

Mini Kapoor in Occupational Health & Safety: 'Protecting Your Company From COVID-19 Workplace Safety Whistleblower Claims'

November 5, 2020 Mini Kapoor

PRACTICES Environmental Litigation, Environmental

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The COVID-19 pandemic has resulted in a dramatic increase in the number of whistleblower complaints to OSHA alleging inadequate protection of employees from COVID-19 in the workplace. OSHA protects employees who complain about unsafe or unhealthy conditions in the workplace from retaliation by employers. Specifically, Section 11(c) of the Occupational Safety and Health Act prohibits employers from discharging or in any manner discriminating against any employee for making such complaints. Considering the upward trend of COVID-19 whistleblower complaints by employees, employers should consider proactively implementing measures in the workplace to minimize the potential for COVID-19 safety complaints. The sections below discuss practical steps that employers can take in that regard.

Enforcing COVID-19 Safety Rules in Compliance With Applicable Federal, State And Local Guidance

Maintaining the workplace in compliance with the applicable COVID-19 guidance may minimize the risk of and boost defenses against whistleblower complaints of unsafe or unhealthy conditions in the workplace. Employers should make good faith efforts to implement and enforce applicable safety rules in the workplace, including COVID-19 specific standards adopted by some state OSHA programs. Where available, industry-specific guidance must be followed, and where industry-specific guidance is not available, employers should strive to implement the safety standards consistently adopted by other employers in the industry. In circumstances where it is infeasible to implement the recommended safety rules, alternative means for protection that provide equal or greater protection should be explored and implemented to help demonstrate due diligence. Further, in view of the evolving COVID-19 safety guidance, employers should stay current with the applicable guidance from federal, state and local governments.

Promoting Communication Regarding Safety in The Workplace

Employers should consider encouraging a culture that allows open discussion regarding safety concerns in the workplace and allows employees to raise such concerns with their managers. Employees may be reminded about the importance of health and safety in the workplace and that they are encouraged to inform managers of any safety concerns that they notice or experience in the workplace.

Managers may proactively seek input from and address employee concerns for COVID-19 safety in the workplace. Managers may be trained on the importance of being aware of the dynamics of workplace safety conditions and watching out for potential concerns among employees. Employers

may consider forming safety teams (composed of both managers and employees) that may be tasked with monitoring and ensuring that COVID-19 safety rules are followed in the workplace.

Excerpted from *Occupational Health & Safety*. To read the full article, click [here](#).