

FP'S NEWLY ENHANCED COVID-19 LITIGATION TRACKER REVEALS 3 SURPRISING TRENDS FOR EMPLOYERS

Insights
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Smaller employers are in far greater danger of being the targets of COVID-19 workplace litigation, as are healthcare employers and other businesses requiring an in-person workforce –Fisher Phillips uncovered in its latest upgrades to the firm’s landmark litigation tracking map. Since it debuted earlier this year as the nation’s first comprehensive database of COVID-19-related employment litigation, the [Fisher Phillips COVID-19 Employment Litigation Tracker](#) has been the go-to source of information for employers looking to ensure they kept one step ahead of workplace lawsuits stemming from virus-related concerns. Due to advances made by the firm’s Knowledge Management Department, the tracker is an even more invaluable tool as it now includes data on three new, key measurements:

- the size of employers being most frequently sued;
- the number of cases filed per state analyzed as a ratio of state population; and
- the industries most commonly targeted by COVID-19 workplace-related litigation.

Here are the three most surprising trends revealed with a fresh examination of this key data:

SMALLER EMPLOYERS ARE BEARING OVERWHELMING BRUNT OF COVID-19 LITIGATION

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FP's upgraded litigation tracker now tracks complaints by employer size – and smaller employers may need to sit down before reading the news that this data set reveals. **Those employers with 50 or fewer employees have been sued at a far greater rate than larger employers, facing a staggering 38% of COVID-19-related lawsuits.** When adding in mid-sized companies with between 51 and 100 employees (receiving another 11% of claims) and those with 101 to 500 employees (just over 17%), we see that **businesses with under 500 workers have been hit with more than 65% of all COVID-19 workplace litigation across the country.**

To a certain extent, this is to be expected. Smaller employers are less likely to have robust compliance systems in place. Further, they may still be in “survival mode” as they adjust to the challenges of conducting business in a pandemic, unable to devote significant resources to getting up to speed on the slew of new legal obligations created in 2020.

However, this data reinforces the need for employers of all sizes – but especially those with under 500 employees – to ensure compliance with new and existing laws. When examined further, the FP COVID-19 Employment Litigation Tracker reveals that the most common case type affecting smaller employers are remote work and leave law conflicts. This is a stark reminder of the importance of complying with the Families First Coronavirus Response Act (FFCRA) and other applicable laws, even if certain provisions may not apply to employers with fewer than 50 employees.

NEW STATES EMERGE AS COVID-19 LITIGATION HOTSPOTS WHEN ADJUSTED FOR POPULATION

While California (217), New Jersey (127), Florida (94), New York (69), Ohio (63), and Texas (61) continue to dominate the charts in terms of the number of COVID-19-related employee vs. employer suits in their states, one might solely attribute those figures to the large populations in those states. **By adding a new map filter which takes into account the relative population of each state (displaying the number of suits per million residents), employers in other states may actually face much higher odds of being a defendant in a COVID-19-related employment lawsuit.**

The data now reflects that New Jersey, for example, has a whopping 14.30 suits per million residents, followed by Washington D.C. (8.5/1M), Kentucky (7.39/1M), and Montana



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(5.61/1M). While California remains a challenging location for employers (5.49 complaints per million people), states like Pennsylvania (only 2.73/1M), Illinois (only 2.53/1M), and Texas (only 2.14/1M) now appear much less problematic than the number of overall lawsuits would suggest.

The upshot? While we don't recommend that employers in states with lower ratios and thus lower risk (such as Maryland, Nevada, Virginia, Arizona, and North Carolina, all with under 1 complaint per million residents) ignore the chances of being served with a COVID-19 workplace lawsuit, this data now puts your risk into perspective. Meanwhile, employers in other states that otherwise believed they were in the low-risk category (also including Connecticut and Michigan) should buckle down and ensure they are fully compliant and have effective legal prevention practices in place.

HEALTHCARE INDUSTRY REMAINS THE PRIME TARGET FOR COVID-19 LITIGATION, MANUFACTURING AND RETAIL FOLLOW

It may come as no surprise that claims against healthcare employers dominate the COVID-19 employee vs. employer suits filed to date, but it is still shocking to see the prevalence of claims filed against businesses in this critical space. **Nearly a quarter of all COVID-19 workplace claims filed in this country have been filed against healthcare entities – a full 22.2% of claims.**

Some of the main reasons for this staggeringly high percentage might be obvious: employers for healthcare organizations occupy the virtual tip of the spear when it comes to the battle against the coronavirus; healthcare entities have robust compliance obligations when it comes to PPE and other safety measures; and employers in the healthcare field have faced innumerable challenges adjusting to the new reality of a pandemic society while still balancing their HR responsibilities. But another reason might not be as obvious: covered healthcare employers with 500 or fewer employees had to deal with the whiplash of trying to understand the very compliance obligations they faced under the FFCRA and its accompanying regulations after [a federal judge tossed out Labor Department rules](#) governing the industry and [the agency scrambled to craft new guidance](#).

The other employers that find themselves particularly susceptible to COVID-19 workplace litigation are those that have a large percentage of workers conducting in-person business. Also in the top five are employers in the manufacturing (9.0%), retail (8.0%), and hospitality sectors (6.8%). (Government workers have also filed 7.2% of such litigation.) Employers in these fields – and any others with a high percentage of in-person workers – should be particularly concerned about the chance of being sued for COVID-19-related workplace litigation, and should ensure they are doing everything reasonably possible to keep their workers safe.

THIRSTY FOR MORE DATA?

For further information about COVID-19-related litigation being filed across the country, and to run your own analyses of our litigation data, you can visit Fisher Phillips' [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions section](#) also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney. You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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