



FP Snapshot for Manufacturers: January 2022

Insights

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Welcome to FP Snapshot on Manufacturing Industry, where we take a quick snapshot look at the most significant workplace law developments over the past month with an emphasis on how they impact manufacturers.

Is COVID-19 a Disability?

Manufacturers should pay attention to the EEOC's recent guidance that COVID-19 may be considered a disability under the ADA given the safety issues an employee working with such a disability could cause at a manufacturing facility. Examples of potential impairments created by the virus that could be considered a disability according to the EEOC include dizziness, "brain fog," difficulty remembering or concentrating, shortness of breath, and associated fatigue.

An employee prone to such medical issues could present a safety issue on the floor of a manufacturing facility – and you'd obviously want to avoid any such situations. However, if such an employee can attribute these issues to an earlier diagnosis of COVID-19, you would need to engage in the interactive process to avoid legal trouble while still ensuring the highest standards of safety are maintained. Manufacturers, therefore, may consider putting a process in place to better handle requests for a reasonable accommodation from employees diagnosed with COVID-19 while simultaneously taking steps to safeguard employees.

Be Prepared for Looser Joint Employment Rule in 2022

Manufacturers can expect some difficult news in February, as that's when the National Labor Relations Board is expected to roll out a union-friendly joint employment rule that will make it easier for workers to be considered employed by more than one entity for labor relations purposes. While you may be frustrated by the yo-yoing of the standard for the past six or seven years – tipping from a narrow rule to a broad standard and then back to a narrow one – you need to prepare once again for things to change.

Where this stands to most impact your operations is in the area of third-party staffing arrangements. For those manufacturers relying on a PEO workforce, temporary workers, leased workers, or any other similar arrangement, you should spend the next month examining the contracts and procedures associated with your relationships – with particular emphasis on reviewing the contractual right to control (both directly and indirectly) employment terms and

conditions. Contract language often is a significant factor in determining joint employer status, and we expect it to play a critical role under the new rule soon to be rolled out.

Best of the Rest

Some other critical developments from the past month you might have missed:

- [5-Step Plan for Employers as CDC Reduces COVID-19 Isolation and Quarantine Periods](#) (December 29)
- [Workplace Immigration Officials Extend “Relaxed” Remote Work I-9 Rules Into 2022](#) (December 21)
- [Federal Government Announces New Affirmative Action Plan Certification Requirements for Federal Contractors](#) (December 3)

Want More?

We will continue to monitor workplace law developments as they apply to manufacturers, so make sure you are subscribed to [Fisher Phillips’ Insight system](#) to get the most up-to-date information directly to your inbox. If you have questions, contact your Fisher Phillips attorney, the author of this Insight, or any attorney on our [Manufacturing Industry Team](#).

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