

Coronavirus Lawsuits Against Healthcare Providers are on the Rise

December 11, 2020 – Dorsey Health Law

by Andrew Holly and Nathan J. Ebnet

Among its many impacts, the coronavirus pandemic has already spawned hundreds of employment and health-related lawsuits, with even more litigation likely as businesses continue to bring back workers and increase operations. Many of these lawsuits have been aimed at employers in the healthcare sector and relate to workplace safety, retaliation, and wrongful termination or wrongful denial of leave. In fact, over 20 percent of the lawsuits alleging labor and employment violations related to the coronavirus arise from the healthcare industry.

A recent lawsuit filed by a fired nursing assistant serves as a good example of the types of claims health care providers may soon face. On April 1, 2020, Za'Taya Ballard was hired as a nursing assistant by Highland Park Care Center, a nursing home located in Pittsburgh. On May 16, Ballard learned she had “prolonged close contact” with a person who had the virus. Ballard was not wearing personal protective equipment at the time of the exposure. Thereafter, Ballard notified the nursing home of her exposure and was removed from the upcoming work schedule so she could self-isolate for 14 days.

However, Ballard alleges that two days later, she was fired for missing work.

On October 20, Ballard filed suit against the nursing home in Pennsylvania state court. The case is *Ballard v. Highland Park Care Center LLC*, Case No. GD-20-011291, in the Court of Common Pleas of Allegheny County, Pennsylvania. In her [Complaint](#), Ballard brings a single

count for “wrongful discharge in violation of public policy.” According to Ballard, guidelines promulgated by the Centers for Disease Control, the Pennsylvania

Related People

- Andrew Holly
- Nathan J. Ebnet

Related Capabilities

- Healthcare & Life Sciences
- Healthcare Transactions & Regulations
- Healthcare Litigation
- Medical Devices



Department of Health, and the Governor of Pennsylvania evidence a “clearly-defined public policy” “for individuals who had prolonged exposure to confirmed cases of COVID-19 without protective gear to isolate themselves in an effort to prevent the virus’s spread.” By purportedly firing her due to her request to quarantine, Ballard alleges the nursing home violated “a clear mandate of Pennsylvania and United States public policy.” Ballard seeks back pay, compensatory damages, and punitive damages.

Claims like those brought by Ballard are on the rise. During the first five months of the pandemic, 459 lawsuits were filed against employers due to alleged labor violations related to the coronavirus. During the next four months, 776 lawsuits were filed. In the first half of November alone, 158 complaints were filed. Of the 1,235 total lawsuits, 116 are class actions. For example, in September, workers in California, Michigan, and Georgia filed unrelated lawsuits in which they claimed they were fired for quarantining after contracting COVID-19.

Whether brought by an individual plaintiff or on behalf of a purported class, these lawsuits most commonly assert that employers violated federal and state mandates, guidelines, and regulations regarding employee safety. One such federal mandate is the Families First Coronavirus Response Act (FFCRA), passed by Congress in March. The FFCRA requires employers with fewer than 500 workers to provide employees with a certain amount of compensated time off for various reasons linked to COVID-19, including if employees become ill. Importantly, however, the FFCRA provides that certain employees—i.e., “health care providers and emergency responders”—may be excluded from entitlement to both emergency family leave and emergency paid sick leave. Please see our e-alert on this topic, available [here](#).

In addition to FFCRA cases, employees have also filed lawsuits alleging that their employers violated the federal WARN Act (or similar state laws), which in certain circumstances requires that employers with 100 or more employees provide at least 60 days’ notice before conducting a mass layoff.

Although lawsuits focused on COVID-19 largely remain at the early stages of litigation, health care providers can employ a number of proactive steps to reduce their potential exposure.

- Providers should understand their obligations under relevant federal and state law and provide employees protected leave as appropriate. When in doubt, we recommend that employers err on the side of granting the requested leave;
- Providers should revise company policies as necessary to incorporate the new regulations that apply to COVID-19 exposure and sick leave;
- To the extent feasible, providers should consider offering teleworking opportunities for eligible employees;
- Providers should implement a system for recording employees’ requests for leave and the reasons supporting those requests, i.e., an employee’s symptoms and the date for a test or doctor’s appointment. However, providers should not require employees to provide further documentation, such as certification that the employee sought a diagnosis or treatment from a healthcare provider; and
- Providers should be mindful of the risks of taking personnel actions that could lead to

discrimination or retaliation lawsuits by workers who requested or took applicable leave. As always, providers should properly document their termination decisions.