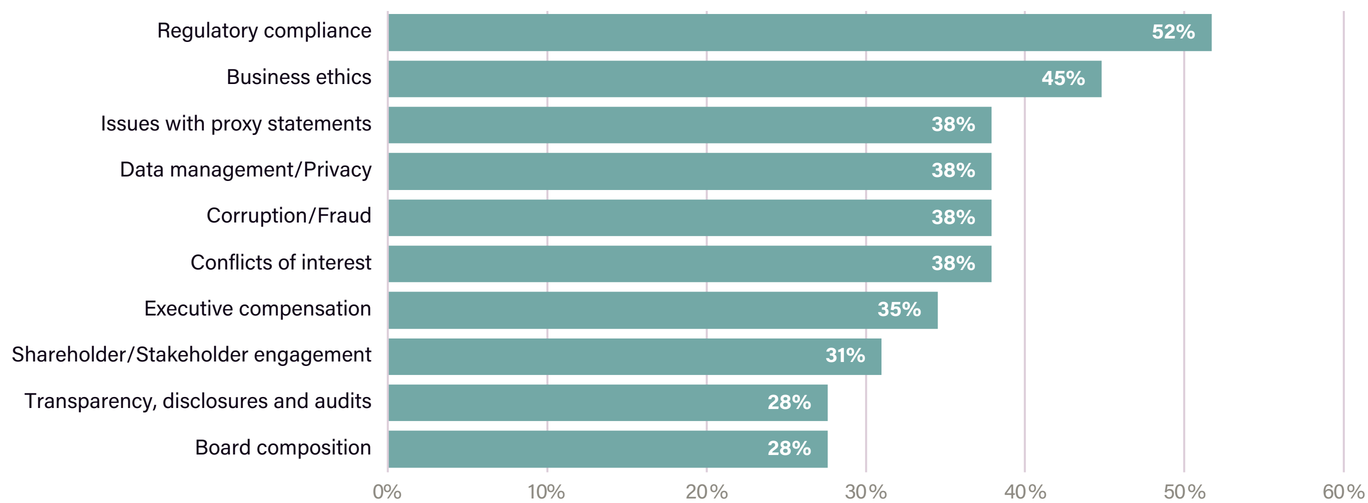
Q. You indicated you were concerned about bank/financial fraud class action risk in the year ahead. Specifically, to what extent are you concerned with class action risk around mortgage and loan asset portfolios?

Regulation and investigations

Regulatory proceedings were up in 2023, with 61% of respondents saying they were involved in at least one this year, compared to just half (50%) the year before. General counsel and in-house litigation leaders are also dealing with more regulatory matters, as the average number of proceedings grew to 3.9, compared to 3.5 in 2022 and 2.9 in 2021. Forty percent experienced regulatory and investigations-related litigation over the last 12 months – which puts it on par with cybersecurity and data privacy as the third most common type of litigation.

Signaling that regulatory scrutiny is unlikely to soften as the executive branch pursues action in areas like cybersecurity, antitrust, and employment and labor, 43% also expect regulatory proceedings and investigations to grow in 2024. More than half (52%) of respondents say that issues with regulatory compliance could increase their governance dispute exposure in the year ahead.

Areas expected to contribute to governance disputes over the next 12 months

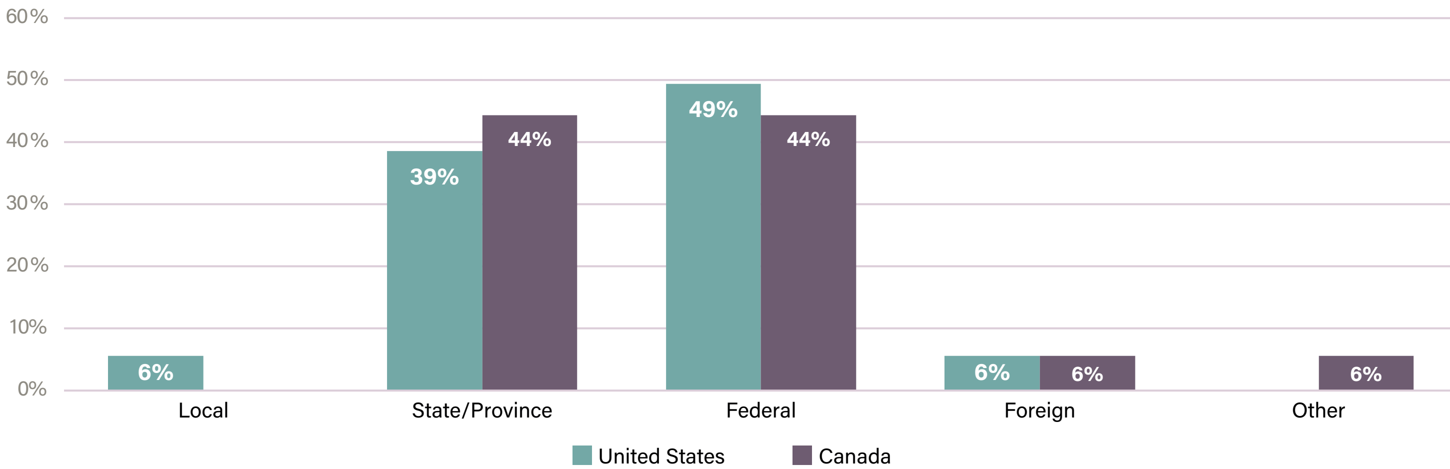


Q. You indicated you expect to be more exposed to governance disputes over the next 12 months. Which of the following areas or issues do you expect to contribute to this increase in exposure? Please select all that apply.

"With what transpired with Silicon Valley Bank and First Republic, our legal department believes there's going to be heightened regulatory and supervisory scrutiny," said a US-based regional general counsel of a multinational bank, adding that the organization is under more pressure from the SEC and the Department of Justice following a crackdown on communications and recordkeeping compliance. "We believe we're doing it effectively, but fines are rampant."

Still, intensified enforcement of existing laws is not the only cause for concern. Forty-two percent of those who expect more regulatory dispute exposure in the coming year cite recently passed or potential laws and regulations as contributing to their litigation exposure. In-house counsel attribute this not only to federal (49%) but also to state (39%) regulatory changes amid an increase in regulatory activity and enforcement to address a real or perceived lack of federal action on key issues. For example, some states are using older or existing tools to address misconduct involving new technologies and industries. New York (44%), California (43%) and Florida (36%) had some of the highest proportions of state-level exposure concern from respondents located in those states.

Source of regulatory exposure



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, federal or foreign regulatory changes? Please select one.

