RECENT DEVELOPMENT

COVID-19 Lawsuits and Claims Increasing in Courts Nationwide

By Jim Paretti and Michael J. Lotito on June 23, 2020

As the United States continues to struggle with the devastating impact of the COVID-19 pandemic on health, safety, and the economy, it is likely that many employers will have yet another issue to face as they attempt to maintain and reopen their businesses: lawsuits.

To date, over 2,000 lawsuits relating to COVID-19 have been filed in federal and state courts. These range from claims from customers and clients relating to COVID-19 exposure, to more focused claims from employees under various federal, state and local laws relating to workplace health and safety, non-discrimination, and employment termination. As of mid-June, more than 230 lawsuits directly related to labor and employment violations have been filed (including 30 class action suits). Perhaps unsurprisingly, California leads the nation with 32 employment lawsuits already filed, with Florida, New York, and New Jersey close behind.

Where workplace liability is concerned, there is no shortage of laws or regulations under which employers may see claims. Employers potentially are exposed to claims from employees under a number of federal labor laws as well as their state law equivalents. Given the rapid (and at times haphazard) pace at which the federal government, states, and localities, have enacted laws responding to COVID-19 and employment, there are several types of claims of which employers should be mindful.

Paid Leave. Both the federal government, by way of the Families First Coronavirus Response Act (FFCRA), and numerous state and local governments have adopted new laws, ordinances, or regulations relating to paid leave for employees during the COVID-19 pandemic. Already we are witnessing claims from employees alleging that they were denied leave to which they were entitled under these new laws, or retaliated against for seeking leave. Employers should monitor developments in this area closely, and make sure their leave programs are coordinated to meet varying federal, state, and local requirements.

Discrimination Claims. Historically, claims of discrimination have increased as unemployment has gone up. Given the unprecedented levels of COVID-related unemployment, we see no reason to think that this historical trend will not continue. The Americans with Disabilities Act, which governs what medical information employers can seek from employees, and requires employers to "reasonably accommodate" employees with disabilities, seems to be a likely potential source of COVID-19 claims. That said, laws that prohibit discrimination on the basis of age, pregnancy, and other bases, may also see an uptick in claims. Particularly where employers are beginning to return their employees to the workforce, they should be mindful of potential legal "pitfalls" even where they believe they are acting in an employee's best interests. For example, the U.S. Equal Employment Opportunity Commission, which enforces federal civil rights laws, has made clear its position that employers may not prevent older workers, or pregnant workers, from returning to work if they wish to do so, even if the employer believes it is acting to protect more vulnerable workers from risk.

RIFS and Downsizing. Employers that have been forced to downsize their workforces in the wake of the pandemic should also be mindful of the federal Worker Adjustment and Retraining Notification (WARN) Act. Under WARN, an employer may be required to provide 60 days' notice to workers when they are laid off for an extended period, or when the employer closes its business. While WARN provides certain exceptions to these notice requirements (most notably, when a plant closure or mass layoff is the result of business circumstances that were not reasonably foreseeable at the time notice was required, or when the result of a natural disaster), the applicability of these exemptions with respect to COVID-19 remains unclear. Moreover, WARN includes certain "lookback" provisions that may trigger a notice requirement even where an employer is not letting everyone go at the same time. As businesses reopen with uncertainty as to their workplace needs, they should be mindful of WARN Act obligations, as well as those imposed by state law analogues (or so-called "mini-WARNs").

These are but a few of the laws employers may need to grapple with in light of the pandemic. Other types of claims (wage and hour, workplace safety, and workers' compensation) seem likely to follow. To date, while there has been limited action on the state front with respect to shielding employers acting in good faith from liability for COVID-19 claims, they have largely been confined to claims of exposure to the virus—we have not seen significant legislation offering any type of protection for labor and employment claims in particular. Nor has the federal government yet acted on proposals to limit COVID-related liability for employers and businesses. A future Littler ASAP will address these efforts, where they may aid employers, and where they may fall short.

Information contained in this publication is intended for informational purposes only and does not constitute legal advice or opinion, nor is it a substitute for the professional judgment of an attorney.

© 2020 Littler Mendelson P.C.
Littler Mendelson is part of the international legal practice Littler Global which operates worldwide through a number of separate legal entities. Attorney Advertising.