



COVID-19 Litigation Data and Trends for the Manufacturing Industry

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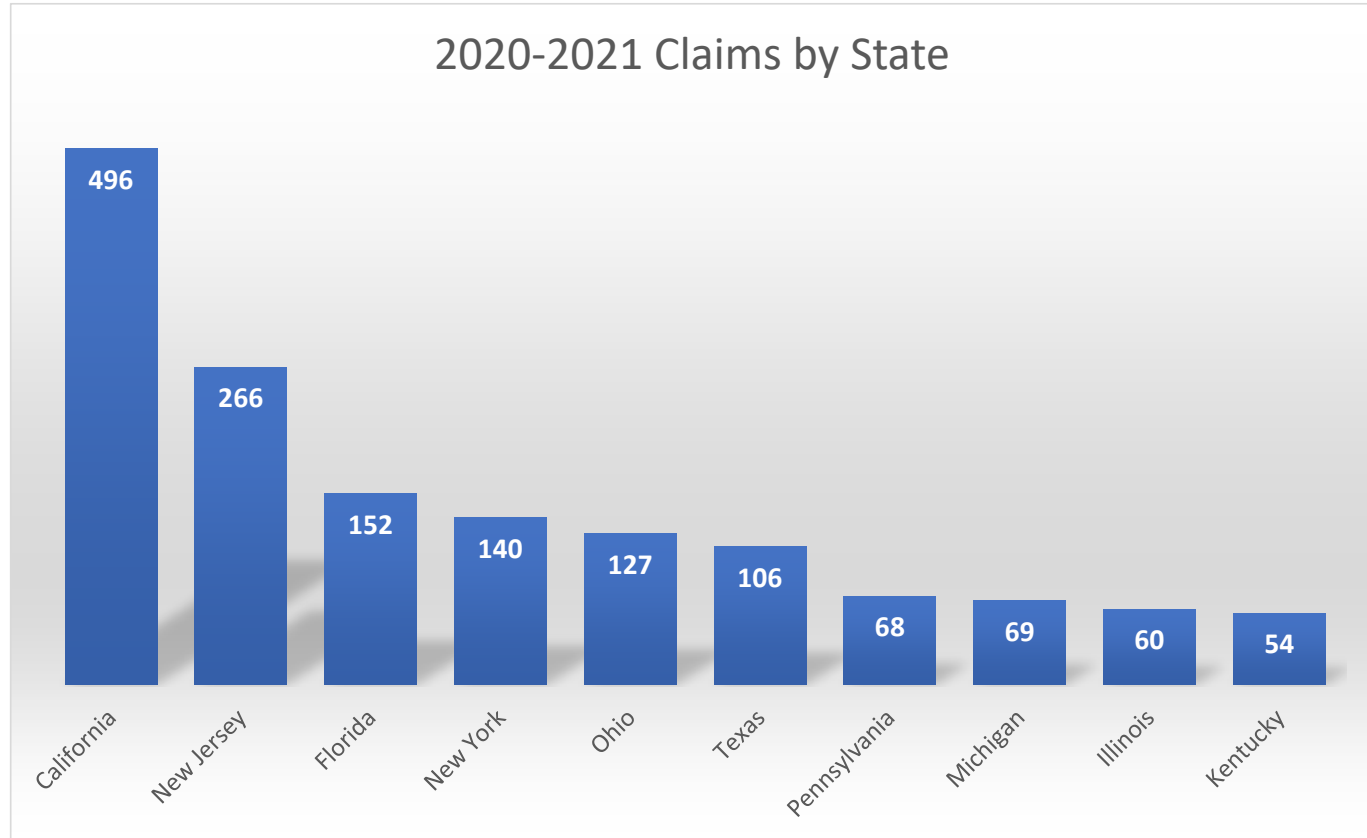
Objectives

- Guidance & Best Practices to avoid COVID-related litigation
- Strategies for Defending COVID Lawsuits
- Examining trends in COVID Litigation