Technology

On an industry level, regulatory activity appears to pose the biggest threat for technology companies, as antitrust regulators deepen their scrutiny of Big Tech and federal and state investigators probe consumer harms around social media. More than half of technology respondents (51%) expect the number of regulatory proceedings commenced against their organizations to grow in 2024. "Technology and resource competition among nations underlie many of the regulatory issues impacting tech industries," said Brian Sun, a regulations, investigations, securities and compliance partner at Norton Rose Fulbright. "Whether your business is microchips, generative AI or biotech, all market participants should be aware of the local and global politics at play and how they may impact the regulatory priorities of each country in which they operate."

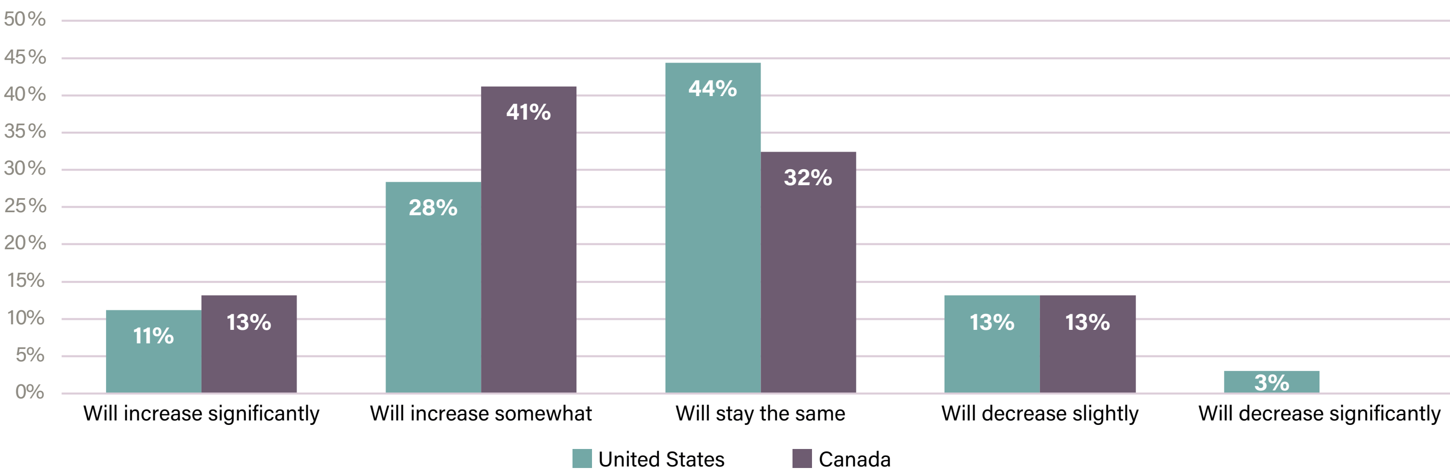
President Biden's Executive Order on the Safe, Secure, and Trustworthy Development and Use of Artificial Intelligence, issued in October 2023, also signaled the current administration's desire to put some guardrails on AI technology. While the standards, testing and administrative provisions of the order are a far cry from the EU's AI Act framework, US technology companies may see more regulatory activity around AI in the year to come.

Differences in Canada

When it comes to legal disputes, the expectations of Canada-based respondents are largely in line with those of their US counterparts – with a few key differences around arbitration and regulatory matters. Nineteen percent of Canadian respondents expect arbitrations will increase significantly over the next 12 months, compared to just 10% in the US. They are also more likely to anticipate a rise in regulatory proceedings and investigations; more than half (54%) expect them to rise, compared to just 39% in the states.

Norton Rose Fulbright partner François-David Paré, Montréal chair of the firm's litigation and disputes group, noted that Canada's 2018 adoption of a deferred prosecution agreement regime, which offers additional tools for prosecutors pursuing white-collar crime and corruption cases, "may contribute to the anticipated growth for investigations and regulatory proceedings, particularly after the recent ratification of the first such agreements in the country's history."

Expectations for regulatory investigations/proceedings by country



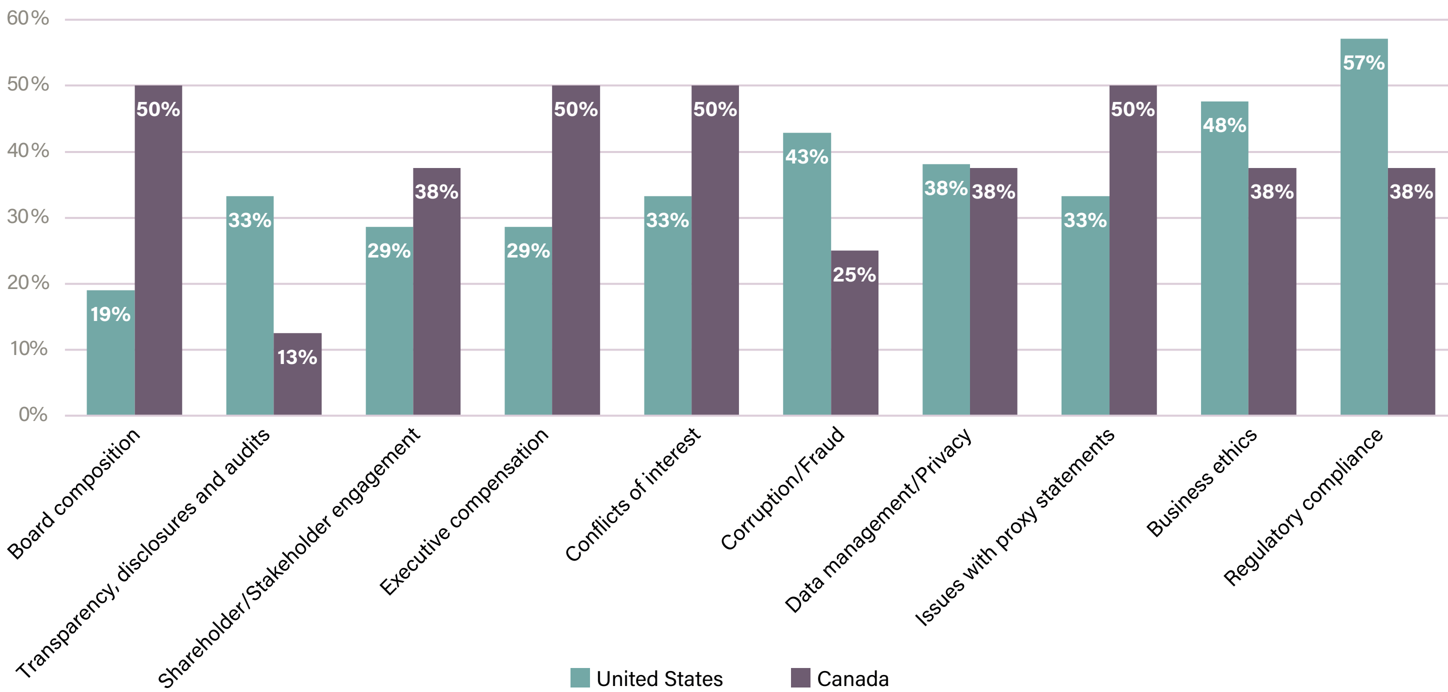
Q. What is your expectation for regulatory proceedings commenced against your organization over the next 12 months?

