Pennsylvania Meatpackers Can't Force OSHA to Act on COVID-19 Concerns

Insights
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A Pennsylvania federal court recently ruled that the federal workplace safety agency adequately investigated claims of unsafe working conditions brought by a group of meatpackers concerned about alleged COVID-19 breaches, and thereby can't be forced to order additional protective measures at the workplace. The court's ruling in favor of the Occupational Safety and Health Administration (OSHA) ensures that employees who are upset about alleged unsafe working environments do not have yet another avenue to seek relief and is generally good news for employers. But you still need to be on guard and take measures to ensure a safe workplace, especially due to a new federal initiative recently unveiled by OSHA. What can employers learn from this case?

What Happened?

A group of employees from Maid-Rite Speciality Foods LLC (based just outside of Scranton, Pennsylvania) sought court intervention alleging that OSHA failed to properly investigate their safety complaints. In their lawsuit, the meatpacking workers allege they filed numerous complaints with OSHA alleging that Maid-Rite was not properly protecting them from exposure to COVID-19. Specifically, they cited a lack of social distancing on the production line, inadequate hand-washing breaks, and protective equipment.

According to the employees, OSHA failed to take substantial action to alter the plant's practices. Through the lawsuit, the employees sought to compel OSHA to take action and require the plant to implement additional COVID-19 precautions. For those unfamiliar, OSHA is an arm of the Department of Labor tasked with assuring safe and healthy working conditions for employees. Among other avenues, OSHA may initiate an investigation as the result of formal complaints filed with the agency by employees.

OSHA argued in response that it had conducted investigations and inspections into the complaints and found no imminent danger existed at the facility. It maintained that the employees were attempting to force the government's hand through the lawsuit. OSHA argued that, under federal law, employees can only force it to act in situations in which the agency has "arbitrarily or capriciously" refused to act on the recommendation of an agency inspector. Citing to the fact that the agency had conducted multiple investigations and had an ongoing inspection at the facility that found

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no imminent danger, OSHA argued that there was no such recommendation of an inspector in this case.

The United States District Judge hearing the case granted OSHA's motion to dismiss the suit on March 30. Judge Malachy Mannion agreed with OSHA, finding that the court could not grant the employees the relief that they sought under the 1970 Occupational Safety and Health Act because OSHA had investigated the complaints and determined that no imminent danger existed at the plant. The court acknowledged the employees' concerns raised against both OSHA and their employer. However, according to the judge, "Plaintiffs' Complaint is not properly before this court as no OSHA inspector has found that the Plant presents an imminent danger to its employees and, consequently, no recommendation has been made to the Secretary to take action."

As of the time of publication, it is unclear whether the workers will bring their case to a court of appeals or whether this lawsuit has reached the end of the road. Regardless of the outcome, this decision is an important one for employers.

Why It Matters For Employers

The court's decision is significant because had the judge ruled that employees could sue OSHA to compel them to act in the absence of the agency ignoring the recommendation of an inspector, it would have given employees significantly more power. Following the employees' view of the law, workers may have been able to require OSHA to conduct additional investigations if they did not agree with the outcome of the investigation into their complaint – which could unnecessarily drag out meritless safety investigations and cause needless waste and delay. Especially during a pandemic, granting such oversight to employees over the nation's workplace safety watchdog would have created a difficult environment for the foreseeable future.

What's Next?

While the employees may have lost in this particular suit, employees across the country may have recently scored a victory in the form of OSHA's latest National Emphasis Program (NEP). This new initiative, announced a month ago, will specifically target and prioritize COVID-19 related inspections during the next several months.

Given the increased resources OSHA will use under the NEP to enforce existing safety standards, along with the Occupational Safety and Health Act's general requirement to maintain workplaces free from recognized hazards, you should continue to enforce existing COVID-19 safety precautions, and if necessary, implement additional precautions. The COVID-19 pandemic is not over, and OSHA is making a push to conduct additional inspections in the next several months. Even as your employees are vaccinated, you should remain vigilant about enforcing your COVID-19 policies.

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

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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 or any attorney in our Workplace Safety Practice Group.

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