GCs Bracing For Wave Of COVID-19-Based Employment Suits

By **Anne Cullen**

Law360 (December 9, 2020, 10:16 PM EST) -- In-house legal professionals overwhelmingly cite employment liability as the biggest legal risk they're facing related to the global health crisis, with many readying themselves for employment litigation they believe is in the pipeline, according to a survey released Wednesday by Morrison & Foerster LLP.

Nearly 90% of the 80 general counsel at global corporations who responded to the MoFo questionnaire this fall said employment-based disputes remain the top legal risk associated with COVID-19 that they're concerned about, regardless of company size or industry.

Around two-thirds of the respondents also said they expect to be hit with employment lawsuits down the line.

Both sets of responses mirror what MoFo found after its two previous surveys conducted in March and May, and MoFo labor and employment partner Janie F. Schulman said in-house legal teams are right to remain concerned about worker-helmed legal battles to come.

"There are a lot of rules that come at employers from a lot of different angles, and it takes a lot of effort to get it right," Schulman said. "Even when you get it right, unfortunately there are employees who are going to sue anyway."

She said employment issues "are always a disproportionately large portion of the risk in any organization," but noted that especially in a situation where so many people have been furloughed or laid off, new types of grievances may emerge.

"Employers are concerned that employees who are desperate might be looking for ways to file claims," she said. "Or maybe more likely that plaintiffs' lawyers have become very creative in looking for ways to come up with new claims with so many people out of work."

With vaccines on the horizon, MoFo's new report found in-house attorneys are more optimistic about the long-term impacts of the crisis and the potential for recovery. But Schulman noted that the availability of a vaccine will present new challenges for businesses and new benefits and risks to balance.

"Some people might be unhappy if there's a mandate that employees get a vaccine, some people, quite

the opposite, may be unhappy if there isn't a mandate because they want to make sure everyone around them is vaccinated," she said.

While Schulman said employers should be able to require their roster to get vaccinated barring any prohibition in state or local laws, she noted that company leaders will need to make sure they're also evaluating special circumstances. In particular, evaluating circumstances to stay compliant with laws and regulations covering disability and religious bias.

"If somebody can show they have a disability that prevents them from taking the vaccine safely, employers will need to consider their obligation to provide reasonable accommodation," she said.

She made clear that this doesn't mean that people can just ask to skip the vaccine if they want to, but that company leaders will need to go through the same steps and analysis they do when evaluating any disability accommodation, regardless of the pandemic. The same goes for a worker who says getting the COVID-19 vaccine runs counter to their faith, Schulman said.

"The employer has to be aware that it needs to examine the duty to explore reasonable accommodation for sincerely held religious beliefs," she said. "So it's going to be really important to make sure employers are educated about the rules that are out there so they don't inadvertently make a mistake in their effort to protect their workforce and the public."

Outside of the employment arena, the general counsel who participated in MoFo's latest survey also ranked the legal risks related to data security and contracts as top areas for liability that they're keeping an eye on. As for litigation, contract battles also ranked high on the type of lawsuits the in-house lawyers said they anticipate, followed by supplier litigation.

--Additional reporting by Michele Gorman and Kevin Penton. Editing by Leah Bennett.