
E.D.N.Y. Dismisses Amazon Workers' COVID-19 Workplace Safety Lawsuit

November 18, 2020

On November 2, 2020, Judge Brian M. Cogan of the U.S. District Court for the Eastern District of New York dismissed Amazon workers' claims that their employer did not comply with state and federal public health guidance and law during the COVID-19 pandemic.^[1]

The workers at Amazon's Staten Island fulfillment center filed an amended complaint asserting claims for (i) public nuisance; (ii) breach of the duty to provide a safe workplace; (iii) failure to timely pay COVID-19 leave; and (iv) an injunction against future failure to timely pay COVID-19 leave. The workers' claims alleged issues with Amazon's productivity requirements preventing basic hygiene, sanitation, and social distancing; limited air-conditioning in break rooms impeding social distancing; inadequate employee contact tracing; and lack of communication and pay regarding COVID-19 leave.

Amazon moved to dismiss the amended complaint on the grounds that, among other things, the federal Occupational Safety and Health Administration ("OSHA") has primary jurisdiction over workplace safety, the workers' private action failed to state a public nuisance claim, and the breach of duty to provide a safe workplace claim was barred by New York's Workers' Compensation statute. The court agreed with Amazon and granted its motion to dismiss the amended complaint without prejudice as to the workers' claims for public nuisance and breach of the duty to provide a safe workplace, pursuant to the doctrine of primary jurisdiction, and with prejudice as to their claims for failure to timely pay COVID-19 sick leave.

In reaching its decision to dismiss the amended complaint, the court, based on the primary jurisdiction doctrine which allows courts to refer a matter to the appropriate administrative agency for a ruling in the first instance, found that OSHA is the federal agency within the U.S. Department of Labor specifically charged with regulating health and safety in the workplace. The court noted that OSHA has the primary responsibility for setting and enforcing standards and providing research, information, education, and training to assure safe and healthful working conditions. Accordingly, the court held that OSHA has the discretion to make a ruling as to claims for public nuisance and breach of the duty to provide a safe workplace.

The court further held that, even if it did not defer to OSHA's primary jurisdiction, it would dismiss the public nuisance claim because New York law requires that a private action for public nuisance allege that the plaintiff sustained special injury not common to the public at large. The court found that the workers' alleged injuries that they had an increased risk of contracting COVID-19 and fear of the same because they work in conditions that increase the risk of spread of COVID-19 is common to the New York City community at large and the public at

large cannot avoid COVID-19 simply by avoiding the fulfillment center.

Moreover, the court found that the workers' claim that Amazon breached its duty to provide a safe workplace under New York Labor Law was essentially a negligence claim. The court concluded that the workers' claims for past injuries, and even for injunctive relief, were precluded by the language of the New York Workers' Compensation statute, which makes workers' compensation the exclusive remedy for workers' claims against employers for any liability whatsoever. The court further held that the workers' claims for future harm failed as well because a threat of future harm is insufficient to impose liability based in negligence.

The court also dismissed the workers' claims regarding failure to pay timely COVID-19 sick leave under the New York Labor Law, finding that the law addresses claims for prompt payment of "wages," not sick leave. In so holding, the court rejected the New York State Department of Labor's recent COVID-19 guidance in its "Frequently Asked Questions" page for COVID-19 leave in which it stated that prompt payment of COVID-19 sick leave was subject to the state's frequency of pay requirements.

Given the rapid and continuous changes in workplace health and safety guidelines during the COVID-19 pandemic, it is anticipated that there will be various cases like this one. We will continue to stay up to date to help businesses get through these difficult times and address any concerns related to workplace health and safety.

If you have questions regarding any aspects of labor and employment law or considerations for your business regarding public health guidance and law during the COVID-19 pandemic, feel free to contact James G. Ryan at (516) 357-3750 or via email at jryan@cullenllp.com, Thomas B. Wassel at (516) 357-3868 or via email at twassel@cullenllp.com, or Hayley B. Dryer at (516) 357-3745 or via email at hdryer@cullenllp.com.

Please note that this is a general overview of developments in the law and does not constitute legal advice. Nothing herein creates an attorney-client relationship between the sender and recipient.

Thank you to Maria A. Gomez for her help with this alert.

Footnote

[1] *Palmer v. Amazon.com Inc.*, No. 20-cv-02468 (E.D.N.Y. Nov. 2, 2020).

Practices

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