



# FP Healthcare Snapshot: Staffing and Regulatory Issues Continue to Create Workplace Challenges

Insights

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Welcome to another edition of FP's Healthcare Snapshot. We continue to focus considerable attention on developments exacerbated by COVID-19, particularly those related to staffing and regulatory issues, which persistently challenge industry employers.

## COVID-19 Still Causing Havoc

While the pandemic may be waning in many respects (or is it?), healthcare employers are still recovering from the unprecedented havoc wreaked by COVID-19. As many front-line caregivers worked through the stress, mental health challenges remain – along with attrition caused by the crisis. Other challenges arise as workers return from remote to on-site work. Even workers who continue to work remotely present potential risks that healthcare employers must be considered. All these factors contribute to the staffing shortages healthcare employers still face.

Although everyone is anxious to see the pandemic end, the Occupational Safety and Health Administration (OSHA) has been laser-focused on how healthcare employers responded and have continued to emphasize the importance of being prepared for similar future events. Specifically, OSHA has extended its COVID-19 National Emphasis Program for healthcare employers while it prepares to issue and implement a permanent rule.

Nursing homes have been particularly hard-hit by the confluence of regulatory requirements and staffing shortages. In short, the pandemic and its ramifications continue to reverberate throughout this portion of the industry. Accordingly, we are continuing to follow important developments and identify issues and possible solutions for healthcare employers to consider.

## Handbooks and Other Workplace Policies in the Spotlight

Pandemic-related issues are not the only ones that healthcare employers should be watching. Among other things, the National Labor Relations Board (NLRB) is taking actions that **all** employers (whether unionized or not) should be watching carefully. For example, among others, handbook policies that address workplace civility and workplace conduct may soon have to be updated again to keep up with the NLRB's increasing scrutiny and changing expectations. In unionized settings, the Board also appears poised to challenge employers whom it believes are bargaining too rigorously with their unions.

More broadly, healthcare and all employers should continue to track developments in the area of privacy protection, given the possibility that federal law may follow the lead of several states and (hopefully) set reasonable, uniform standards for protecting the privacy of consumer and employee data. With the current hodgepodge of state privacy laws across the country, this could be a welcome development for employers.

Additionally, non-compete and confidentiality agreements are persistently garnering attention in various locations around the country, following a trend toward making it harder for employers to adopt and enforce such agreements.

## **Abortion-Related Issues in the Workplace**

Finally, the U.S. Supreme Court's recent *Dobbs* decision, overturning *Roe v. Wade*, has resulted in new questions for employers about the rights of employees to take job-protected leave or invoke other federally protected rights in seeking an abortion. In healthcare settings, employers must also keep in mind their legal and accreditation responsibilities when employees raise religious or other personal conscience objections to participating in certain medical procedures.

Although these rights have been in place in for years, tensions related to the *Dobbs* decision and the increased prevalence of employees' religious-based exemption requests during the pandemic may lead to human resources representatives facing many more of these scenarios. The analysis is fact-specific and each must be evaluated thoughtfully.

## **Conclusion**

In short, healthcare employers still have plenty of issues to contend with as they attempt to return to more "normal" pre-pandemic operations.

What will we do? We will continue to monitor workplace law developments as they apply to employers in the healthcare industry, 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 Healthcare Industry Team.

## ***Related People***





**Laurel K. Cornell**  
Regional Managing Partner  
502.561.3987  
[Email](#)



**A. Kevin Troutman**  
Senior Counsel  
713.292.5602  
[Email](#)

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