We will address the following issues

- Overall Litigation Trends in Workplace COVID-19 Matters
- Remote Work/ Employee Leave Issues
- Retaliation/ Whistleblower Claims
- Discrimination Claims
- Wage and Hour Claims
- Unsafe Workplace Allegations
- CARES Act Claims
- Wrongful Death Claims
- Warn Act Matters
- Non-Competition/ Trade Secret Claims
- Breach of Contract Allegations

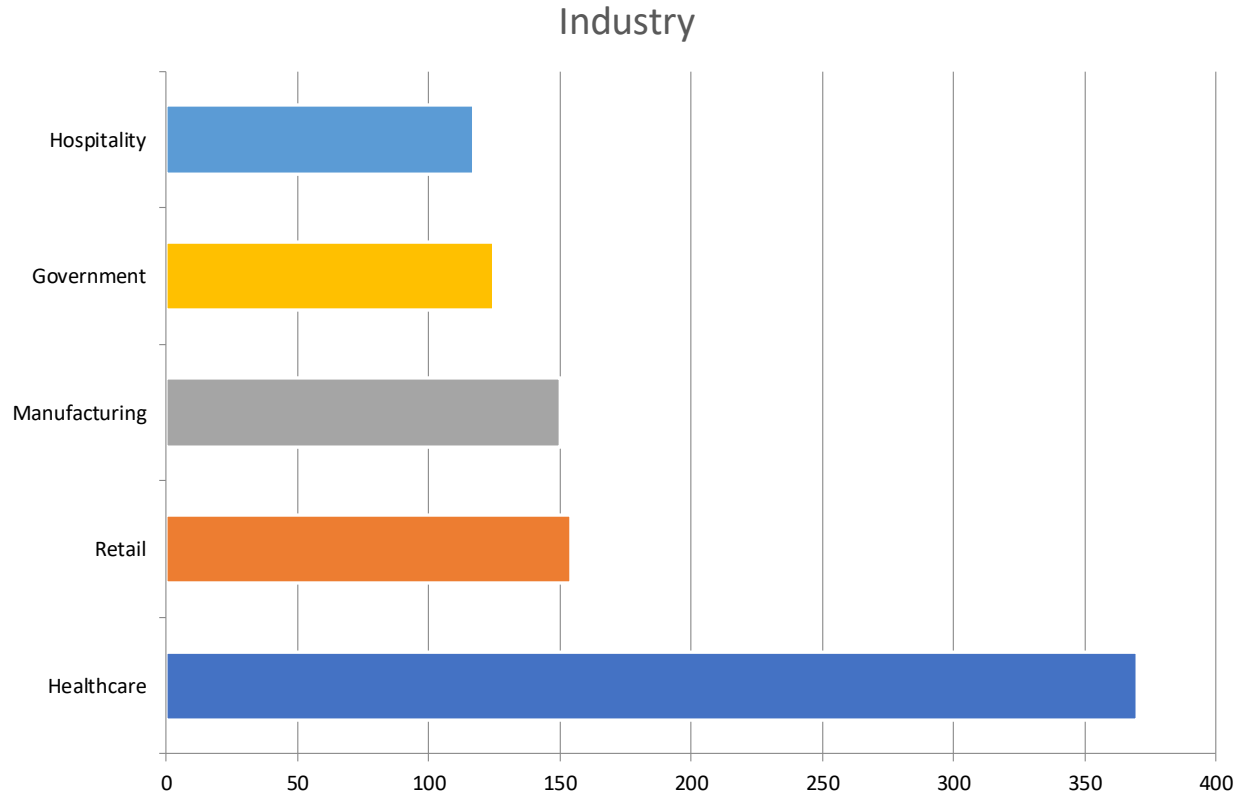
Number of Claims by State



Total Cases

- 2,053 from 1/30/2020 to 4/2/2021
- 65% of the claims were filed against employers with less than 500 employees
- 35% of all claims were filed against employers with less than 50 employees

