COVID-19 Employment Lawsuits Premised on State Law Violations on the Rise

Insights
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While many COVID-19-related employment lawsuits are based on federal laws such as the Families First Coronavirus Response Act, it is important to be aware that state laws are also the subject of many pandemic workplace lawsuits. South Carolina, for example, has seen five recent COVID-19 actions filed alleging violations of state law that were in effect prior to the pandemic. This is part of a nationwide trend of plaintiffs' attorneys bringing state law claims on behalf of employees alleging their termination violated state laws and regulations, which are often far kinder to workers than employers. What can you learn from this concerning trend to ensure you are not on the receiving end of such a case?

Recent Example

On such example is the lawsuit filed by Russell McLeod against his former employer, Clarios, LLC. McLeod alleges that Clarios employed him as a Production Supervisor at the company's Florence, SC manufacturing facility. According to McLeod, the company allowed employees who contracted COVID-19, or were exposed to a co-worker with the virus, to take leave to quarantine without penalty or discipline. After presenting a negative COVID-19 test, the company allowed such employees to return to work.

On August 19, 2020, McLeod reported for work on the 7 AM shift, when he and the approximately 15 other production employees were summoned to a joint meeting. At that meeting, McLeod alleges that a supervisor informed them that a co-worker tested positive for COVID-19. The supervisor also informed the employees of all the actions taken by the company to ensure their safety. At the conclusion of the meeting, McLeod alleges that almost all of the production employees in attendance elected to leave work and quarantine at home.

After the employees left to quarantine, McLeod alleges the plant manager and an HR representative called him into another meeting where they terminated his employment. The two informed him he "failed as a manager" by not meeting with each of his subordinates individually and convincing them to remain at work instead of quarantining at home. According to McLeod, he was terminated for "allowing the employees to do just what the state and federal government directives and public policy required them to do."

Based on these allegations, McLeod brought a lawsuit against Clarios alleging wrongful termination in violation of public policy and negligence per se. His lawsuit also included another state law cause of action unrelated to COVID-19.

Employers, Be Wary of State Law and Guidance

While McLeod mentions federal laws and policy connected with these causes of action, his claims are mostly based on alleged violations of South Carolina law. Specifically, McLeod bases his claims on the general duty clause found in regulations issued by the South Carolina Department of Labor, Licensing, and Regulation, which is similar to the general duty clause found under the Occupational Safety and Health Act, and guidance published by two South Carolina state agencies: the South Carolina Occupational Safety and Health Administration (SC OSHA) and the South Carolina Department of Health and Environmental Control (SC DHEC). Although the guidance issued by each agency is several pages long, McLeod's complaint takes note of only a few specific points of the guidance issued by each agency.

In SC OSHA's guidance, McLeod's complaint notes that it states all businesses must follow SC DHEC and CDC guidelines and SC OSHA standards. The guidance also recommends "any workers who have close contact with a worker or any other person who is diagnosed with COVID-19 should be required to quarantine for at least 14 days after last exposure."

McLeod similarly alleges that SC DHEC's guidance recommends employers ensure their "sick leave policies are flexible and consistent with public health guidance" and that if an employee is confirmed to have COVID-19, any employees who had close contact with that employee should be excused from work to complete a 14-day quarantine period.

According to McLeod, his termination violated public policy because the company retaliated against him for taking the actions instructed by SC DHEC, SC OSHA and the federal government by "allowing" employees exposed to COVID-19 to go home and quarantine. His termination also constitutes negligence per se, he claims, because the company's actions were in violation of state and federal laws concerning safe workplaces for employees and rules requiring quarantine after exposure to COVID-19.

This case shows the difficulty situation employers face during the pandemic given that multiple state and federal agencies have issued guidance related to the pandemic. While many employers like Clarios have sought to continue to operate as safely as possible – and in this case, the plaintiff himself even acknowledges the company allowed employees to take leave to quarantine – you can still face litigation if you do not navigate all existing state guidance.

What Employers Should Do To Avoid COVID-19 State Law Claims

Most employers, and especially manufacturers like Clarios, are aware of general safety requirements imposed by state and federal law and work hard to comply with those laws. Each

state, however, has likely issued guidance or have seemingly unrelated laws in place that an enterprising plaintiffs' attorney can link to COVID-19. Due to the trend of employees bringing claims under state law related to COVID-19, you should consider adopting the following recommendations (in consultation with your employment counsel).

1. **Educate Yourself**
   You cannot take actions to comply with local laws if you are unaware of these laws. Speak with your employment counsel and found out if any lawsuits similar to the one described in this article have been filed in your state. Then determine the requirements of the laws involved to ensure compliance.
2. **Educate Managers and Supervisors**
   Once you have learned of any local laws that could be implicated by COVID-19, educate managers about these issues so they do not take any action that could possibly expose your company to litigation.
3. **Implement New Rules and Systems**
   Implement new policies, as applicable, to ensure compliance with these laws. A member of HR should be designated the "go to" person for issues related to these laws. Company leaders should know that if they have any doubt as to whether a local law is implicated, they should take the issue to this individual.

Conclusion

While the case described above is still in its infancy, you should understand that it can teach you lessons that can help you avoid getting served with a similar lawsuit. The main lesson to be learned: there are state laws that may be implicated by COVID-19, and you need to be aware of them in order to be fully compliant.

For further information about COVID-19-related litigation being filed across the country, you can visit our COVID-19 Employment Litigation Tracker. 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' Insight System to get the most up-to-date information. For further information, contact your Fisher Phillips attorney.

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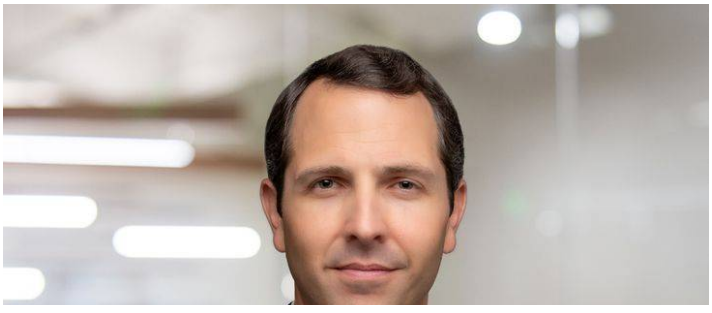

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