



# Challenging Health and Safety Issues in a Unionized Environment





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Q&A

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RALPH: What is the current legal position on marijuana in the workplace?

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## Challenging Health and Safety Issues in a Unionized Environment

**Date:** August 11, 2021

**Time:** 3:00 p.m. Eastern Daylight Time

9:00 a.m. Hawaii Standard Time

**Duration:** 1 hour



### Event Resources

Presentation Slides & Certificate of Attendance

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Resources provided by the speakers and their firms:

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M O D E R A T O R

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# Panelists



**Chad M. Horton**  
Associate  
Shawe Rosenthal  
Maryland



**Francine Esposito**  
Partner  
Day Pitney LLP  
New Jersey



**Michael Glassman**  
Partner  
Dinsmore & Shohl LLP  
Ohio



**John (Jack) R. Merinar Jr.**  
Member  
Steptoe & Johnson PLLC  
West Virginia

# Overview

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## Challenging Health and Safety Issues in a Unionized Environment

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- Labor Law Safety-Related Protections and Increased Union Activity
- Potential Issues Under Collective Bargaining Agreements and the National Labor Relations Act (NLRA)
- Collective Bargaining & Grievance Processing During a Pandemic
- Economic Issues and Flexibility of Operations



FRANCINE ESPOSITO

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# Labor Law Safety-Related Protections

- In addition to OSHA, federal labor law protects all non-supervisory employees' safety-related protests
  - Section 7 of National Labor Relations Act protects those who engage in “concerted activity for mutual aid or protection”
  - Section 502 of Labor Management Relations Act protects those who participate in a work stoppage based on a good-faith belief that working conditions are abnormally dangerous
    - Ascertainable, objective evidence supports that belief; and
    - Perceived danger poses an immediate threat of harm to employee health or safety
- Federal labor law may require employers to bargain with the union representing their employees regarding their safety-related decisions and the effects of those decisions



# Increased Union Activity



**Francine Esposito**  
Partner  
Day Pitney LLP  
North America/New Jersey

- Unions have encouraged and/or provided guidance for safety protests (even for non-union employees)
- Uncertainty, wage and hour reductions, lack of job security and safety concerns caused by COVID-19 pandemic may encourage employees to seek union representation
  - Watch for signs of organizing, which is more frequently virtual
- Be aware of CARES Act loan certifications
  - Neutrality in union organizing campaigns for the duration of the loan
  - Not to “abrogate” existing CBAs during term of loan (not to exceed five years) and for two years thereafter





**MICHAEL GLASSMAN**

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**Dinsmore**

## Potential Issues Under Collective Bargaining Agreements and the National Labor Relations Act (NLRA)

- Issue of Mandating Vaccines
- Is There A Duty To Bargain?
- Virginia Mason Hospital, 357 NLRB 564 (2011), appeal from remand, 358 NLRB 531 (2012)
- Suggestions for Employers
- Dealing With Other COVID – related Health & Safety and Operational Issues That Unionized Employers May Face





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**SHAWE**  
**ROSENTHAL** LLP  
MANAGEMENT'S WORKPLACE LAWYERS®

## Collective Bargaining & Grievance Processing During a Pandemic

- In-person vs Remote Bargaining: Pros/Cons and Other Considerations
- Is Remote Bargaining Here to Stay?
- Pandemic's Effect on CBAs: Extensions and Duration
- How Pandemic Has Affected Grievance Processing
- Remote Arbitrations





**JOHN R. MERINAR JR.**

West Virginia

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## Economic Issues

- “Hero Pay” and other forms of hazard pay
- Paid Time Off
- Added costs of working remotely
- Costs of workplace modifications



# Economic Issues



**John Merinar**  
Member  
Steptoe & Johnson, PLLC  
WV, OH, KY, PA , MD

- Scenario: The Union is pushing for improved ventilation....and a wage increase.
- Scenario: The Union wants added PTO to cover quarantines...
- Scenario: You want to pay COVID hazard pay, but only for certain classifications.
- Scenario: You want to encourage remote work. The Union wants you to pay for laptops and wi-fi.



# Flexibility of operations



**John Merinar**  
Member  
Steptoe & Johnson, PLLC  
WV, OH, KY, PA, MD

- Needed: the ability to conduct swift *temporary* layoffs with few seniority-based restrictions.
- Helpful: the ability to make skill-based voluntary reassignments to other departments or classifications.
- To be avoided: time-consuming internal bid procedures that slow external hiring.

# Flexibility of operations



**John Merinar**  
Member  
Steptoe & Johnson, PLLC  
WV, OH, KY, PA, MD

- Temporary layoff scenario: The County issued a 25% bar occupancy limit for the next 4 weeks. You are a beer distributor. Your drivers are union.
- Skills-based reassignment scenario: Your nursing home provides incentive pay to work the COVID Unit. You want to assign your most skilled nurses, not necessarily the most senior.
- Hiring scenario: Enhanced unemployment benefits make it hard to find CNC operators. Now a good one is available, but you have to post the job for bid first.

# Questions?



# Thank You!

M O D E R A T O R



**Anna M. Elento-Sneed**  
President  
ES&A  
Hawaii



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Region\*

### Speakers

*Moderator*



**Anna M. Elento-Sneed**  
President  
ES&A  
Hawaii

*Presenter*



**Chad M. Horton**  
Associate  
Shawe Rosenthal  
Maryland

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10:00 a.m. Eastern

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**Legal Implications  
of Hiring and  
Managing Remote  
Workers in Asia  
Pacific**





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