

Podcast

The Year Ahead 2024: Healthcare

By Sarah R. Skubas & Michael R. Bertoncini

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Alitia Faccione:

Welcome to We get work™ and The Year Ahead 2024 podcast series. Covering workplace issues from both subject matter and industry perspectives, the 19 episodes in our series provide both big picture trends and detailed tactics that can help employers achieve their workplace ideal, while remaining real about regulations, compliance challenges, and more in 2024. Jackson Lewis invites you and others at your organization to experience the report's legislative, regulatory, and litigation insights in full at our website, JacksonLewis.com, or listen to the podcast series on whichever platform you turn to for compelling content.

Sarah Skubas:

Happy New Year everyone. I'm Sarah Skubas, co-chair of the healthcare Industry group at Jackson Lewis, and I'm excited to be joined with my fellow co-chair, Mike Bertoncini. Mike, Happy New Year.

Mike Bertoncini:

Happy New Year to you too.

Sarah Skubas:

All right. Mike, is it going to be a happy one for our healthcare industry clients?

Mike Bertoncini:

Well, let's talk about these top five that we identified and let them be the judge of that in typical fashion. I'll start it off with a negative. I would say expect continued strike activity. Having just minutes ago received a ten-day notice myself, and I say that for a few reasons. First, if you look at Cornell University's Industrial Labor Relations School Labor Action Tracker because what else would you be doing? There are actually 50 strikes against healthcare and social assistance employers in 2023. I don't see things getting easier this year. I think we continue to see some leftover angst coming out of COVID.

I think we've still got employees thinking about the high inflation from a year ago, and I think that the environment remains very difficult. And for those reasons, I'd say to healthcare employers whose contracts are open this year.

Number one, more important than ever to understand your marketplace, what are the wages in the marketplace? Two, unfortunately, I think strike planning is a must in advance of every negotiation in this sector this year. And then finally, start thinking about well in advance of the negotiations, what's a strike issue for you and what is really a strike issue for the employees? So that's my number one for this year.

Sarah Skubas:

All right. Thanks, Mike. And in no particular order, I'm going to jump in with number two, which we've talked a lot about as industry group leaders, the burnout amongst providers, particularly physicians and nurses, where we're seeing those staffing shortages are at their highest. And healthcare employers need to continue to explore new approaches to the recruitment and retention issues in this space. I mean, when you look at some of the data, it's a little scary. Nursing turnover is upwards of 60% in a hospital setting. Physicians are leaving employment faster and faster even prior to being somewhere for one year. And the causes for these staffing issues are complex. They're not necessarily new for 2024, but there are some key areas in the space that healthcare employers need to be thinking about as we head into 2024. One is going to be wellness programs, particularly around access to mental health services and managing burnout in an already stressful industry.

2024 is going to require healthcare employers to really look at their total rewards programs, backup childcare, on-site daycare, and the entire benefit programs in terms of addressing these burnout and retention issues. Obviously we saw a lot of focus on these issues when COVID-19 first hit the industry. But healthcare employers that are going to thrive really need to evolve in these spaces. Two, innovations that I think we're going to see a lot of focus on in 2024 in this space is how care is provided, increased use of remote nurses to perform tasks like admission, discharge planning, patient education are being utilized to manage the burnout and staffing issues. Seeing more usage of remote employees in a space like healthcare that's been traditionally dominated by an in-person workforce is going to see a continued evolution. So as our healthcare employers become multi-state employers, they need to act like one.

They need to continue to think about the additional workplace compliance issues, things like taxes, workers' compensation, unemployment, state and local paid sick leave, pregnancy, disability accommodation issues, and, frankly, all the state-specific employment regulations that go into being a multi-state employer, which is really different for a lot of the brick-and-mortar healthcare in-person workforce that we're used to in the industry. Another big topic in the space of managing retention and recruitment is AI. Obviously it's been a keen focus for healthcare employers that are exploring the capabilities of AI when it comes to delivery of patient care, but it's also going to be a key component to addressing those staffing issues, how AI might help resolve back-office needs. I can see AI coming into play when we're talking about scheduling clinical workflows. And so employers are going to be grappling with all the creative things. Nothing's not on the table when it comes to managing the staffing crisis that affects the industry for 2024.

Mike Bertoncini:

Great. And I think all of those topics are important, and as Sarah said, nothing should be left off the table. And that brings us to the next topic, which is expect to see continued union organizing in this field, in part driven by the burnout issues that Sarah's talking about, and the idea that workflows could be handled differently and, frankly, better. What we saw in the last 12 months or so, and what I think is going to continue is there were 240 NLRB elections among healthcare employers in 2023 that unions won. So let me say that again. Unions won 240 elections in the healthcare industry last year, and we're not just talking about nurses and techs anymore. We're actually seeing doctors and residents and interns organizing and doing so at a record pace. According to a 2023 American Medical Association issue brief on physician unions, 7.2% of actively practicing physicians belong to a union in 2019.

