

# EMPLOYMENT RELATED PANDEMIC LEGAL ACTIONS ON THE RISE

*Hodgson Russ COVID-19 Litigation & Employment Action Team Alert*  
July 14, 2020

Employment related legal actions (including federal and state lawsuits and administrative claims) are on the rise during the coronavirus pandemic. These cases arise in all business sectors, from colleges and universities to medical offices to heavy manufacturing.

These can include (but are certainly not limited to) claims related to discrimination/harassment, wage and hour, refusal to pay sick and family leave benefits, and the WARN Act, and are being brought on both an individual and a class basis. Here we provide just a few examples:

So far, over 50 employment-related coronavirus pandemic cases have been filed in the district courts in New York State. Between March and May of 2020, this pattern is seen throughout the country, with cases filed related to whistleblower/wrongful termination claims (40%), unsafe working conditions (23%), disability discrimination (15%), FMLA (12%), wage and hour (6%), and the WARN Act (4%).

The New York City Commission on Human Rights formed a COVID-19 Response Team to handle reports of harassment and discrimination related to the outbreak. The response team is comprised of staff from the Law Enforcement Bureau and the Community Relations Bureau working in coordination to quickly and efficiently track and respond to the sharp increase in reports of harassment and discrimination connected to the pandemic. From February to May 31, 2020, the agency recorded 389 reports of harassment and discrimination related to COVID-19, almost 40% (145) of which identify incidents of anti-Asian harassment or discrimination. By comparison, during this same time period in 2019, the Commission received just 12 reports of anti-Asian discrimination. Employers must be sure that their policies and practices, specifically including those implemented in response to COVID-19, for example work-from-home policies and procedures for return-to-work onsite, do not discriminate against or treat workers less favorably based on their protected status, including race, national origin, citizenship, immigration status, and disability, among others.

Employers also need to be mindful of claims filed not just by employees, but also by others who enter their premises and/or utilize their services, like contractors, vendors, visitors, customers and students. For example, students have filed class

## Attorneys

Jane Bello Burke  
Ryan Cummings  
Glen Doherty  
Reetuparna Dutta  
Rob Fluskey  
Jodyann Galvin  
Joseph Goldberg  
Patrick Hines  
Charles H. Kaplan  
Ryan Lucinski  
Charles Malcomb  
Jason Markel  
Michael Maxwell  
Elizabeth McPhail  
Adam Perry  
Christian Soller  
Melissa Subjeck  
James Thoman  
Benjamin Zuffranieri Jr.

## EMPLOYMENT RELATED PANDEMIC LEGAL ACTIONS ON THE RISE

action lawsuits against more than 100 institutions of higher education seeking partial reimbursement for spring tuition based upon the institution's COVID-19 closure. Nearly all of the lawsuits assert a claim for breach of contract, unjust enrichment, and conversion.

Since mid-March, Hodgson Russ LLP has taken steps to ensure that our clients are fully informed about developments impacting employers during this difficult time, including administration of state and federal leave benefits, implementation of Governor Cuomo's Executive Orders (and similar state and local directives in other jurisdictions), and compliance with health and safety guidance regarding essential employees and employees more globally as the business community seeks to return to a new "normal." For these resources and other guidance on issues impacting employers, please review the firm's Coronavirus Resource Center. Perhaps just as important is to continue to utilize best practices generally in interacting with employees. Even in this hectic time, employers must attempt to step back and try to foresee how their employment actions taken now will be viewed by employees/former employees and by governmental agencies and the courts in the coming months. If you believe that you face a complicated or high risk employment action, please contact Elizabeth McPhail (716.848.1530) or Stephen Kelkenberg (716.848.1307).

Please check our Coronavirus Resource Center and our CARES Act page to access information related to both of these rapidly evolving topics.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us [HERE](#).