Another COVID-19 Litigation Hazard: Essential Employer Sued For Not Allowing Work From Home

Insights
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An engineer terminated for job abandonment just sued his former employer for not allowing him to work from home due to the COVID-19 pandemic. According to his complaint, Yiyu Lin, a 55-year-old Chinese-American engineer with high blood pressure who lives with his elderly mother, was terminated after repeated requests to work from home were denied. Instead, he claims his termination was unlawful disability, age, and national origin discrimination – and that his employer violated the Massachusetts Earned Sick Leave law when it terminated him for his use of sick leave. The case, filed in a Massachusetts federal court, is one of many lawsuits filed across the country as businesses begin to emerge from the worldwide pandemic. What can all employers – especially those in essential industries that cannot utilize telework – learn from this claim?

How Did We Get Here?
As with most states, Massachusetts has been subject to some form of a non-essential business shutdown order and a voluntary "stay at home" advisory since mid-March. In late March, Lin allegedly requested to work from home out of what he claims was a concern regarding either contracting COVID-19 himself, or potentially exposing his elderly mother who lived with him.

Lin claims his request was ultimately denied, and he was told to return to work by March 30. Lin then requested vacation time through April 7, when the pending stay-at-home advisory was set to expire. His employer denied the vacation request on account of its need for his services. According to the complaint, Lin then asked to use paid sick leave, and was permitted to use his remaining eight hours to cover March 30.

Lin did not report to work on March 31 and says his employer terminated him for job abandonment. Lin claims that his coworkers became increasingly sick, and that one or more of them contracted COVID-19. Three days after Lin's discharge, he says that all employees were instructed to work from home, but that he was never contacted about being reinstated.

The Legal Claims
Lin's "kitchen sink" style complaint raises a host of claims that most employers likely have seen before. Lin's first claims are that his employer discriminated and retaliated against him for his own disability or because of his mother's disability. Outside of the allegation that plaintiff has high blood pressure, it is unclear what he alleges his employer did wrong. As most employers know, a disability must be a physical or mental impairment "that substantially limits one or more major life

activities." Other than alleging his employer knew of his high blood pressure, the Complaint does not indicate he requested an accommodation on account of his high blood pressure or that his high blood pressure "substantially limits" any major life activity.

Lin also claims that his employer discriminated against him on account of his elderly mother's heart disease, but again provides no connection between the termination and his mother's health condition. To the extent Lin is claiming that he was entitled to an accommodation to avoid potentially exposing his mother, employers are not required to accommodate an employee due to their relationship with an alleged person with a disability. In fact, the EEOC recently reminded employers that they were under no obligation to accommodate employees seeking to avoid exposing a vulnerable family member to a potential case of COVID-19 in its most recent update to its frequently asked questions. Based on the allegations in the complaint, the employer should have a strong argument against these disability claims.

The complaint next claims that Lin's termination was the result of age or race/national origin discrimination. Outside of his allegation that he is 55 years old and Chinese-American, there is nothing in the complaint that connects these protected characteristics to the employer's decision to terminate him. Instead, the complaint itself acknowledges that Lin was fired for failing to report to work when requested.

Lin's final claim is that he was retaliated against for his use of earned sick time under Massachusetts law. Most Bay State employers know that most employees are entitled to up to 40 hours of paid sick leave a year and that an employer may not retaliate against employees who use such leave. Lin's claim, however, appears to suffer from two key defects. First, the complaint admits that when he asked to use his remaining sick leave, that request was honored. Second, the use of earned sick leave because of a fear of contracting COVID-19, even if that fear is legitimate, is not a qualifying reason under the statute. The Attorney General's office has implicitly accepted that fact in a list of COVID-19 related FAQs posted on her website. Nowhere does it list fear of COVID-19 as a reason for use.

What You Should Watch For

While Lin's claims appear to be fairly weak, the lawsuit is a real-world example for employers of the many legal obligations that must be considered when making any employment decision. Outside of bona fide workplace safety issues covered by OSHA, there are limited statutory protections for employees like Lin who have a generalized fear of working due to COVID-19. Nevertheless, if you are in receipt of a request to telework, you are reminded that there may be instances where accommodating that employee would be required. Each case will rise and fall on its own facts, but you must remain aware of your obligations under the ADA and state disability discrimination laws. Cases like these are likely to become far more prominent as other sources of income, like expanded unemployment, begin to dwindle.

If your organization is considering similar personnel action for employees who are reluctant to

return to the workplace now that things are starting to reopen, you should take care to clearly document the action and the reasons for doing so. This will best prepare you and your organization to defend against a similarly specious lawsuit. Keep in mind that if you have offered certain leave (whether it was required or not) to other employees affected by COVID-19, you should treat similarly situated employees the same in order to avoid unnecessary litigation risk.

What's Next?

Lin's suit is one of likely thousands that will be filed challenging employers' responses to the COVID-19 pandemic. We will keep you apprised of any development in this case, and any others that may impact employer's rights and obligations as employers get back to business.

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, the author, or any member of our Post-Pandemic Strategy Group Roster. 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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