Industries with the Most Claims



Manufacturing Highest Number of Claims

- Remote Work and Employee Leave Issues
- Employment Discrimination Issues
- Retaliation/ Whistleblower Claims
- Wage and Hour Matters
- Unsafe Workplace Allegations
- Wrongful Discharge Allegations

Most Common Claims

Employee Leave & Remote Work Requests

- Employers wrongfully denied employees leave under the Families First Coronavirus Response Act (FFCRA)
- Employers terminated employees in response to requesting leave under the act

Types of Filed Claims

- In *Baszak v. Givaudan Fragrances Corp.*, a shipping coordinator filed suit in New Jersey state court alleging she is at high risk for COVID-19 due to her Type 1 diabetes and comorbid cardiopulmonary conditions, and that her employer not only denied her request to perform work from home but concocted false reasons why she needed to work in-person at the facility.
- In *Camacho v. Performance Labs Inc.*, a former employee filed suit in New Jersey federal court claiming his employer fired him after he tested positive for COVID-19 and was forced to remain at home for 14 days. The employee also alleges that his employer failed to properly pay sick leave in violation of the Families First Coronavirus Response Act (FFCRA).
- In *Keys v. Giering Metal Finishing Inc.*, a former employee filed suit in Connecticut federal court against his employer, an automotive repair center, claiming he was fired when he was forced to stay home and take care of his two young children when their daycare closed due to COVID-19.

Discrimination Claims

- With respect to **discrimination** claims filed against manufacturing employers, many arise out of COVID-19 layoffs and sound like classic workplace disputes wrapped in a COVID-19 context. For example:
 - In *Gaston v. Flex N Gate Corporation*, a former assembly line worker filed suit in Indiana federal court claiming she was temporarily laid off while her employer, an automotive product manufacturer, closed during the COVID-19 pandemic. She claims that she was not called back to work because of her age.
 - In *Saleba v. Medpace Inc.*, a former research assistant filed suit in Ohio federal court alleging that, through a COVID-19 related reduction-in-force, his employer targeted older employees for termination and later recruited younger employees to fill their positions.

Discrimination Cases – Pregnant Employees

- Heightened risk of COVID-19 complications due to pregnancy may require accommodations or furlough
- Employers should respond quickly to requests for accommodation
- Treat a request to WFH as an accommodation request
- Document discussions for requests for leave or accommodation
- Reasons for termination should be carefully documented for a non-discriminatory reason

Retaliation Claims

- Finally, **retaliation/whistleblower** claims are being filed by employees in a variety of scenarios, including the following:
 - In *Detombeur v. CRH PLC and Tilcon New York Inc.*, a former employee filed suit in New Jersey state court alleging he was suspended and eventually fired after he voiced concerns about lack of social distancing and unsanitary conditions in his employer's workplace related to COVID-19.
 - In *Burgy v. Senator Int'l Inc. dba Allermuir*, an employee filed suit in Ohio federal court alleging his employer fired him after he provided his subordinates with accurate information about their eligibility to use paid sick leave under the FFCRA.

Unsafe Workplace Allegations

- Follow CDC guidelines to ensure a safe workplace for employees, including:
 1. Encourage hygiene practices
 2. Intensify cleaning, disinfection, and ventilation of the workspace
 3. Cancel non-essential travel and encourage telework
 4. Make spatial changes to the workplace to allow for 6 feet of distance where possible
 5. Restrict the use of shared items and spaces
 6. Train employees in safety actions

How are these claims different?

- They can come quickly: employees do not need to exhaust administrative processes first.
- Claims can come through days after the adverse employment action
- Smaller employers are not immune (employers with 50 or fewer employees are exempt from the FMLA, but not from the FFCRA)
- Claims can be costly – employees can recover liquidated damages
- Individual managers can be sued under the FFCRA

How to Avoid and Defend These Claims

- Designate a leave expert
- Train your management team
- Understand accommodation obligations
- Manage Communications
- Ensure sufficient documentation
- Consider written terminations

Is COVID-19 a Disability?