While legal professionals in the US are more concerned about federal than state regulatory changes, Canadian respondents are divided evenly, with 44% expecting impact from changes at the province level, and 44% saying the same of federal changes. This can likely be attributed to historically generous interpretations of provincial powers by Canadian courts, compared to more restrained views of federal powers, offering provinces a greater impact on the regulatory scheme compared to their US counterparts.

Interestingly, regulatory compliance itself is a less relevant issue when it comes to governance in Canada. While 57% of US respondents identify compliance as an area where they expect to deepen exposure to governance disputes in 2024 – the highest ranked response among the overall respondent pool – just 38% in Canada agree. Instead, Canadian respondents were far more concerned with the impact of board composition, executive compensation, conflicts of interest and issues with proxy statements, all of which were selected by half (50%) of respondents in Canada.

"Board composition, executive compensation, conflicts of interest and issues with proxy statements are all areas of focus in Canada, where there are enshrined corporate and securities laws, stock exchange rules and recommended best practices for such matters," said Norton Rose Fulbright business law partner Evelyn Li, based in Toronto. "Issues such as a stagnant, homogenous board or a lack of alignment between the board and shareholders are also often part of an activist campaign against an issuer in Canada, so it's natural for organizations to see these as contributors to governance dispute exposure."

Areas expected to contribute to governance disputes over the next 12 months



Q. Which of the following areas or issues do you expect to contribute to this increase in governance exposure in the next 12 months? Please select all that apply.

Preparedness and tools

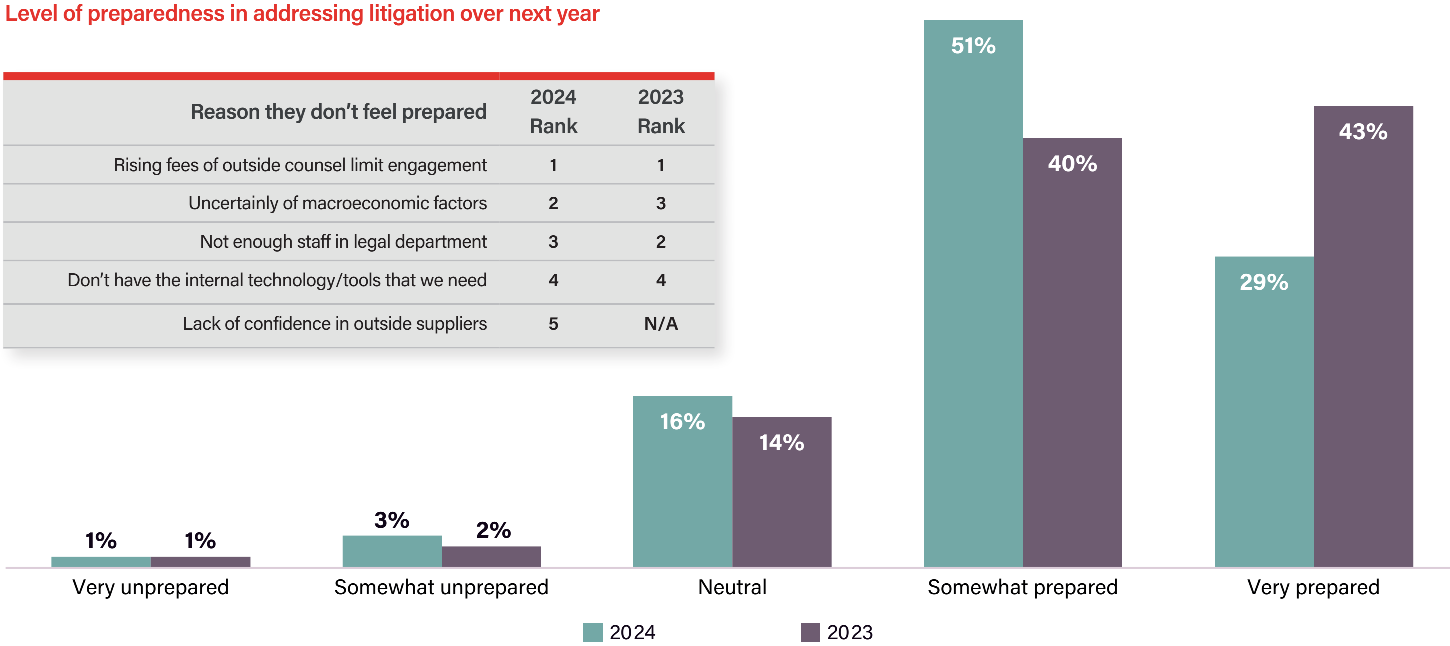
2023 saw a notable drop in corporate counsel's confidence in their ability to handle litigation, as organizations confront legal issues ranging from mounting regulatory investigations to heightened dispute exposure in the year ahead.

Only 29% of respondents say their organizations are very prepared to address litigation in 2024, compared to 43% in last year's report. The majority (51%) place themselves in the "somewhat prepared" category, compared to 40% last year, reflecting a more tempered outlook for the year ahead.

> *"The litigation environment is more complex when business relationships are less predictable, particularly in these volatile economic and political cycles. Litigation becomes more probable in these turbulent times, and seeking the views of outside litigation counsel to assess risks and to prepare strategies at the early stages becomes more important when in-house counsel identifies potential disputes that may lead to substantial risk."*
>
> **Richard Krumholz**
> Global Head of Litigation and Disputes

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
Uncertainly 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



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

The top reason for feeling unprepared, this year and last, is the rising fees of outside counsel, which limit organizations' engagement with their law firms. Uncertainty of macroeconomic factors ranked second, followed by a lack of legal staff internally and the lack of necessary internal technology and tools (the third- and fourth-ranked reasons, respectively).

