

Employment Law Developments Coming Soon to a Manufacturing Facility Near You

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June 14, 2023

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Every year, some developments in employment law have greater potential to affect the manufacturing industry than others. Thus far in 2023, possible changes to the salary threshold under the Fair Labor Standards Act (FLSA) and changes to the independent contractor classification are among the developments manufacturing employers should watch.

FLSA Salary Threshold

It is anticipated that the Department of Labor (DOL) will adjust salary thresholds for exempt employees under the FLSA, revisiting changes originally proposed under the Obama administration.

The current annualized salary requirement for exempt employees is a minimum of \$35,568, but DOL has signaled proposing a new higher salary threshold. If employers do not modify salaries to meet these new requirements, their employees may fall out of their exempt classifications and be entitled to overtime.

Manufacturing employers should begin their review of salaries now and keep the new salary amounts in mind as they budget. If the new salaries are not feasible, manufacturers need to plan now to eventually reclassify employees as non-exempt, understanding that this will trigger entitlements to overtime for all hours in excess of 40 in a workweek under the FLSA. Manufacturers then may need to take greater measures to offset the impact a having more non-exempt workers, including increased hiring, shift modifications, and so on.

Independent Contractors

Manufacturers that utilize independent contractors could be affected by possible changes to the treatment of this classification.

DOL is expected to propose a new independent contractor rule that may make it more difficult for manufacturers to meet the test for an independent contractor.

In addition, in recent years, many states have implemented their own independent contractor statutes, which presume anyone performing services for an employer for which they were paid is an employee and not an independent contractor. Most of these statutes put the burden on the employer to rebut this presumption.

Manufacturers may be tempted to utilize an independent contractor classification to keep retired talent on staff as a resource or transition tool or to fulfill areas of need such as maintenance, landscaping, or cleaning. Some employees may even request such a classification. However, it is important to make sure those classified as independent contractors are truly functioning as such. The risks associated with misclassifications are high.

EEOC Charges

Manufacturers are likely to see an increase in the number of charges filed by their workforce nationally. The Equal Employment Opportunity Commission (EEOC) has reported that, for its fiscal year 2022, it received almost 20 percent more charges than the previous year. The states with the highest increased charge numbers include California, Florida, Illinois, Pennsylvania, and Texas.

The EEOC has also grown its enforcement capabilities by increasing its workforce.

Manufacturers should devote resources to making sure their management is well-trained to deal with issues before they rise to the level of a charge. Such actions as making sure handbooks and policies are updated and employees knowing how to bring issues forward may prevent some charges from being filed. Even if charges are filed, these actions will greatly enhance the company's ability to defend them.

Pay Transparency

Manufacturers are facing an increasing number of states with pay transparency requirements.

In general, with pay transparency disclosure requirements, employees can have the right to request or be informed of salary range information for their position. In addition, some statutes require reporting this information to the government.

This information is anticipated to increase the focus on pay equity issues by employees, as well as enforcement agencies. Like with anticipated salary changes, it is a good time for manufacturers to review pay differentials and ranges and identify areas where affirmative steps need to be taken now to address any gap or disparity issues.

Accommodations

The EEOC provided new guidance for employers navigating the Americans With Disabilities Act when it published technical assistance "[Hearing Disabilities in the Workplace and the Americans with Disabilities Act.](#)" The EEOC also updated its [guidance related to COVID-19](#) and provided a number of examples for accommodating long-term COVID-19.

Manufacturers should continue to sharpen their processes and truly engage in the interactive process with their employees and carefully evaluate potential accommodations.

The federal government has also expanded protections for pregnant and nursing mothers. President Joe Biden signed the Providing Urgent Maternal Protections for Nursing Mothers (PUMP) Act, which expands accommodations for breastfeeding employees under the FLSA, giving all employees, not just non-exempt employees, the right to take reasonable breaks as needed to express milk. The DOL Wage and Hour Division [published guidance](#) emphasizing that the length and frequency of breaks will vary for each person. The breaks can be unpaid, unless required by federal or state laws or ordinances to be paid. Employers should pay careful attention to the FLSA's standard requirements for counting and compensating hours worked. Employees must be paid for any time spent pumping when they are not fully relieved from duty or when pumping during an otherwise paid break.

The PUMP Act clarifies that private spaces for pumping may not be a bathroom and should be shielded from view and protect against intrusion from coworkers and the public.

Also signed into law was the [Pregnant Workers Fairness Act](#) (PWFA), which requires employers with at least 15 employees to provide reasonable accommodations to qualified employees for known limitations related to pregnancy, childbirth, or related medical conditions, so long as they do not impose an undue hardship.

These laws are in addition to protections under Title VII of the Civil Rights Act, the Family and Medical Leave Act, and the ADA, and join many state laws providing similar protections against discrimination and accommodation.

Manufacturers would benefit from making sure notice requirements are being met, checking that their lactation spaces comply, and making sure accommodation forms and policies meet new standards.

If you have any questions, please contact the author or the Jackson Lewis attorneys with whom you regularly work.

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