

FP SNAPSHOT ON HEALTHCARE INDUSTRY: FEBRUARY 2022

Insights
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Welcome to FP Snapshot on Healthcare, where we take a quick look at some of the most significant current workplace law issues, including hot non-COVID-19 issues, with an emphasis on the practical impact of how they affect employers in the healthcare industry.

Covid-19 Fatigue in the Workplace?

If you are feeling exasperated, overwhelmed or just plain tired of keeping up with evolving guidance, litigation and/or the politicization of vaccinations, you are not alone. Clients and friends tell us every day that they are encountering the same feelings in their workplaces – especially in the healthcare field. It's been tough to remain resilient and keep everyone motivated, safe, and productive throughout this long journey. Success seems to correlate largely with leaders who remain attuned to what employees are experiencing, saying and feeling. Those leaders continually communicate their vision and underlying rationale, and respond effectively to employees' questions and needs.

Interestingly, during webinars that we conducted soon after the Supreme Court's decisions that blocked OSHA's COVID ETS but permitted the CMS vaccine mandate to proceed, about two-thirds of the participants told us that *they were not changing* COVID-19 policies they already had in place *before* the SCOTUS rulings. If nothing else, this conveyed a reassuring sense of foresight and stability during uncertain times.

Although employers and employees may be weary of dealing with vaccine, masking and other rules, however, the

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pandemic has not gone away yet. And neither have agencies such [OSHA, who remain focused on enforcing workplace safety standards](#). Medicare/Medicaid recipients must comply of course with [the CMS vaccinate mandate](#). Thus, employers have to follow applicable rules while at the same time doing everything they can to mitigate the effects of employee burnout or COVID-19 fatigue. [In this Insight, we discuss five critical steps you can take to address "COVID Fatigue"](#) and keep your workplace focused on the things matter most: safety, customer service and employee morale.

Workforce Shortages

After two years of unprecedented challenges and stress, [employers are still struggling to attract and retain qualified workers](#). The challenge in healthcare is among the greatest because key constituents such as registered nurses are retiring or pursuing other career options. Schools cannot keep pace with the increasing demand for RNs and other key workers who comprise the foundation of the nation's healthcare system. When we asked healthcare employers for their perspective during a recent presentation, nearly one third mention pay rates as being a challenge that contributes to staffing shortages, followed by burnout and employees taking other jobs that offer remote work. This crisis is especially acute in long-term care facilities, such as nursing homes, where the pandemic wreaked havoc. [This Insight discusses some ideas for effectively addressing workplace shortages in healthcare settings](#).

Nursing Agencies and the Gig Economy

Many healthcare employers have a longstanding love/hate relationship with supplemental staffing agencies. These agencies provide necessary but comparatively expensive staffing resources when regular and *prn* staff are unavailable to cover certain shifts. The pandemic has increased the inherent tension in these relationships as agencies have recruited traveling nurses at higher rates of pay, tapping into local providers' base staffing contingent. [Now, the emergence of a gig economy element in this high-stakes arena is certain to attract more attention](#).

Specifically, California voters may have the opportunity in November to approve categorizing certain healthcare workers, including nurses and therapists, as independent contractors. And it is no secret that when innovations work well in California, they tend to migrate to other states. In the

meantime, it is worth noting that some agencies were accused of price-gouging in a letter signed by a bipartisan Congressional group, who asked for one or more federal agencies to investigate the allegations. Although the roots of this tension between staffing companies and healthcare providers is nothing new, these escalating stakes bear watching. [You can read more about the latest development in this area here.](#)

False Claims Act (FCA) Stats Reflect Intense Focus on Healthcare

According to recent stats from the U.S. Department of Justice, 90% of all FCA recoveries in 2021 came from industries being overseen by the Department of Health and Human Services. In the 35-year history of this anti-fraud Act, no single industry has so thoroughly dominated the level of overall recoveries. This attention to and enforcement activity in healthcare shows no signs of slowing down. Besides serving as a reminder to ensure that their billing and other related practices are in order, this activity should also spur employers to review their relevant policies.

Specifically, do those policies adequately direct employees to present questions or concerns about improper billing or other suspected fraudulent activity to the appropriate internal contacts? Do those policies explain that retaliation will not be permitted against anyone who reports such issues? And critically, do your policies and practices ensure appropriate review and oversight of adverse actions toward any employee, to ensure there is no appearance of retaliation for engaging in such protected activity?

The CMS Vaccination Mandate is being Implemented and Enforced

Finally, as mentioned above, applicable deadlines for at least the first COVID-19 vaccines under [the CMS mandate](#) have passed or are imminent across the country. Covered employers should also have all applicable policies and procedures in place. The [deadlines for 100% of staff to complete their vaccine series \(or have been granted a qualifying exemption or been identified as being entitled to a temporary delay\) are also rapidly approaching.](#)

Well over half of healthcare employers have repeatedly told us they are worried about losing more staff as they implement the vaccination mandates. Not only was this a

huge concern mentioned in [a Flash Survey](#) that we conducted last fall, but over 60% of healthcare employers cited this same concern when responding to a poll question during one of our webinars earlier this month.

Religious Basis Dominates Requests for Vaccination Exemptions

As employers receive requests for exemptions from vaccination mandates, an unprecedented proportion of those requests are based upon religious grounds. A recent audience told us that religious-based requests are outpacing all other bases by about 4-to-1. This obviously means that employers must be prepared to [evaluate and respond to such requests effectively](#), especially since the CMS mandates says that employers are expected to grant exemptions only if required by federal law. If you haven't already done so, you should review your procedures and make sure that only trained individuals are handling them.

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