Asked about what they were using to track litigation risk, interviewees tended to cite only one major tool or software program, rather than an arsenal of options. Others cited matter management platforms and legal eBilling system software – which help with project management and other tasks but don't directly address legal risks – as litigation tools.

Still, few corporate counsel go so far as to say outright that they are unprepared to address what lies ahead. Of those who *do* feel prepared, many credit that confidence to a strong understanding of their business and risk factors, while others cite the quality of their outside counsel or the degree of trust they place in those providers.

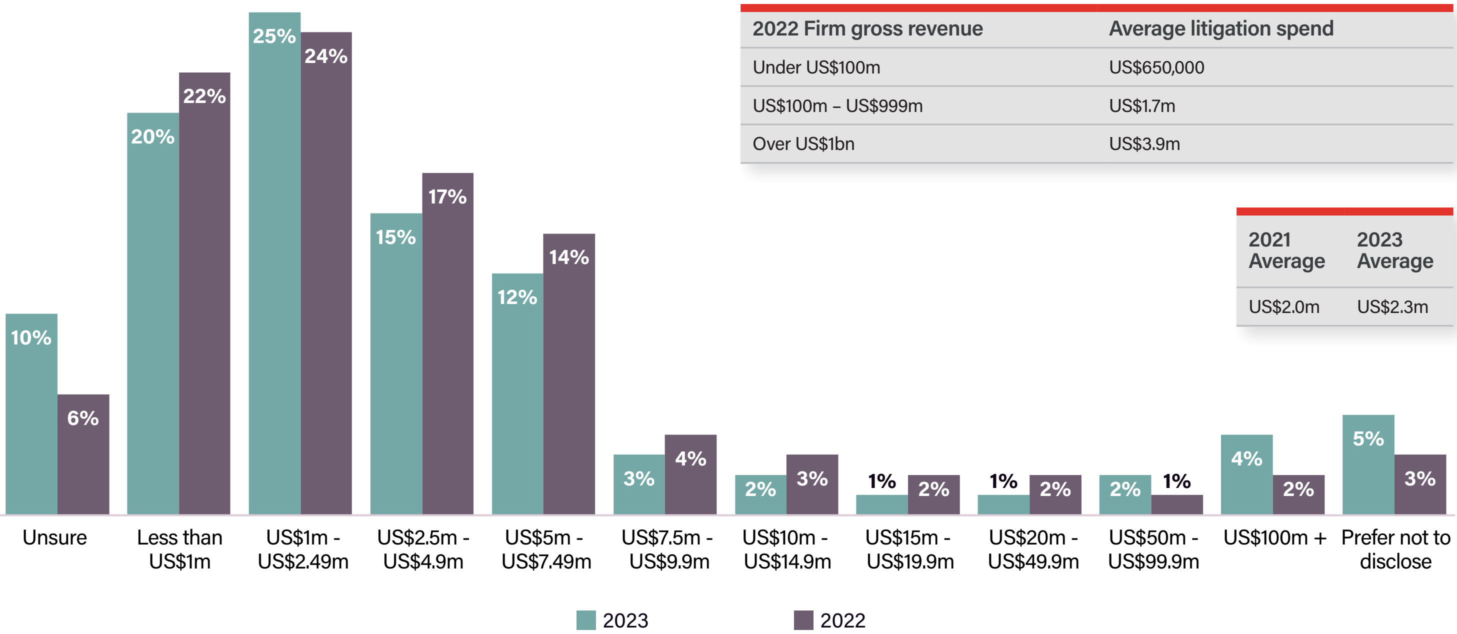
Litigation spending

Organizations' annual litigation spending remained relatively consistent, rising slightly from previous years to an average total of US$2.3m, compared to US$2m in 2021. For organizations with revenues over US$1bn, annual litigation spending averaged US$3.9m – six times the level of those with revenue under US$100m, that averaged US$650,000. Companies with US$100m to US$999m in revenue averaged US$1.7m in litigation spend.

The share of the budget spent on outside counsel remained relatively flat in 2023 from the previous year, to 65% from 63%, while the share allocated to personnel and other in-house expenses shrank slightly, down to 19% in 2023 versus 22% in 2022. Spending on other vendors – such as eDiscovery firms, alternative legal service providers and expert witnesses – also changed little, at 10% of litigation budget from 8% in the previous year's survey.

"The unpredictability of litigation spending is a recurring pain point," said a senior counsel for US litigation and investigations at a pharmaceutical company. "Predicting it is two-fold. We have really strong relationships with our outside counsel and get in the weeds with them about day-to-day matters while also constantly revisiting our budget, even on a weekly basis."

Annual litigation spend

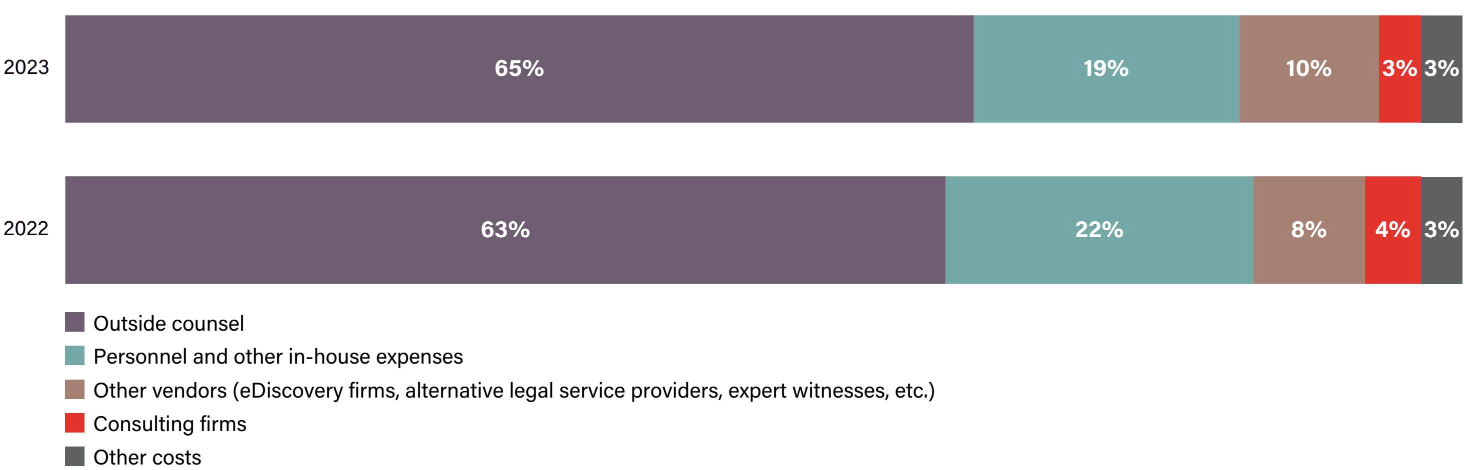


2022 Firm gross revenue	Average litigation spend
Under US$100m	US$650,000
US$100m – US$999m	US$1.7m
Over US$1bn	US$3.9m

2021 Average	2023 Average
US$2.0m	US$2.3m

Q. Please estimate the specific annual litigation spend in US$ for your entire organization, excluding cost of settlement and judgements.

