

Insights, News & Events

TAKING YOUR FOOT OFF THE GAS TOO EARLY COULD LEAD TO COVID-19 WORKPLACE SAFETY LAWSUITS

Insights

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The recent stages of the coronavirus pandemic have been a rollercoaster, with many twists and turns along the way. One week brings promising news of decreased community spread, and the next week concerns of new variants and local “surges” dominate the headlines. With the number of vaccinations trending up and positivity rates trending down in some states, there is reason for optimism. However, even with this increased optimism, employers can ill afford to coast through the rest of the pandemic when it comes to workplace safety measures – taking your foot off the gas could lead to dangerous working conditions and unwanted litigation.

Relaxing workplace safety measures too early could invite litigation from employees in a stressed economy, or a knock on the door from the Occupational Safety and Health Administration (OSHA). [Fisher Phillips' COVID-19 Employment Litigation Tracker](#) highlights the risks that still loom with COVID-19 litigation. The last four months alone have ushered in 875 COVID-19-related lawsuits addressing a variety of claims, from an employer's failure to provide required leave to complaints about unsafe working conditions.

Pennsylvania Lawsuit Highlights Potential Danger

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As employers continue to monitor their workplace for compliance with federal and state COVID-19 safety measures, you should not lose sight of external risks that might be present for employees working in the field or whose job responsibilities require frequent travel to customer facilities. For example, in a lawsuit recently filed in Pennsylvania, an employee of a carpet cleaning service claimed that he was wrongfully terminated for objecting to working at a customer's facility where social distancing and the wearing of protective personal equipment was not being practiced.

According to the complaint in *Holtzman v. Cleaning Services Corporation*, the employee was sent to a customer's facility in late June 2020 where he observed other individuals in close proximity to one another and not wearing face coverings. He alleged that upon making this observation, he notified his boss that he was unable to work where COVID-19 precautions were not being followed because he cared for his elderly, at-risk, grandfather. The employee alleges his employment was terminated after raising these concerns.

What Employers Can Learn

While this lawsuit is still in its infancy and the outcome not yet determined, it should serve as a helpful reminder that an employer's obligations to provide a safe work environment extends to *all* employees, not just those employees working on the company's premises. For example, OSHA's General Duty Clause provides that every employer has a general duty to "... furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees." That duty applies regardless of the location where your employees are working. This could, conceivably, also include work being performed at a customer's facility, if the unsafe conditions are made known to the employer.

OSHA's whistleblower provisions also protect individuals from retaliation for complaining about unsafe working conditions, including conditions stemming from COVID-19. The Biden administration is particularly keen on enhancing protections for COVID-19 whistleblowers. On March 12, [the agency adopted a National Emphasis Program \(NEP\) on COVID-19](#), which, among other things, devotes more resources to OSHA's Whistleblower Protection Program. Based on these initiatives, you would be well served to not quickly dismiss COVID-19 safety-related complaints made by employees. In certain situations, it might be necessary to modify an employee's work assignment, or make arrangements with a customer for an employee to visit the facility during a time when there is less foot traffic. Review each complaint and document your efforts to mitigate the employee's concerns.

Conclusion

There are positive signs that the worst of the pandemic is behind us, but don't let your foot off the gas. Litigation trends and OSHA's push to strengthen COVID-19 safety protections for employees are a clear indication that the pandemic isn't over yet.

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). 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' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney.