

As pandemic spreads, so do lawsuits: 3 cases to watch



Because of the coronavirus pandemic, the chances that your organization will be hit with a lawsuit have risen sharply. There are already hundreds of covid-19 and coronavirus-related lawsuits percolating through state and federal courts.

The most common claims are retaliation, followed by wrongful termination, discrimination and worker safety.

Here's a sampling of three recent lawsuits that illustrate some of the legal perils that await employers in the coronavirus pandemic age.

FFCRA paid sick leave

Aileen worked for Refocus Eye Health, a Philadelphia-area ophthalmology practice. She began experiencing symptoms of covid-19 back in May. She called her boss and said she was unable to come to work because she felt ill.

She visited her doctor, who arranged for a covid-19 test and ordered her to self-quarantine until she got the results. She told her employer about the test and the recommendation to quarantine.

Twelve days later, Aileen received the test results. They came back negative, but she still felt sick. Aileen's doctor ordered a second test, reasoning that the first test may have been taken too early.

At that point, Refocus Eye Health ordered Aileen to return to work or else she would be fired. Her doctor told her to stay home. She did, and the medical practice terminated her.

Aileen has now filed suit. She alleges that she was on protected FMLA leave when she was fired. She claims her employer should have paid her under the emergency sick leave terms of the Families First Coronavirus Response Act. (*Lopez v. Refocus Eye Health*, ED PA, 2020)

Note: This is one of the first FFCRA covid-19 paid leave lawsuits.

FMLA interference

Ernesto was a maintenance worker at Fieldale Farms in Georgia. He was diagnosed with covid-19 and told by his physician to stay home for two weeks. When his two weeks were up, he was still having respiratory symptoms. His doctor said he should remain at home and assume he was still infectious. When Ernesto was finally cleared to return to work, his employer terminated him.

Ernesto sued, alleging interference with his FMLA rights. (*Lopez v. Fieldale Farms*, ND GA, 2020)

Fired for mask enforcement

Will, a manager at a General Nutrition store in Florida, confronted several customers who entered his store without face coverings. The mayor of Tampa had just issued an order requiring customers to wear masks inside retail establishments.

The customers became aggressive and screamed obscenities. Will called his district manager, who told him to back off enforcing the face-covering rule. He said he was told the vitamin-supplement chain did not want to risk alienating customers and losing sales because of a mask dispute.

A few days later, Will was fired. He sued, alleging he was retaliated against for reporting wrongdoing under the Florida Private Whistleblower's Act. (*Rivera v. GNC*, Hillsboro County FL, 2020)