Litigation spend allocation, 2023 vs. 2022



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

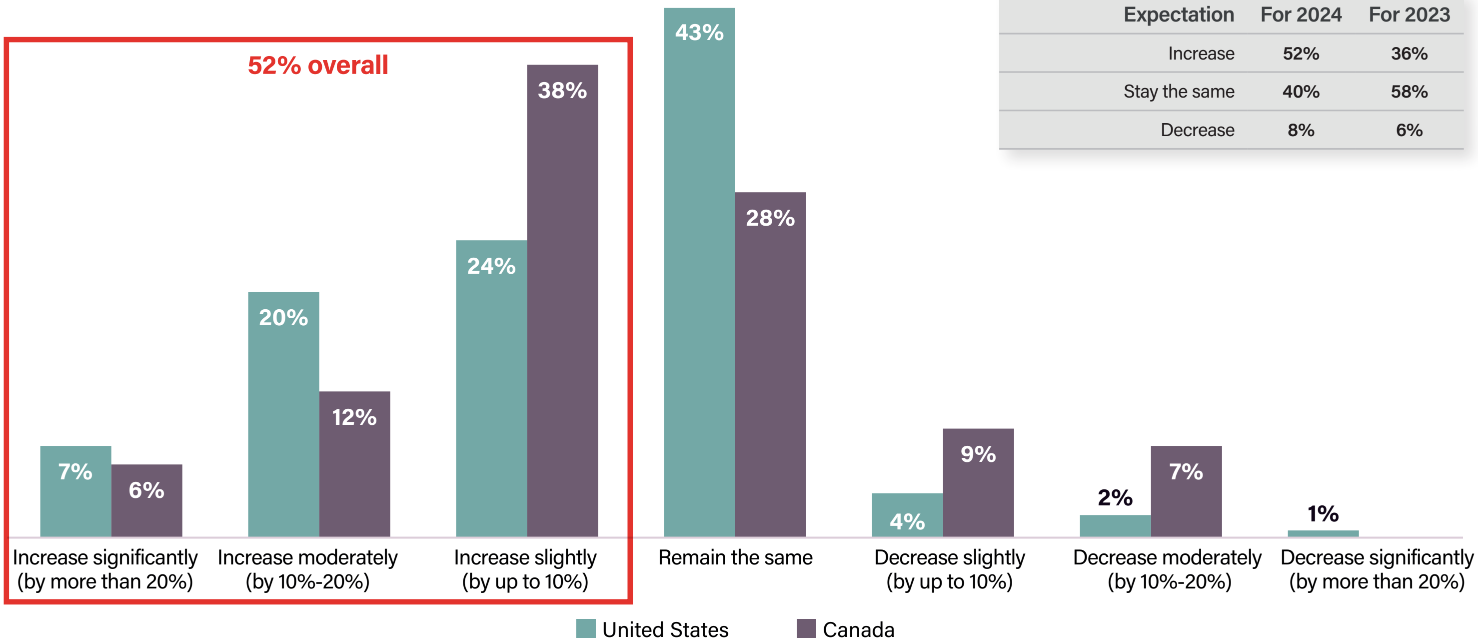
Staffing

Organizations are preparing to expand legal department headcount to meet a heavier workload. More than half (52%) say they expect an increase in the number of in-house lawyers at their companies who manage and/or conduct litigation – a major jump compared to just 36% last year.

While increased litigation remains the leading reason for ramping up internal hiring (41%), three in 10 respondents attribute it to an expected decrease in outside counsel engagement. Currently, organizations seem inclined to spread the work among a number of outside law firms, with 41% employing more than five.

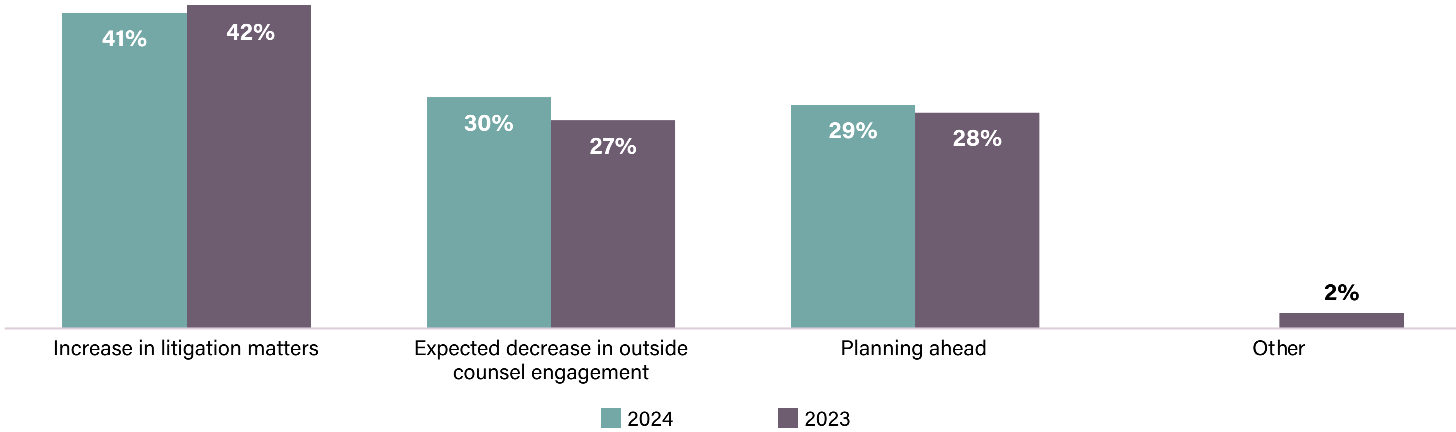
Expected changes in legal department staffing

Expectation	For 2024	For 2023
Increase	52%	36%
Stay the same	40%	58%
Decrease	8%	6%



Q. Over the next 12 months, do you expect the number of in-house lawyers within your company who manage and/or conduct litigation to increase, decrease or stay the same?

