



Novel Lawsuits for a Novel Virus

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While the landscape is far from settled, there is increasing evidence that the plaintiffs' bar is gearing up for a wave of employment lawsuits stemming from the ongoing COVID-19 pandemic. These lawsuits typically allege an employer's unlawful conduct as it relates to an employee's pre-existing medical conditions, an employer's obligation to accommodate for these conditions, an employer's failure to take appropriate COVID-19 safety precautions in the workplace, or some combination thereof.

A typical example of such a lawsuit was recently filed in Florida federal court. There, a 60-year-old employee alleged she was terminated because of her inability (or perhaps her personal fear) to return to the office because of pre-existing medical conditions that make her more susceptible to COVID-19 complications. She alleged that as her employer began reopening the office, she felt pressured to return to the workplace, despite the employer's awareness of her medical conditions and a doctor's note explaining the same. The employee claimed she succumbed to her management's pressure to return and, upon doing so, found the employer's safety measures appalling.

Specifically, she claimed her colleagues were not wearing masks and did not properly distance, and contended that the facility

lacked basic sanitary products such as paper towels. She further claimed that after working in the office for only a couple of weeks, and with a coinciding spike in Florida COVID-19 cases, her employer abruptly terminated her because “things were not working out.” According to the employee, this justification for her termination was entirely pre-textual. Instead, she believes her employer terminated her because of anticipated accommodations the employer would have to make for her, such as remote work and sick leave. The employee alleges that her employer’s conduct violated the retaliation and interference provisions of the Family Medical and Leave Act (FMLA).

Though we are only seeing one side of this story in the employee’s complaint, these facts present a type of scenario that will likely be common for employers in the coming months. Among the sources of anticipated COVID-19-related complaints are organizations attempting to reopen offices, employees’ individual medical conditions impacting their ability to be physically present in the office, employers’ attempts (or failures) to implement workplace safety measures, and a cycle of spiking and waning COVID-19 cases throughout the country.

So what are employers to do in the face of all these factors and uncertainty?

We have discussed in previous blog entries that employers should first look to governmental agency guidance from organizations such as the [Centers for Disease Control \(CDC\)](#) and the [Occupational Safety and Health Administration \(OSHA\)](#) in making workplace decisions in the context of COVID-19. In the absence of laws shielding employers from COVID-19-related

claims, employers can point to their compliance with this guidance to show their actions were reasonable. However, there actually is hope that federal and state governments will provide statutory protections for employers against some COVID-19-based claims. We previously highlighted [several bills that are in the works providing such protections](#), though most are still working their way through their respective legislative bodies.

In the meantime, employers should be mindful that there is not a “one-size-fits-all” answer for these issues. Before taking any adverse employment actions, it is best to consult with counsel to identify any potential risks.

Companies in all sectors of the economy continue to be impacted by COVID-19. Foley is here to help our clients effectively address the short- and long-term impacts on their business interests, operations, and objectives. Foley provides insights and strategies across multiple industries and disciplines to deliver timely perspectives on the wide range of legal and business challenges that companies face conducting business while dealing with the impact of the coronavirus.

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