

COVID-19-Related Employment Litigation Affecting Manufacturing Industry

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Manufacturing employers probably will continue to see an increase in COVID-19-related litigation affecting the industry. Keeping up with recent trends in COVID-19-related litigation can help manufacturers ensure compliance with the common bases of alleged violations.

Nationwide, manufacturers have seen one to seven new COVID-19-related employment complaint filings a week since the beginning of April 2020. Such litigation is likely to continue to rise given the volume of filings over the past 10 months.

General Trends

Since April 2020, more than 130 COVID-19-related complaints were filed against manufacturers. Of these complaints, California, Michigan, New Jersey, Ohio, and Pennsylvania have the highest COVID-19-related litigation filings in federal and state courts. More than 50 percent of these cases were filed in various state courts; the remainder were filed in federal courts nationwide. Roughly 95 percent of the claims have been brought by a single plaintiff, rather than by class or collective action.

COVID-19-related litigation in the manufacturing industry generally fall into six categories:

- Contract
- Disability, leave and accommodation
- Discrimination/harassment
- Retaliation/whistleblower
- Wage and hour
- Workplace safety and conditions

Of these filings, nearly half fall under the “Disability, Leave and Accommodation” category. Common causes of action include alleged wrongful termination, or interference with rights under the Families First Coronavirus Response Act (FFCRA) or the Family and Medical Leave Act (FMLA). In state courts, filings allege violations of the states’ discrimination laws stemming from their employees’ extended leave related to complications, underlying health conditions, or disabilities exacerbated by COVID-19. The filings against manufacturers have tended to involve FFCRA or FMLA allegations by single plaintiffs.

The “Discrimination/Harassment” and “Retaliation/Whistleblower” categories also see a steady influx of complaints, roughly one-third of which were filed in federal court. Common causes of action for “Discrimination/Harassment” have alleged state and federal violations of discrimination or civil rights laws, such as terminating the employment of an older worker or a pregnant woman because they are members

of a high-risk population. Common causes of action for “Retaliation/Whistleblower” have alleged retaliation for complaining about lack of safety measures in the workplace. Significantly, even when not the primary allegation, “Retaliation/Whistleblower” claims frequently accompany “Disability, Leave and Accommodation” and “Discrimination/Harassment” complaints.

Status of Cases

Manufacturers continue to see COVID-19-related employment litigation filings weekly. The majority of cases are in the early stages of litigation and have not been dismissed or resolved at this time. A limited number of COVID-19-related cases were transferred to arbitration or settled between the parties and a small number voluntarily dismissed by the plaintiffs. Interestingly, the federal court in the Eastern District of Michigan granted defendants’ motions to dismiss in three separate cases upon the parties’ stipulation. Each case included alleged wrongful termination or retaliation claims under the FFCRA or FMLA. It is unclear whether cases in the “Disability, Leave and Accommodation” category will be dismissed by courts in other jurisdictions as COVID-19 employment litigation affecting the manufacturing industry continues to develop.

Implications

As COVID-19-related employment litigation continues to surface and affect manufacturers throughout the United States, manufacturing employers should vigilantly stay current on relevant legal updates. Employers should review and comply with relevant employer responsibilities and employee rights under state and federal laws and regulations as the COVID-19 pandemic continues.

Jackson Lewis’ manufacturing industry team regularly advise manufacturers on issues posed by COVID-19. Our [COVID-19 Employment LitWatch](#) offers detailed, up-to-date information, tracked and searchable by state, complaint category, and more.

If you have questions or need assistance, please reach out to the Jackson Lewis attorney with whom you regularly work, or any member of our [COVID-19 team](#).

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