Primary reason for legal department expansion

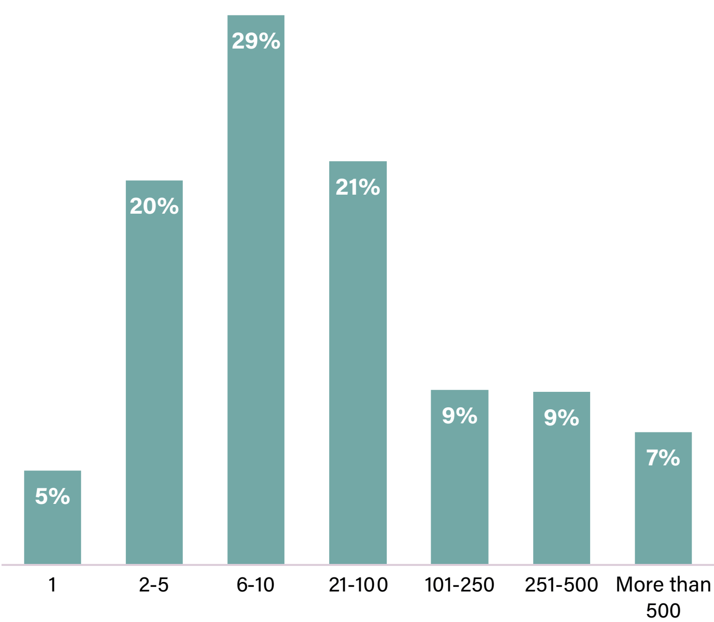


Q. What is the primary reason for the expected expansion of your legal department?

On the other hand, most in-house dispute teams are small, with the majority (54%) having 10 or fewer lawyers. Approximately one in five (21%) had between 20-100 in-house lawyers working on disputes.

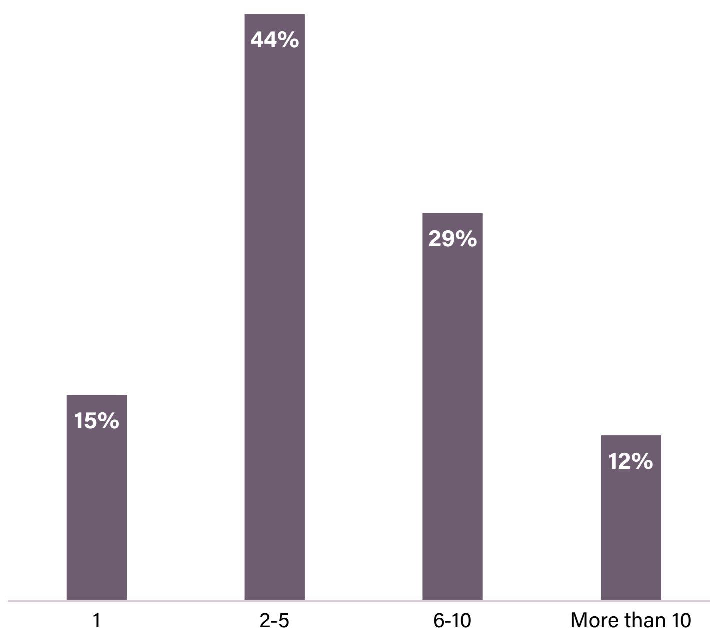
Asked about the most important attributes in hiring or working with outside counsel, half (50%) of overall respondents say cost and fee structure – that number jumps to 60% for firms with revenue over US$1bn – signaling price sensitivity is a factor as inflation and market volatility persist. Still, client service matters just as much, at least for the biggest companies. Communication and responsiveness is the top-ranked attribute among billion-dollar organizations, selected by 61%.

Number of in-house lawyers handling disputes



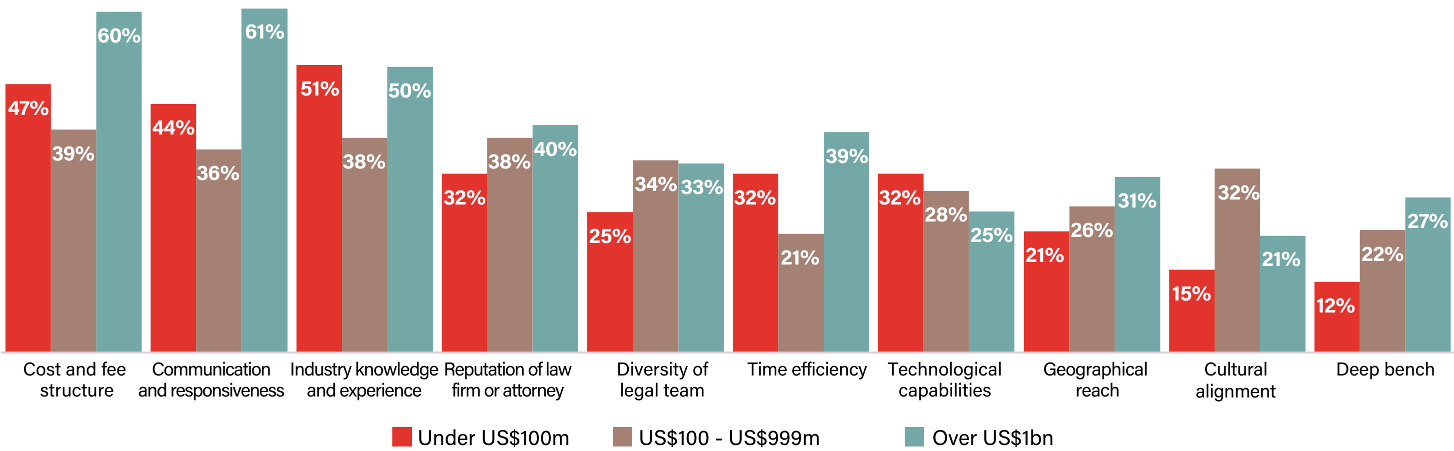
Q. How many in-house lawyers does your organization currently employ to manage and/or conduct disputes?

Number of outside law firms hired for litigation purposes



Q. How many outside law firms does your organization currently employ to represent you in litigation?

Most important attributes in hiring/working with outside counsel by revenue range



Q. Which of the following attributes are most important to your organization when hiring and/or working with outside counsel? Please select all that apply.

