



COVID-19 Leave Plaintiff Denied Discovery Of Employer's Use Of PPP Funds

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The Barnes & Thornburg Wage and Hour Practice Group's [COVID-19 Related Workplace Litigation Tracker](#) summarized a whopping 772 complaints filed in courts across the United States, broken down into 12 different categories. This week's spotlight is an update on the progress of a case that was previously summarized on the tracker, [O'Bryan v. Joe Taylor Restoration](#) in the Southern District of Florida.

In *O'Bryan*, the plaintiff sued his employer for denial of benefits and for retaliation under the FFCRA. In late March 2020, the plaintiff began coughing, and immediately reported his potential COVID-19 symptom to his supervisor. The defendant sent the plaintiff home and told the plaintiff to complete forms for sick leave, which the plaintiff promptly returned. After being quarantined for 14 days, the plaintiff claimed he did not receive any pay he was owed under the FFCRA. The plaintiff then inquired whether he could return to work, as he needed income. The defendant told him to get a doctor's note clearing him to return.

The plaintiff obtained a doctor's note confirming he had self-quarantined for 14 days due to COVID-19 symptoms and could return to work. The plaintiff attempted to give the note to the defendant, but the defendant would not accept it and allegedly told the plaintiff he needed a note specifically saying he was not contagious. The next day, the plaintiff informed the defendant he was being tested for COVID-19. The following business day, while his test results were pending, the defendant terminated the plaintiff's employment. The plaintiff seeks recovery of the benefits he was allegedly due for paid leave under the FFCRA, as well as damages for alleged retaliatory termination.

During discovery, the plaintiff sought information related to his employer's use

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of PPP funds. Specifically, the plaintiff sought information regarding whether the defendant chose not to pay any employees for COVID-related sick leave from its PPP funds, whether the defendant paid other employees for such leave but did not pay him, or whether the defendant terminated employees who sought such leave.

The defendant argued that its participation in the PPP program was irrelevant and did not have any impact on whether the plaintiff was eligible for paid sick leave under the EPSLA. Ultimately, the court agreed with the defendant and determined that the use of PPP funds was not relevant to the plaintiff's claims. The court explained that PPP and the EPSLA are separate considerations and involve separate requirements; thus, employers are not obligated to use PPP funds to pay for EPSL.

The *O'Bryan* decision presents a useful lesson for employers. First, it demonstrates a potential litigation strategy by plaintiffs in COVID-19 related litigation that employers may want to plan for. Second, it provides a roadmap for employers seeking to prevent disclosures in discovery regarding the use of PPP funds.

As we have done since the start of the pandemic, the Barnes & Thornburg Wage and Hour Practice Group will continue to monitor employment-related COVID-19 litigation, and will provide updates as more developments emerge. For more insight in this area, join us for our regular webinar, "What's Going On? Lessons From Current COVID-19 Workplace Litigation Trends," with the next one scheduled for March 10. As always, stay tuned.