

Insights, News & Events

## FLIPPING THE SCRIPT: EMPLOYER SUES FORMER WORKER FOR COVID-19 DEFAMATION

Insights  
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In what can only be described as a complete flipping of the script in employment-related litigation, the owner and manager of a suburban Pittsburgh restaurant adversely impacted by the COVID-19 pandemic have sued a former restaurant server for defamation in Pennsylvania state court. They allege that when they changed their pay plan to deal with the impact of lost business due to a government shutdown order, the server took to social media making disparaging comments about their business that were false, defamatory, and damaging to the restaurant's and the individuals' reputations. While [there has been a steady stream of lawsuits being filed across the country](#) by employees alleging COVID-19-related workplace wrongdoings, suits by employers against employees regarding impacts of the pandemic remain an extreme rarity. What can employers learn from this example?

### PAYROLL ERROR LEADS TO CAUSTIC SOCIAL MEDIA ATTACKS

When the pandemic hit and business suffered, the Gateway Grill in Monroeville, Pennsylvania – among other changes – altered servers' pay from their normal \$2.83 per hour plus tips to the state's minimum wage of \$7.25 an hour plus a share of tips from the take-out service that was allowed to continue. But due to an error (later corrected according to the restaurant), the restaurant's payroll processor did not make the change in a timely manner. The error resulted in servers receiving paychecks at the usual \$2.83 an hour, but with scant, if any, tips because they were not offering the usual dine-in services.

### Related People



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Brittney M. Davenport, a server at the Gateway Grill, allegedly went on social media to allege that Michael Bennett, the manager, was “extorting thousands of \$\$\$ from his entire female staff” and “retaliating against female staff for uncovering fraud.” According to court records, Davenport made numerous posts along these lines, alleging the restaurant was keeping servers’ tips and paying them to restaurant cooks as wages, and was committing tax fraud.

The restaurant terminated Davenport in late May, but her posts continued thereafter. Court records show that many of her social media followers commented on her posts, some supportive, some cautionary. One reply recommended that Davenport “refrain from posting too much on social media, he could get you for slander and have proof of it on social media . . . go thru the proper channels . . . when you go to (war) you don’t let the enemy know your plans . . . .” These words ended up ringing true.

The restaurant, along with owner Kevin McFadden and the manager named in the social media posts, sued Davenport on June 19. The eight-page complaint seeks monetary damages, punitive damages, interest and costs, and injunctive relief to force Davenport to cease her negative posts about the restaurant, its owner, and manager.

## **WHAT CAN YOU LEARN FROM LAWSUIT**

The takeaway for business owners and employers who have made adjustments in operations to survive the pandemic is that you need to be mindful that not every adjustment you make will sit well – or at all – with employees, vendors, even customers. You should be regularly Googling or otherwise searching your business names on all social media platforms to learn what’s being said about you.

If it’s positive, that’s wonderful. But if it’s false and/or defamatory, you need to act swiftly to halt the activity if possible. Considering that the social media sites are often loath to act on behalf of those who complain at the risk of limiting posters’ rights to free speech, legal action along the lines of what the Gateway Grill filed might be a necessary and perhaps the most effective deterrent. You will want to act in concert with your counsel if you learn that any current or former employee is making such comments, however, as there could be hidden traps along the way for you to navigate.

## CONCLUSION

For further information about COVID-19-related litigation being filed across the country, you can visit our [COVID-19 Employment Litigation Tracker](#). Our [COVID-19 Employment Litigation and Class & Collective Actions section](#) also has a listing of our litigation-related alerts and team members handling these types of cases.

Fisher Phillips will continue to monitor the rapidly developing COVID-19 situation and provide updates as appropriate. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney. You can also review our [FP BEYOND THE CURVE: Post-Pandemic Back-To-Business FAQs For Employers](#) and our [FP Resource Center For Employers](#).

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