



FP Snapshot for Manufacturers: February 2022

Insights

2.18.22

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.

OSHA Penalties Automatically Increase, Putting Pressure on Manufacturers to Comply with Workplace Safety Obligations

Manufacturers should pay closer attention to increased fines from OSHA citations. The U.S. Department of Labor recently published its yearly increases to the maximum civil penalties that may be assessed via citations against employers by the Occupational Safety and Health Administration (OSHA) as a result of workplace safety and health inspections. These penalties will apply to all citations issued by OSHA after January 15, including for employers who had inspections open at the time. Here's a quick summary of the maximum and minimum penalties that may be assessed by the agency, and you can read more here:

Serious Violations

- Penalty minimum: \$1,036 per violation
- Penalty maximum: \$14,502 per violation

Other-Than-Serious Violations

- Penalty minimum: \$0
- Penalty maximum: \$14,502 per violation

Willful or Repeated Violations

- Penalty minimum: \$10,360 per violation
- Penalty maximum: \$145,027 per violation

Violation of Posting Requirements

- Penalty minimum: \$0

- Penalty maximum: \$14,502 per violation

Failure-to-Abate Violations

- Penalty minimum: N/A
- Penalty maximum: \$14,502 per day unabated beyond the abatement date (generally limited to 30 days maximum)

Top 10 Wage and Hour Trends for 2022

Manufacturers should review the [top 10 trends for Wage and Hour](#) you can expect to see in 2022 as predicted by the leaders of our Wage and Hour Practice Group. Here is a quick summary and [you can read more about them here](#).

1. **Feds Will Turn Up the Heat** – The Department of Labor announced in early February that it will be hiring at least 100 new wage and hour investigators.
2. **Misclassification Challenges Will Cause Businesses to Reevaluate Structure of Workforce** – A collection of federal agencies and state regulators have indicated that they will place independent contractor arrangements in their crosshairs in 2022, while also aiming to capture as many businesses as possible in joint employment situations.
3. **Hiring Minors to Address Workforce Shortages Will Come Back to Bite Unsuspecting Employers** – Many employers that expanded their hiring pool by lowering minimum ages in 2021 will find themselves at the mercy of federal and state regulatory agencies and class action lawsuits in 2022.
4. **Retention Bonuses and Incentives Will Cause Trouble** – Besides hiring minors, the other solution that many manufacturers arrived at to address workforce shortages was to throw money at workers through retention bonuses and incentives.
5. **The Great Remote Work Migration Will Lead to The Great Remote Work Litigation** – Working from home became entrenched in the lives of up to 60% of American workers for much of 2020 and 2021, and many employees will remain remote or hybrid for the foreseeable future – leading to inevitable disputes over compensation.
6. **Class and Collective Litigation Will Go Overtime** – Another area where you can expect to see a greater amount of litigation in 2022 is in class and collective claims involving overtime pay.
7. **Labor Department's New Overtime Rule Will Ruffle Feathers** – Speaking of overtime, the DOL has indicated it will issue a new federal regulation transforming the overtime rule by April 2022, and the new standard is bound to upset some businesses.
8. **Infrastructure Efforts Will Lead Unwitting Employers to Make Wage Mistakes** – The amount of cash floating down from the federal government as a result of the infrastructure legislation and related executive orders will be too much money for many businesses to ignore, and we'll see a whole host of businesses unwittingly become obligated to comply with laws they have no

whole host of businesses unwittingly become obligated to comply with laws they have no experience with as they become federal contractors or subcontractors (sometimes without even realizing it).

9. **Look to the States for the Real Action** – The plaintiffs’ bar is sick and tired of facing judges they consider to be employer-friendly in federal court, forcing them into settlements they aren’t happy with and handing them losses in cases they thought were winners. You can expect workers’ attorneys to bring more wage and hour class action lawsuits in state courts in 2022, especially in jurisdictions with longer statutes of limitations and less-developed law.
10. **Commissions and Bonuses Will Receive Increased Legal Focus** – Some states, such as New York, have specific legislation requiring the payment of commissions to be specifically laid out in written agreements.

5 Steps Manufacturers Should Take to Avoid Getting Shocked by the Electric Vehicle Industry

If the iconic scene from the movie “The Graduate” were recreated today, Dustin Hoffman’s character Benjamin would be pulled aside by a local businessman who would have two words of advice for him: “electric vehicles.” The wave of battery powered vehicles is no longer fast approaching – it is here. Given the current state of affairs, what do manufacturers need to know about a future with the rapidly expanding electric vehicle industry? This insight provides five key takeaways for manufacturers.

Best of the Rest

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

- Flying Solo: Can a Single Employee’s Workplace Complaint Qualify as Protected Concerted Activity? (January 28)
- Changes to Employment Arbitration Agreements Under the “Ending Forced Arbitration of Sexual Assault and Sexual Harassment Act”: FAQs (February 11)
- “Strait” Talk for Employers on COVID-19 Compliance After OSHA Pulls Short-lived Vaccine ETS (February 2)

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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J. Micah Dickie

Partner

404.260.3419

Email

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