

FP SNAPSHOT FOR MANUFACTURERS: JANUARY 2022

Insights

Jan 6, 2022

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](#)

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Phillips L. McWilliams

Partner

[803.255.0000](tel:803.255.0000)

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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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