



# 5 Steps Manufacturing Employers Should Take As Industry Remains Top Target For COVID-19 Workplace Claims

Insights

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Employers in the manufacturing industry have emerged as a prime target of COVID-19 workplace litigation. In fact, according to the [Fisher Phillips COVID-19 Employment Litigation Tracker](#), manufacturing is the second-hardest hit sector in the country, facing 9.1% of all COVID-19 workplace claims filed (trailing only the healthcare industry which, for obvious reasons, dominates the field at 22.3%). Given recent trends, manufacturing employers everywhere should be aware of the lawsuits that may be coming in the states where they operate – and should adopt our five-step recommended plan to avoid facing litigation in the new year.

## Overview Of COVID-19 Claims Against Manufacturers

The [FP COVID-19 Employment Litigation Tracker](#) shows the number of pandemic-related workplace cases that have been filed against employers in the manufacturing industry since the COVID-19 crisis began. It should come as no surprise that the states seeing the most action when it comes to COVID-19-related workplace litigation are the same states that typically see the most employment-related lawsuits. California has seen the highest number of claims filed, followed by New Jersey, Florida, and New York. However, states not normally associated with high numbers of workplace litigation – such as Ohio, Texas, and Pennsylvania – also have faced many claims. Moreover, once adjusted for local population, we also learn that employers in Kentucky, Michigan, and Oregon are also facing numerous such claims.

Of the COVID-19 related lawsuits filed against manufacturing employers, the vast majority of them – close to 90%, in fact – involve three types of claims:

- Remote Work / Leave Conflicts (41% of total)
- Employment Discrimination (27% of total)
- Retaliation / Whistleblower (20% of total)

## Examples of Recent Cases

The claims that have been filed most frequently against manufacturing employers are **remote work/employee leave** claims. Broadly speaking, these claims are based on a worker's allegation that the employer denied a request for time off or a request to work from home, despite the worker's

claimed need for such leave or accommodation. Below are some examples of the claims that have been asserted against manufacturing employers in this area:

- In *Baszak v. Givaudan Fragrances Corp.*, a shipping coordinator filed suit in New Jersey state court alleging she is at high risk for COVID-19 due to her Type 1 diabetes and comorbid cardiopulmonary conditions, and that her employer not only denied her request to perform work from home but concocted false reasons why she needed to work in-person at the facility.
- In *Camacho v. Performance Labs Inc.*, a former employee filed suit in New Jersey federal court claiming his employer fired him after he tested positive for COVID-19 and was forced to remain at home for 14 days. The employee also alleges that his employer failed to properly pay sick leave in violation of the Families First Coronavirus Response Act (FFCRA).
- In *Keys v. Giering Metal Finishing Inc.*, a former employee filed suit in Connecticut federal court against his employer, an automotive repair center, claiming he was fired when he was forced to stay home and take care of his two young children when their daycare closed due to COVID-19.

With respect to **discrimination** claims filed against manufacturing employers, many arise out of COVID-19 layoffs and sound like classic workplace disputes wrapped in a COVID-19 context. For example:

- In *Gaston v. Flex N Gate Corporation*, a former assembly line worker filed suit in Indiana federal court claiming she was temporarily laid off while her employer, an automotive product manufacturer, closed during the COVID-19 pandemic. She claims that she was not called back to work because of her age.
- In *Saleba v. Medpace Inc.*, a former research assistant filed suit in Ohio federal court alleging that, through a COVID-19 related reduction-in-force, his employer targeted older employees for termination and later recruited younger employees to fill their positions.

Finally, **retaliation/whistleblower** claims are being filed by employees in a variety of scenarios, including the following:

- In *Detombeur v. CRH PLC and Tilcon New York Inc.*, a former employee filed suit in New Jersey state court alleging he was suspended and eventually fired after he voiced concerns about lack of social distancing and unsanitary conditions in his employer's workplace related to COVID-19.
- In *Burgy v. Senator Int'l Inc. dba Allermuir*, an employee filed suit in Ohio federal court alleging his employer fired him after he provided his subordinates with accurate information about their eligibility to use paid sick leave under the FFCRA.

## Practical Tips To Avoid A COVID-19 Lawsuit

Given the prevalence of claims filed against manufacturing employers, employers in this field should be particularly concerned about the chance of facing a COVID-19-related lawsuit. The good news is that by doing everything reasonably possible to keep your workers safe, you will also put yourself in the best position to avoid litigation. Here are five steps you can take to minimize the chances of a claim being filed:

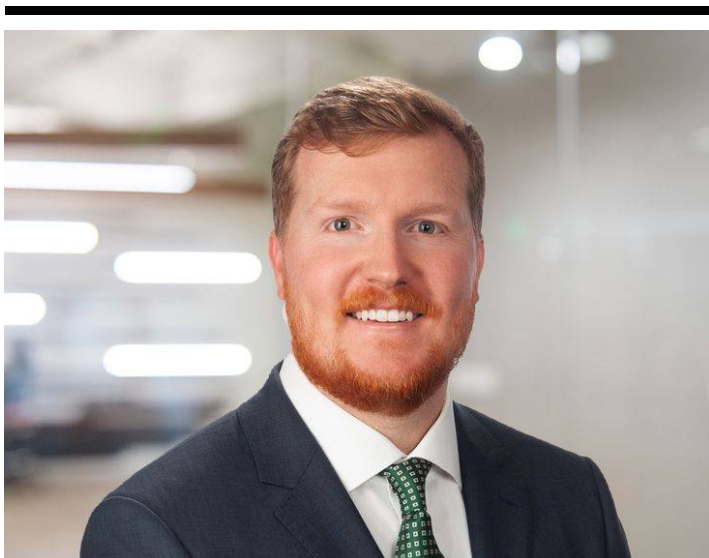
1. Ensure front-line managers and Human Resources personnel are well-versed in all the new leave law requirements under federal, state, and local law;
2. Regularly monitor and implement CDC, OSHA, and local guidance regarding appropriate COVID-19 workplace safety practices;
3. Train employees on appropriate COVID-19 safety procedures;
4. Update anti-retaliation policies to cover workplace safety and health issues; and
5. In the event of a layoff or RIF, develop selection criteria that are objective and based on measurable data (i.e., production, performance metrics, etc.), and then conduct an adverse impact analysis to determine whether the criteria disproportionately impacts a protected category of individuals.

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.

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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.

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