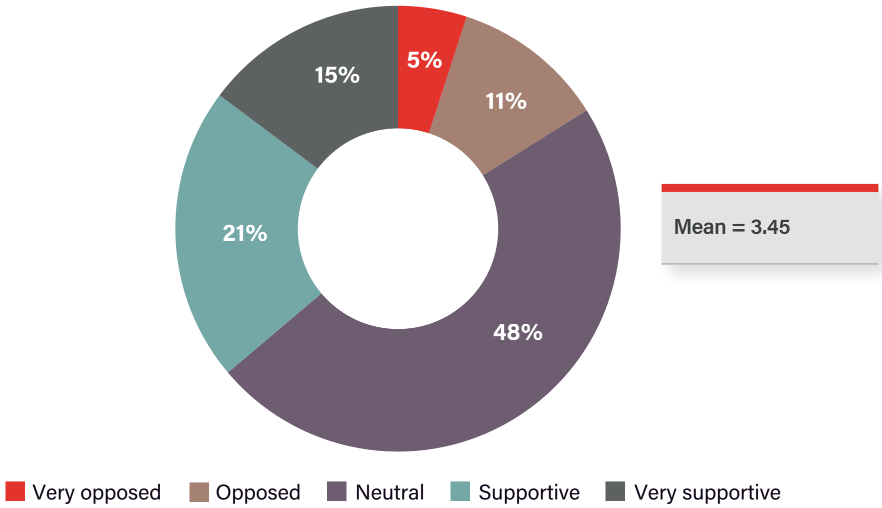
Legal technology

With market volatility and fee structures top of mind, organizations increasingly expect their outside counsel to leverage technological developments to cut costs – and AI is no exception.

More than a third (36%) of respondents support their outside law firms using generative AI to bolster their litigation work; only 5% say they are very opposed. While generative AI is still largely in its infancy, particularly in the legal industry, support for such tools may increase further as their capabilities and sophistication advance and organizations deepen their understanding of the attendant risks and benefits.

Andrea D'Ambra, Norton Rose Fulbright's US Head of Technology and US Head of eDiscovery and Information Governance, noted that while clients will be attracted to the technology's potential to significantly save time and money, preparation will be key if law firms want to meet clients' AI expectations. "As companies and law firms become more comfortable with utilizing generative AI, they should simultaneously be establishing robust measures to protect client confidentiality and ensure information accuracy," she said.

Organizational support of generative AI by outside counsel to support your company's litigation work



Q. On a scale of 1 to 5, where 1 = Very opposed and 5 = Very supportive, how does your organization feel about the use of generative AI by outside counsel to support your company's litigation work?

"We want to make sure our external counsel are taking advantage of AI and have a certain level of sophistication around these tools," said a general counsel in the banking industry. "We hope that outside counsel are willing to experiment."

Another general counsel at a healthcare organization went a step further. While he understands the confidentiality issues of using generative AI tools specifically, he said, "I think those sorts of tools are going to become very useful going forward. Law firms should be figuring out how they're going to use them to help their clients, rather than sticking their heads in the sand and saying it would be inappropriate for law firms to use them."

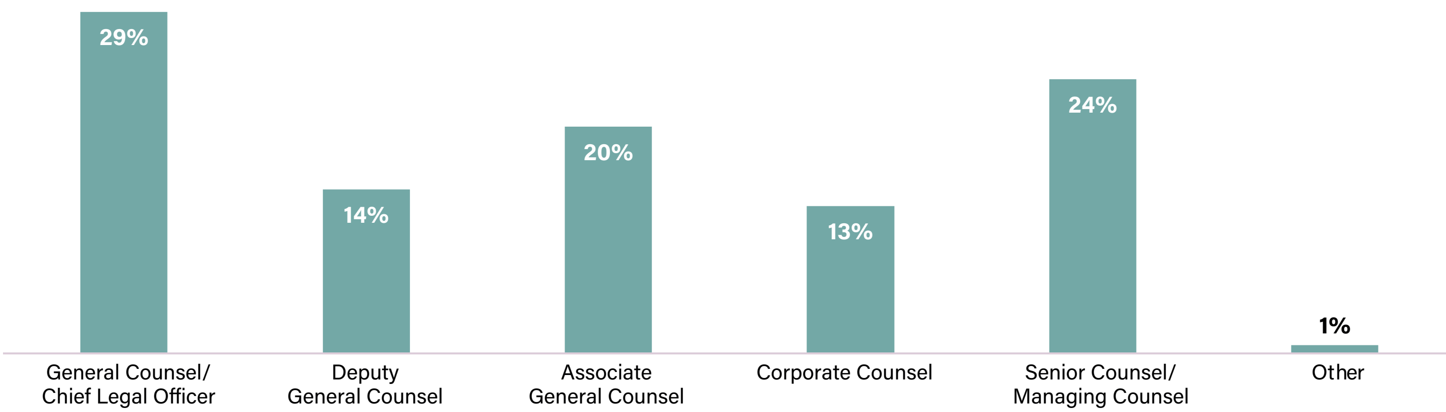
Methodology and demographics

Norton Rose Fulbright's 2024 Litigation Trends Survey draws from both qualitative and quantitative research findings.

On the qualitative side, we conducted nearly 20 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 additional context for the results.

