

# COVID-Related Wrongful Termination Cases & Tips For Avoiding Them

By John R. Giovannone and Rosario Stoliker – CDF Labor Law LLP  
www.cdflaborlaw.com



**D**espite unprecedented court closures and related procedural delays, COVID-19 litigation has steadily increased and is only expected to expand across industries, jurisdictions, and areas of law. In the engineering industry, new Coronavirus-specific wrongful termination litigation appears to be on the rise, up and down the state of California.



**Pregnancy Leave And COVID.** In September, a claimant sued her former employer, a construction engineering firm, in Sacramento County alleging pregnancy and disability discrimination and retaliation. In the lawsuit, she claims that she advised her supervisor that she had been directed by her healthcare provider to be off work for a period of time because she had tested positive for COVID-19 and thereafter delivered a stillborn baby. The lawsuit alleges that when she returned to work, her employer expressly blamed her for exposing her colleagues to COVID-19 and simultaneously directed her to go on a disability-related leave of absence because her job required her to work at the construction site. The claimant alleges that she received an email a month later communicating the need to permanently terminate her employment due to “all this COVID stuff.”

**CDC-Identified High-Risk Groups.** In October, a claimant sued a building operations company in Los Angeles when she was terminated for refusing to return to on-premises work after her employer implemented COVID-related safety protocols and required her team to return to the jobsite. The claimant states that she provided a doctor's note to her employer merely stating that she was part of a CDC-identified population at a higher risk of serious illness due to exposure to COVID-19 (the existence of an underlying medical condition) and that working at home could reduce this risk if offered by her employer. Claimant contends she should have been permitted to continue working from home despite her employer's directive in light of her healthcare provider's letter, and claimant believes she should not have been terminated for refusing to return to her pre-pandemic worksite.

**Furloughs, Recalls, And Layoffs.** In November, another claimant filed a lawsuit, this time in San Diego County, against a broadcast engineering company and claimed wrongful termination based on age. There, the claimant's pay was allegedly initially reduced in re-

sponse to the pandemic, and subsequently furloughed a few months later. The employer allegedly advised the claimant a few months later that his layoff was permanent, after which the claimant allegedly learned of a younger colleague's recall from a social media post. Claimant's lawsuit asserts that he was perfectly capable of performing the work of the younger recalled employee, and alleges that the employer's stated reason for his termination (COVID-driven lack of work) was merely a pretext for its true intention, to eliminate its older workforce and replace it with younger workers.

While none of these recent cases have been decided on the merits, they foretell the direction where a wave of COVID-implicated employment termination case filings may be heading. And similar to our recent discussion of employer pitfalls associated with COVID-related leave laws;

For example, employers must assess COVID-related employment issues in the context of all employment-related rights and responsibilities. While an employer may bar an employee displaying COVID symptoms, the employer should have a comprehensive policy concerning the identification and handling of symptoms and a recordkeeping of symptom identification before an employee is barred entry so as to avoid claims of non-COVID retaliation or other alleged violations of legal rights.

Likewise, when an employer has permitted a workforce to telecommute for a period of time, before requiring that workforce to return to the employer's place of business, written communications to the workforce explaining, not only how employees will safely return to work, but why a return to on-site work is critical to the business, will preemptively forestall argument that continued telecommuting is feasible.

Finally, while many employers these days are eager to recall at least some of their previously furloughed employees so they can get back to business, employers should recall employees with as much deliberate non-discriminatory precision as they would when effectuating a layoff. Specifically, employers should establish legitimate, nondiscriminatory objective criteria to ensure that a recall does not adversely impact a protected (e.g., age) group without business-related necessity.

While this list of new COVID wrongful termination case profiles and case avoidance tips is certainly not exhaustive, our hope is that it will help employers issue spot before potential issues become real cases.

To contact the authors; John R. Giovannone can be reached via email at [jgiovannone@cdflaborlaw.com](mailto:jgiovannone@cdflaborlaw.com), and Rosario R. Stoliker can be reached via email at [rstoliker@cdflaborlaw.com](mailto:rstoliker@cdflaborlaw.com). Δ