

COVID-19 LITIGATION REPORT

August 24—28, 2020

TRENDS THAT WE ARE SEEING:

- Continue to see a wide-range of retaliation, discrimination and/or unlawful termination lawsuits filed relating to the pandemic.
- Heightened focus on workplace schedules, request for accommodations, and leave requests related to Fall childcare and school reopening decisions. Employers are quickly assessing FFCRA emergency leave obligations while attempting to maintain continuity of business operations.
- Significant number of contract claims, on a wide-variety of industries and businesses, but including landlord/tenant and other premises-related issues.

PRACTICAL CONSIDERATIONS:

1. Consider all potential COVID-related arguments that will be made by employees when contemplating any termination decision; carefully consider requests for employee accommodations, and properly document business decisions.
2. Continue to assess all contracts, develop positions in order to enforce or seek to avoid performance under the agreement; consider adding language to future contracts to allow for different outcomes during this pandemic.

Subject Matter	Case Details
Workplace Claims	<ul style="list-style-type: none"> • Deny leave request (Alabama): A parks and rec employee filed suit after her leave request under the Families First Coronavirus Response Act was denied. • Deny request to conduct in-person meeting (California): employer insisted on holding an in-person meeting, which employee objected; when employee sought assistance in cancelling in-person meeting, employee was then fired. • Sexual harassment: <ul style="list-style-type: none"> ○ Supervisor made employee have sex with him and threatened that if she refused, she would be fired. His threats included requiring the employee to drive or fly to see him for sexual acts. After the pandemic began, she refused to drive or fly to see the supervisor, and she was then fired (California) ○ Employee received requests for sexual favors, unwanted touching, and other inappropriate conduct; employer claimed to lay off employee because of COVID, but employee claims it was because she made these complaints about sexual harassment (California). • Wages (New York): Union initiating lawsuit alleging workers are not being paid properly, being paid only a “per diem” rate. • Masks/ADA (New York): plaintiff who is confined to a wheelchair alleges a store wrongfully refused him entry because plaintiff was not able to put on a mask before entering the store. • Age Discrimination:

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	<ul style="list-style-type: none"> ○ Lawyer was fired after he informed employer that his underlying health conditions made returning to the office potentially life-threatening (New York) ○ Estimator was told he needed to work from home because of COVID and then told he would be placed on “temporary layoff” because of his age; he was then fired, along with another older co-worker (California) ● Disability Discrimination (Ohio): pre-COVID, employee went on medical leave for back surgery and then developed further complications that required additional procedures, which were postponed because of the pandemic; employer then fired employee because she could not work without restrictions. ● Refusal of a WFH Request (Florida): Employer allegedly wrongfully refused employee’s work-from-home request that she made due to a disability. ● Firing following a WFH Request (Missouri): Doctor’s office allegedly fired employee after requesting to work from home during a “stay at home” order. ● Unpaid wages (Alabama): Worker was not paid for overtime hours worked and then she took time off after injuring her knee; after the employer-restaurant re-opened during pandemic, she has not been asked to work. ● Retaliation (California): bookkeeper sought to transition to a “contractor” status after informing employer that she was pregnant; employer denied the request. Due to the pandemic, employer then placed her on “temporary layoff” status. When bookkeeper informed employer that she could not work remotely because she had to care for her daughter and then asked about FFCRA rights, the employer allegedly accused her of past performance issues and then terminated her. ● Whistleblower (New Jersey): employee was laid off after pandemic began and then was re-hired part-time; after employee provided information of areas of a hotel that were not compliant with disability discrimination laws, employer ignored her and then fired her. ● Wrongful termination (California): employee was fired one week after she provided a medical note saying she needed leave to treat thyroid cancer; employer claimed the pandemic as a reason for the termination, which the employee contends is a pretext. ● Wrongful use of Personal Health Information (Missouri): employer allegedly used confidential health information in order to identify employees and urge them to stay home and use leave.
<p>Premises Issues and Landlord/Tenant</p>	<ul style="list-style-type: none"> ● California: Sublessee failed to pay monthly rental payments on a commercial lease and allegedly did not qualify for rent deferral protections of San Diego law. ● Virginia: lessor alleged property owner knew lessee did not intend to renew a lease and then deliberately delayed providing alternative leasing options during the pandemic; property owner then sought to bind lessee to an additional three-year renewal term. ● New York: lessee seeking declaration that lease is terminated and void, plus the return of security deposite, after lessee had to close his business due to pandemic. ● New York: lessee sought return of lease installment payment and deposit after lessee was unable to use equestrian center due to pandemic. ● Ohio: lessee seeks declaration that lessee cannot be evicted because pandemic has prevented them from opening the business effectively and sufficiently enough to be

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	<p>able to make enough money to pay the lease or make a profit; seeking reformation of lease.</p> <ul style="list-style-type: none"> • Pennsylvania: parking lot owner has failed to conduct repairs and maintenance, attempting to pass those costs onto lessee • California: lessee alleging the return of \$1 million deposit on a condominium, which value has been destroyed by pandemic. • New York: lessee seeking to rescind rental agreement due to unforeseen circumstances due to pandemic. • Arizona: lessor wrongfully demanded full rent from tenant, even though facility was closed by government order, and wrongfully locking out tenant from property.
<p>Contract and Business Claims, Including Event Cancellations</p>	<ul style="list-style-type: none"> • Repossession of goods (Wisconsin): alleged wrongful repossession of car, without alleged notice, after lessee fell behind on payments due to economic hardship due to pandemic. • Rental facility (Georgia): Rental facility for high school prom refused to refund full deposit. • Trip Insurance (Nebraska): family attempted to cancel a trip to Tuscany due to pandemic, and credit card company allegedly employed “arbitrary and capricious protocols” in determining whether to pay trip interruption insurance. • Event Deposits (New York): alleged failure to return deposits for wedding reception that was cancelled due to pandemic. • Sponsorship Deal (California): large education institution has sued a large athletic apparel company, alleging the company has sought to get out of a sponsorship deal because it was too expensive and has identified the pandemic only as a pretext to terminate the agreement. • COVID-Related PPE and Materials: <ul style="list-style-type: none"> ○ Company offered to sell protective face masks to state and said it would do so at a small markup, when actual markup was closer to 100% (North Carolina). ○ Company allegedly agreed to purchase air-disinfection machines that were based upon false representations and then learned the manufacturing facility had no ability to make the number of units promised; seeking return of \$300,000 deposit (Florida). ○ State filed suit against company that charged “unconscionably excessive” prices for hand sanitizer during pandemic (Pennsylvania). • Chemical Contract (Texas): seller of chemical attempted to terminate contract while products were in transit, citing the pandemic as an excuse; buyer seeks damages of \$1.5 million under the contract. • School buses (New York): bus company refused to perform services without a guarantee that district will pay even during periods of time when no services are provided due to the pandemic; district seeks an order requiring company to provide services.

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Class Actions	<ul style="list-style-type: none">• Data breach (Illinois): Consulting firm built web-portals to allow users to apply for benefits under the Pandemic Unemployment Assistance program, with insufficient controls of personal identifiable information, resulting in a data breach.• Tuition and fees for higher education (New York, California, Missouri, Arizona, Florida, New Jersey): Students bring class action cases against universities to refund payment for tuition and fees after COVID-19 pandemic cancels classes and campus activities.
Insurance Coverage	Several suits alleging business interruption and revenue/profit losses by a variety of businesses across the country.

For additional information, please feel free to contact us at any time.



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