That's a 26% increase from 2014. We saw more of that going on in 2023. And this one surprised me a little bit. A recent survey of 1,000 employed physicians, so not residents and interns actively practicing docs, 44% of them said they would join a union. Similarly, on the resident and intern side, we saw a large residence union grow by 58% in just the past couple of years. It's ranked swelling from 19,000 to 30,000. So that is really beginning to take off. And it's similar to what we saw in higher ed with the grad student and the faculty movement. There's now an acceptance that although I'm a white-collar worker or a white-jacketed worker, in this case, highly educated and in a field that didn't often see union representation, it's okay now. And we're seeing some of the finest institutions across the country seeing their residents and interns, unionize.

Employers should be aware, these are stealth campaigns. They're done all on social media. We're not seeing a lot of pen and paper. We're not seeing a lot of, even in-person gatherings, it's all being done through social media. The NLRB's quickie election rules took effect on December 26, 2023. That's going to speed the process up. There's less and less time for employers to connect with employees. So, all the more reason to be doing all the proactive things, including what Sarah just talked about, to make sure you're giving employees the tools and working environment they need to feel that they are able to do good work. So, with that, let me turn back to Sarah.

Sarah Skubas:

Thanks, Mike. Yeah. No, I think these are such key things to be talking about. And so for our fourth top five topics for 2024 in the industry, and I regret to even say these words, Mike, but we're going to talk about vaccine and exemptions. We thought we were done or at least slowly closing that topic, but unfortunately, I do think 2024 has continued to raise compliance and legal challenges around vaccination requirements and accommodations, particularly in the healthcare industry. We're seeing more discussion around mandatory vaccination obligations, particularly the flu related mandates. We anticipate more challenges to mandatory flu vaccine requirements and/or resulting exemption decisions way more of them before we saw in COVID-19 had. Adding to it is the recent Supreme Court's decision in Groff and, frankly, the willingness of employees and

the plaintiff's bar to continue to challenge those mandatory vaccination requirements. And it's going to test healthcare employers resolve on these issues.

As a result of those COVID-19 vaccination obligations, it shouldn't surprise us that more than ever employees are educated about their legal rights when it comes to religious and medical accommodations. The Supreme Court's Groff decision really underscores the importance of evaluating accommodation processes, particularly around religious accommodations. Frankly, historically, those have been few and far between, and now they're coming out of the woodwork. So employers really need to be taking a look at their accommodation processes and importantly, how they're evaluated. COVID-19 changed the game, and so we're seeing an increase in accommodation requests across the board, whether it relates to vaccination requirements or just regular working conditions. So every healthcare employer really needs to be taking a look at their policies, procedures, the standards of how they review those accommodations to ensure compliance with these evolving laws. So maybe 2025, I won't mention it vaccines, but for now, it still needs to be on our radar, particularly the accommodation process in particular. And so with that, Mike, I'm going to turn it back to you for our last and final top five issue for 2024.

Mike Bertoncini:

Last and final issue is more of the same with respect to staffing shortages, staffing challenges. It's just continues to be a reality in this industry. And for that reason, we do expect that healthcare employers are going to have to continue to rely on staffing agencies to supplement their workforce. Now, our friends at the NLRB were very active last year and they left us a gift for 2024 – a new joint employer rule scheduled to take effect on February 26, 2024, we've got a new joint employer rule. Surprise, surprise. That rule is going to make it easier to find that employers and their staffing agencies are in fact joint employers. What does that mean as a practical matter? It means both a healthcare employer and that staffing agency could be jointly liable for unfair labor practices, and that healthcare employer may have a bargaining obligation were the staffing agency employees to be unionized.

The key change on this rule is that now merely possessing the authority to control is sufficient to establish a joint employer relationship, even if the employer, the healthcare entity, does not actually exercise that control. There are seven factors the board looks at and they're worth reviewing because ultimately this comes down to a business decision on the part of the healthcare employer. The seven factors are wages, benefits, and other compensation. Number two, hours of work and scheduling. Number three, assignment of duties to be performed. Number four, supervision of the performance of the duties. Number five, work rules and directions governing the manner means and methods of the performance of the duties and grounds for discipline. Sixth, tenure of employment, including hiring and discharge. And finally, number seven, working conditions related to the safety and health of employees. Now, if you think about those seven things, in my experience, almost always, your contract with that staffing agency is going to reserve to you the right to have some control over these seven items.

You may or may not exercise them, but merely having that control is going to be enough under the NLRB's new rule to establish a joint employer relationship. So where it becomes a business decision is how much control, if any, are you willing to cede to that staffing agency? And if on the business side, the answer is not much, you just have to go in, understand you've got some potential exposure under that NLRB joint employer concept. Those are the top five that we wanted to leave you with for 2024. If you'd like more information, please do check out our webinar series, Keeping Pace with Industry Concerns. You can find information about that on our web page. And then finally, always feel free to contact Sarah or me if you have any questions or if there's anything we can help you out with.

Alitia Faccone:

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