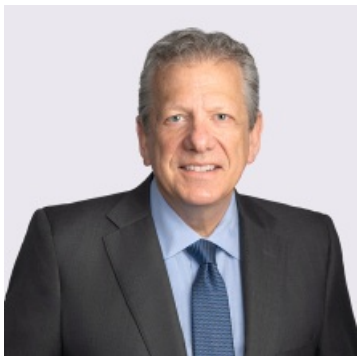


Workplace Safety, Hazard Prevention, and Premium Pay During COVID-19 Pandemic

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Six months into the COVID-19 pandemic, workplace safety and hazard prevention are more important than ever for manufacturers and other employers of essential employees. Besides the benefits of keeping their workers safe, manufacturers that maintain safe workplaces generally benefit from strong grounds for resisting demands for premium or “hazard” pay during the COVID-19 pandemic.

Premium or Hazard Pay

Despite significant progress in mitigation of workplace risks, premium or “hazard” pay continues to come up frequently for manufacturing employers. Hazard pay (somewhat of a misnomer) derives from a term used by the U.S. armed forces and originally referred to premium pay provided to troops deployed overseas, especially to combat zones. As its name implies, hazard pay is a premium provided to those whose work puts them in harm’s way when, despite every measure taken to lower the risk, there remains a significant risk of harm to the worker.

Hazard Pay Early in the Pandemic

Early in the COVID-19 pandemic, some employers offered premiums to ramp up hiring and staffing or to stem the losses of employees who chose not to face what was then a risk that could not be well quantified. Some early adopters of premium pay, or what became known as hazard pay, were in distribution centers and retail settings. Some manufacturing employers also provided limited time bonuses to acknowledge the extra work put in by their essential employees. Generally, manufacturing employers have chosen to provide pandemic-related premiums only in limited setting and for limited periods of time.

Early in the pandemic, workers’ centers that focused on workers’ rights (especially among workers historically underrepresented by many mainstream unions) called for hazard pay alongside calls to action on workplace safety issues. These early actions by workers’ centers included such classic corporate campaign tactics as street protests, letter writing campaigns to local and federal politicians, and social media and local press releases. While these have been overtaken by other news over the summer, unions have not forgotten and have continued to demand hazard pay at the bargaining table.

Three Considerations for Now and Later

While each manufacturing employer, whether unionized or not, will consult its own specific set of circumstances and strategy when responding to calls for hazard pay, some general considerations include following governmental and industry advice, supporting human resources and compensation fundamentals, and communicating consistently.

First, manufacturers should ensure they have taken precautions to comply with the

available advice on workplace safety. This means double-checking with legal counsel familiar with the Occupational Safety and Health Administration regulations and guidance and workplace safety consultants who can help ensure all of the basics are in place for compliance — even before beginning to talk about COVID-19 transmission mitigation and public health issues. This requires ongoing vigilance to stay on top of the changing official advice, executive orders, and regulations. If this challenge is met, the underlying rationale for hazard pay is already addressed.

Second, manufacturers can ensure their human resources and compensation fundamentals are in place. This means high functioning payroll and human resources departments that do more than execute well on the documentation needed for the added obligations presented by the pandemic. They should be fully aware of the benchmarking needed to ensure that compensation and benefits are market-competitive. These fundamentals can make a manufacturer less vulnerable to demands for overdue adjustments toward higher compensation in the form of hazard pay. They also can help employers avoid high turnover, absenteeism, and utilization of temporary workers and the related consequences (such as increased training costs, inefficient production, missed customer deadlines, and an inability to ramp up production).

Third, a consistent communication campaign is critical to decreasing the risk a manufacturer will be susceptible to claims that employees face the sorts of risks that can lead to demands for hazard pay. Even in unionized environments, a joint safety team or committee can help to address safety issues when they first arise. The committee listens to individual employee feedback and then takes action on safety-related concerns, thus preventing them from becoming significant compensation issues. Of course, labor counsel should be consulted before planning and implementing safety committees to ensure safety committees are formed the right way.

By focusing on addressing workplace safety issues before workers need to seek outside assistance from a workers' center, plaintiff's lawyers, or unions, manufacturers can lower the inherent risks presented by safety issues. Mitigation of risks must be coupled with close attention to market factors to know when pay needs to be adjusted to maintain competitive recruitment and retention of employees. Finally, when done right, safety committees can help alert employers to issues they otherwise might miss that can make workplaces safe, while reducing the need for hazard pay in the first place.

For additional guidance, please contact a Jackson Lewis attorney.

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