



## RELATED PRACTICE AREAS

COVID-19 Resources  
Discipline and Termination  
Employment  
Labor and Employment  
Wage and Hour

## RELATED TOPICS

Wrongful Termination  
Pennsylvania

## Governor's COVID-19 Orders Are Not Public Policy, Pennsylvania Federal Court Says

February 8, 2021 | [Employee Health Issues, Labor And Employment](#)



**Caroline Dickey**  
Of Counsel



**Christina M. Janice**  
Partner



**Mark Wallin**  
Partner

In January, a federal judge found that the Pennsylvania governor's COVID-19 related executive orders do not constitute public policy, and that terminating an employee after reporting violations of those orders is not wrongful. This decision is an early indicator that a current strategy of the plaintiffs' bar in elevating COVID-19 public health orders to support wrongful discharge claims may not gain universal acceptance in the courts.

In *Warner v. United Natural Foods, Inc.*, the plaintiff alleged that while quarantining after experiencing symptoms of COVID-19, at the direction of his supervisors, he reported his employer to the Department of Health. The plaintiff complained to the Department of Health that the company did not adequately adhere to COVID-19 orders issued by the governor. The plaintiff alleges that after he received a negative test result and attempted to return to work, his employment was terminated.

He then brought a lawsuit for wrongful termination in violation of public policy, based on two separate theories: first, that his employer retaliated against him for making a complaint to the Department of Health, and alternatively, that his employer impermissibly terminated his employment for missing work pending the results of his COVID-19 test. After the defendant removed the case to the

United States District Court for the Middle District of Pennsylvania, the court granted the defendant's motion to dismiss. The court held that the plaintiff failed to satisfy legal requirements for maintaining a claim that the defendant terminated his employment in violation of public policy.

The court reasoned that public policy in Pennsylvania is determined by reference to judicial decisions by the Pennsylvania courts, the Pennsylvania Constitution, and statutes enacted by the Pennsylvania legislature. The court found that the COVID-19 executive orders did not fall within these categories and did not undergo the same rigorous enactment process as a statute or administrative regulation. The court stated that while it did not condone the defendant's alleged conduct, "public policy of the Commonwealth of Pennsylvania cannot be based on the whims of an individual judge or the allegations of an aggrieved employee." The court held that because the plaintiff had not identified any public policy that was allegedly violated, he could not state a claim for wrongful termination in violation of public policy.

While this is a win for employers in Pennsylvania, it is important to note that some states have whistleblower protection laws that may provide greater latitude to employees making similar claims against their employers.

The Barnes & Thornburg Wage and Hour Practice Group continues to monitor employment-related COVID-19 litigation, as it has done since the start of the pandemic, including tracking and summarizing 772 complaints filed in courts across the United States on its [COVID-19 Related Workplace Litigation Tracker](#). As always, stay tuned.