

WORKERS AIM TO OUTMANEUVER OSHA AND SEEK COURT RELIEF FOR WORKPLACE SAFETY CLAIMS: WHAT IT COULD MEAN FOR YOUR BUSINESS

Insights
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A three-judge panel of the Third Circuit Court of Appeal recently heard oral arguments on the issue of when federal courts may intervene in workplace safety disputes between employers and their employees, as OSHA squared off with worker advocates about whether workers claiming to have been exposed to “imminent danger” on the job can outmaneuver the agency and seek relief from the courts. This case, argued before the Third Circuit on September 7, is the first time a federal appellate court has been asked to make a decision as to when workers dissatisfied with OSHA’s response to safety concerns can ask a court to intervene in the administrative process. If the court ultimately rules in favor of the employees, it could result in more petitions by unions and other worker advocacy groups asking judges to intervene if they believe that OSHA is not responding quickly enough to protect employees from life-threatening work hazards.

How Did the Case Reach the Appellate Court?

The recent hearing marked the latest step in a case filed by three public interest groups on behalf of employees who filed complaints with OSHA in 2020 against a Maid-Rite Specialty Foods meat packing plant in Dunmore, Pennsylvania. Those complaints alleged that Maid-Rite was not taking adequate steps to protect its workers from COVID-19 infections.

The petitioners said that two complaints (one of which was styled an “Imminent Danger Complaint”) were made to OSHA about Maid-Rite’s failure to implement safety

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measures. Specifically, they said they went to the agency to complain about the company's failure to provide cloth face coverings, arrange for social distancing of employees on the production line, and failing to notify employees of potential exposure to the virus in the workplace. OSHA dismissed both complaints, however, leaving the workers aggrieved with the outcome.

On behalf of plant workers who were dissatisfied with OSHA's failure to issue COVID-related safety citations to the company, three advocacy groups – Justice At Work, Public Justice, P.C., and Towards Justice – filed a writ of mandamus petition with the U.S. District Court for the Middle District of Pennsylvania in July 2020. The district court dismissed the complaint, and the advocacy groups appealed that decision.

The Parties' Arguments

They argued that Maid-Rite's failure to implement adequate safety measures to prevent the spread of COVID-19 at the plant constitutes an imminent danger to the health and safety of its workers. They also argued that, because of OSHA's failure to act to protect employees exposed to an imminent danger, section 13(d) of the Occupational Safety and Health Act permits workers or their representatives to bring legal action against the agency for an order requiring OSHA to take "such steps to be taken as may be necessary to avoid, correct, or remove an imminent danger" in the workplace.

OSHA's counsel argued that workers who believe they are exposed to an imminent danger at work should file another complaint with the agency rather than seek court intervention. Moreover, the agency attorneys further asserted that the case was moot because the underlying administrative complaints were filed two years ago and OSHA is required to issue citation within six months of opening an investigation.

The workers' advocates want the appeals court to send the case back to the district court judge. They want to renew their argument that OSHA should conduct another inspection of Maid-Rite's facility and the company's efforts to prevent the spread of COVID-19. They also want the court to order the agency to produce documents of its investigations into the 2020 complaints.

OSHA wants the appeals court to remand the case to the district court with instructions to dismiss the case altogether. We should get a ruling from the appeals court in the next several months.

What Does This Case Mean for Employers?

This is one of a number of cases brought by unions and attorneys representing workers in the wake of the COVID-19 pandemic, asking federal courts to order OSHA to take specific actions to ensure the safety of employees. This is particularly true for those employed in high-risk jobs such as health care and meat and poultry processing. To date, none of these efforts has been successful. [The most recent was the D.C. Circuit Court's denial two weeks ago of a similar writ of mandamus petition filed by several nurses' unions.](#)

But we expect this current wave to continue, and we'll see further efforts to get courts more involved in determining how OSHA does its job. Eventually a court will insert itself and force an agency to take more action, only emboldening workers, unions, and their advocates to file further claims seeking judicial oversight of the agency. For this reason, the time is now for employers to ensure their workplace safety protocols are firmly in place and being followed.

Conclusion

Fisher & Phillips will continue to monitor this situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Insight System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney, the author of this Insight, or any attorney in our [Workplace Safety and Catastrophe Management Practice Group](#).