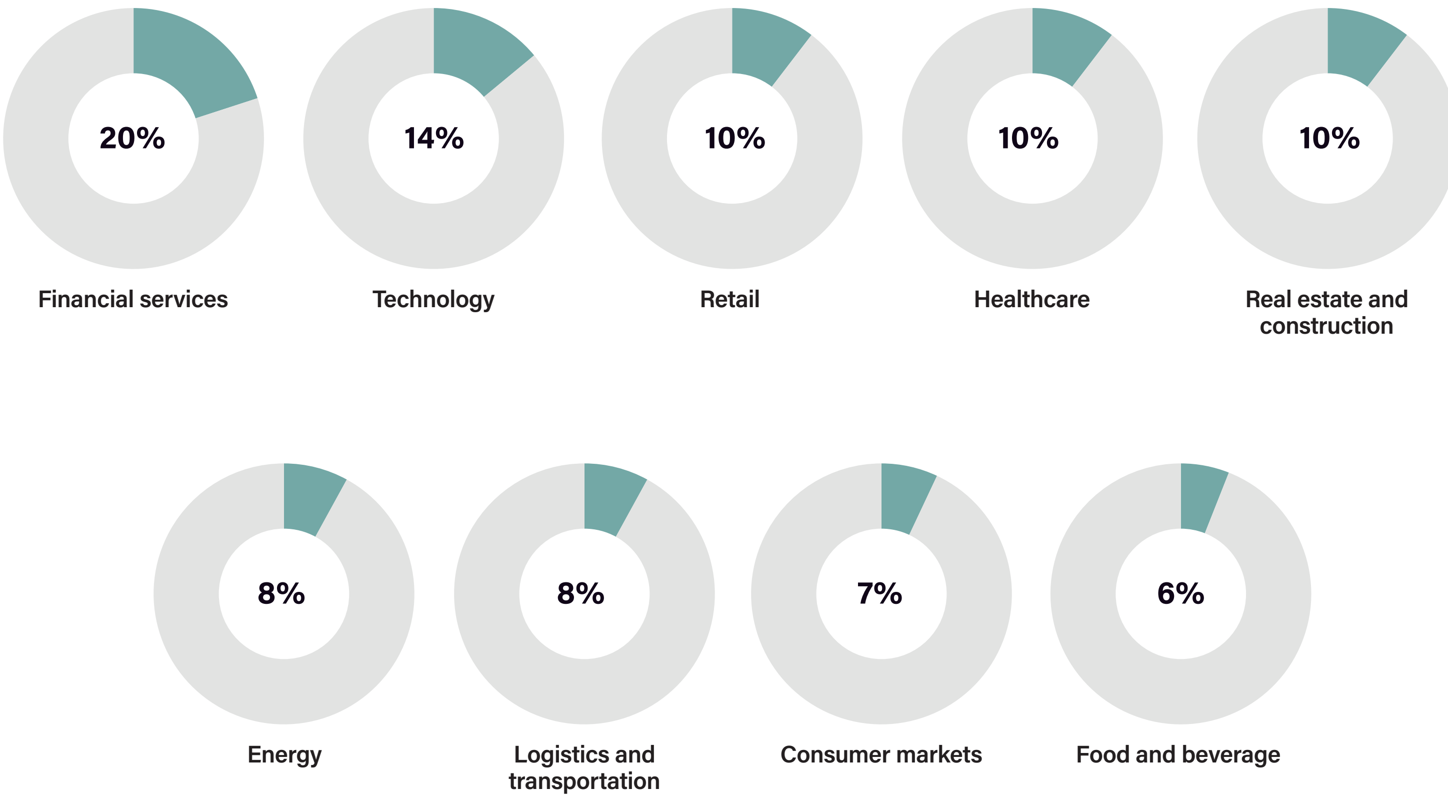
As it has for the last 18 years, Norton Rose Fulbright used quantitative research to track litigation trends over the previous year and gauge perceptions of litigation leaders regarding what the next 12 months may bring. This year's survey was fielded in September 2023 and conducted online. The more than 400 participants – 73% of whom have a leading or co-leading role in litigation oversight – answered a mix of quantitative and qualitative survey questions. Respondents represent 38 US states as well as Washington, DC, and six Canadian provinces. Other demographics are included below.

Title/Role



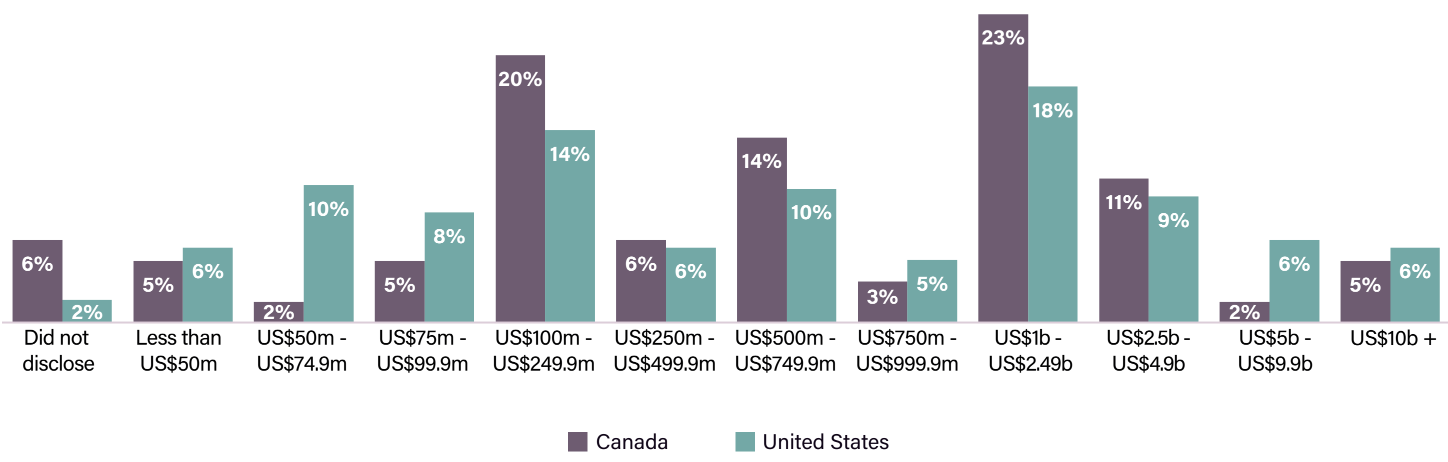
Q. Which of the following best defines your title/role?

Primary industry of operation



Q. What is the primary industry in which your organization operates?

Estimated gross revenue, 2022



Q. What was your organization's approximate gross 2022 revenue in US$?

In today's dynamic business landscape, organizations grapple with increasingly complex challenges, including an evolving patchwork of regulatory requirements and stakeholder expectations amidst the backdrop of high-profile bank fraud cases. Additionally, unprecedented concerns over AI-enabled cybersecurity and data privacy threats compound the potential impact.

Increased regulatory scrutiny and the proliferation of national, supranational and local regulatory frameworks means that incidents occurring in one jurisdiction can quickly impact operations in others. Amid these developments, corporate counsel must have robust preventative measures and compliance tools in place to minimize risk and manage litigation.

Litigation and disputes

Our global litigation and disputes lawyers advise many of the world's largest corporations and financial institutions on complex, high-value and sensitive multijurisdictional disputes. With more than 50 offices across the globe, we have one of the largest disputes legal practices in the world, with significant experience resolving domestic and cross-border mandates, international arbitrations and investigations and enforcement for clients across all the key industry sectors including financial institutions; energy, infrastructure and resources; transport; technology; life sciences and healthcare; and consumer markets.

Our lawyers both prevent and resolve disputes by providing clients with practical, creative legal advice that focuses on their strategic and commercial objectives. Our experience includes the full spectrum of dispute resolution and litigation mechanisms ranging from negotiation, mediation, conciliation and conflict resolution to vigorous courtroom strategy, multi-party and class action lawsuits and appellate proceedings. We have acted on some of the world's highest profile domestic and multijurisdictional investigations, including high-profile regulatory inquiries, regulatory enforcement, criminal investigations and prosecutions, and related civil disputes and litigation. We are experienced in advising on risk and public relations issues in the context of legal disputes.

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