



Choppy Seas: Alleged Involuntary Quarantine Of Employees Lands Employer in Wage and Hour Class Action

Insights

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A class action lawsuit filed in Los Angeles County alleges that a seafood company exposed seasonal employees to COVID-19 and then forced them, with the help of a hotel, to quarantine in hotel rooms against their will – and without pay. This class action is an extreme example of the new wave of COVID-19 lawsuits involving costly wage and hour claims against employers. But is likely to be one of many such lawsuits that will be filed as businesses work to navigate their legal obligations to their employees in the landscape of COVID-19. What can your business learn from this Los Angeles county suit?

The Allegations

Jane Doe, a woman who prefers to remain unnamed in this suit, alleges that her employer, North Pacific Seafood, Inc., flew her and 150 other seasonal employees to Los Angeles before further transporting them to a fish canning factory in a remote Alaskan village. Jane Doe claims that North Pacific did not comply with county and state health measures, forcing them to be in close proximity to each other without any protection, social distancing, or proper hygiene for more than six hours. Jane Doe claims that employees received COVID-19 tests and were forced to quarantine in hotel rooms at the Crown Plaza Hotel while waiting for test results. When three employees' tests came back positive, Jane Doe claims that North Pacific and the hotel where the employees were tested, forced all employees to continue to quarantine for 10 additional days without pay.

During the quarantine, employees were locked in and not allowed to leave their hotel rooms, were only provided two meals per day, and were not allowed to order additional food or supplies from room service or elsewhere. Jane Doe alleges that employees were told they would be terminated if they violated the quarantine rules.

Jane Doe's suit alleges that North Pacific should have paid the employees for their time in mandatory quarantine and failed to do so. This case is in the early stages of litigation, and it is critical to keep in mind that these allegations have not been proven in any manner. The employer will have an opportunity to offer a defense to all of the charges against it. Regardless of the validity of these claims, however, reviewing these allegations is still a helpful exercise for your business in determining the best way to stay on the right side of the law during these unprecedented times.

Wage and Hour Obligations Remain Despite COVID-19 Precautions

The best way for employers to protect their employees and to protect against future litigation is strict compliance with federal, state, and local health orders. The [Centers for Disease Control and Prevention](#) makes recommendations, including but not limited to, maintaining social distancing between employees; encouraging employees who are sick to stay home (quarantine); and establishing routine, daily employee health checks (i.e. temperature checks or symptom surveys). Be sure to check your state and local orders because these orders may contain additional safety requirements. An important consideration for employers with COVID-19 safety procedures (think temperature checks or symptom questionnaires, or here, quarantine) is whether they have to pay employees for the time it takes to comply with the employer's safety procedures? The answer is: maybe.

The federal Fair Labor Standards Act (FLSA) requires that employees be paid for "principal activities or activities which employees are employed to perform." Principal activities include all activities that are "an integral and indispensable part of the employee's principal activities." An activity is integral and indispensable, and compensable, if it is "an intrinsic element of the principal activities and one that the employee must do in order to perform their principal activities." Courts have held that the following are examples of employee-compensable time: time spent by battery plant employees showering and changing clothes after working with toxic chemicals; time spent by meat packer employees spent sharpening their knives because dull knives would slow down production, affect quality of the meat, and lead to accidents; and time that poultry plant employees spent walking between the changing area where they put on protective gear and their work area.

Under the FLSA, if an employer fails to pay an employee minimum wage, the employee may seek recovery of the unpaid wages, an equal amount in liquidated damages, and attorneys' fees and costs. Many states throughout the country have additional wage protection laws for employees. For example, California similarly requires that the employees be paid minimum and overtime wages for all hours worked for the employer. "Hours worked" means the time during which an employee is "subject to the control" of an employer.

Whether an employer must compensate an employee for time spent doing temperature checks and symptom surveys is a fact-specific question for each employer. For the time being only, measuring employees' temperatures may be like situations where employees must put on protective gear in order to safely perform their jobs. But, there is also some guidance that suggests that employees waiting to have their temperature taken or respond to a symptom survey may be performing activities too far removed from principal job activities to be compensated.

What Should Employers Do?

The safest approach is to pay non-exempt employees their regular wages during their compliance with employer-mandated COVID-19 safety measures, especially in employee-forward states like California. This means paying employees to have their temperatures checked or participate in symptom questionnaires. If an employer makes the decision not to pay employees wages for their participation in COVID-19 safety measures, this decision should be made under the careful direction

of employment counsel. This is an easy area to in which to identify and prevent potential liability. Employers have the opportunity to pay employees limited current wages to avoid substantial future litigation costs.

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](#).

This Legal Alert provides an overview of a specific developing situation. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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