- The EEOC has not made a determination
- NYC Commission on Human Rights actual or perceived infection of COVID-19 is protected as a disability in NYC

FFCRA Leave Extended

- The Rescue Plan added **three new qualifying reasons** (7 through 9 below) for an employee to take EPSL. Now employees may take EPSL if the employee:
 1. Is subject to a federal, state, or local quarantine or isolation order related to COVID-19;
 2. Has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
 3. Is experiencing symptoms of COVID-19 and seeking a medical diagnosis;
 4. Is caring for an individual who is subject to either number 1 or 2 above;
 5. Is caring for his or her child if the school or place of care of the child has been closed, or the child care provider of such child is unavailable, due to COVID-19 precautions;
 6. Is experiencing any other substantially similar condition specified by the secretary of health and human services in consultation with the secretary of the treasury and the secretary of labor;
 7. **Is obtaining immunization related to COVID-19;**
 8. **Is recovering from any injury, disability, illness, or condition related to such COVID-19 immunization; or**
 9. **Is seeking or awaiting the results of a diagnostic test or medical diagnosis for COVID-19 and the employee has been exposed to COVID-19 or their employer has requested such a test or diagnosis.**

NYS Paid Time Off For Vaccinations

- New York employees are now entitled to receive paid leave to take their COVID-19 vaccination. One month after the New York State Assembly passed the bill, the New York State Senate unanimously voted 62-0 on March 1 to [grant both private and public employees up to four hours of paid leave per injection to receive the COVID-19 vaccine.](#)
- The bill amends the New York Labor Law (NYLL) to add Section 196-C, requiring that all private employers provide their employees with a “sufficient period of time,” up to four hours, of paid leave to receive the COVID-19 vaccine. The leave is four hours *per injection*, meaning employees who receive a two-dose vaccine can potentially be entitled to up to eight hours of paid time off under the law. The leave cannot be charged against any other leave to which the employee is entitled, including the recently enacted paid sick leave requirements.

NYS Paid Time Off For Vaccinations

- The entire period of leave must be provided at an employee's regular rate of pay. The requirements of the law, however, can be waived by a collective bargaining agreement if it explicitly references NYLL 196-C. The bill also forbids an employer from discriminating against, retaliating against, or interfering with an employee exercising their rights under the law, including requesting paid leave to be vaccinated.
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NYS Paid Time Off For Vaccinations

- The bill is short on detail and does not provide insight on what are likely to be some common employer questions, such as:
 1. whether employers can ask for proof of vaccination and what that proof could be;
 2. whether employees can use this paid leave for recovery from any side effects; and
 3. whether employers can exert any control over when an employee schedules a vaccine appointment.
- As it has with other COVID-related actions and with the new paid sick leave law, the State may issue guidance or FAQs. Given the purpose of the law is to promote vaccination, it is likely that the law will be interpreted through that prism to provide maximum encouragement for employees to get vaccinated. Until any guidance is issued, employers can and should continue to rely on current guidance, such as that issued by the [EEOC](#).

Additional Safe Workplace Practices

- Maintain social distance between employees
- Encourage sick employees to stay home
- Establish routine, daily employee health checks, such as temperature screenings
- Monitor absenteeism and maintain flexible time off policies
- Have an action plan in case an employee contracts COVID
- Create and test emergency communication channels
- Establish communication with state and local health authorities
- Keep written documentation of the company's safety protocols

Shielding Against COVID-19 Claims

- Follow OSHA and CDC Guidelines
- Timing and documentation are important (It never looks good when personnel change decisions are made around the same time an employee complained or the employer violated the law)
- Be aware of the new litigation landscape

Questions?

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**Thank you for
attending!**