



California Whistleblower Bartender Crows About COVID And Sues About Pay

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This week's spotlight among [COVID-19 related workplace litigation](#) involves a familiar trend: a plaintiff who collectively alleges she was not provided required meal breaks (nor paid for working through them), and individually alleges wrongful termination in retaliation for reporting her employer's alleged violation of COVID-19 related safety measures. We've seen it before and we will see it again—yet another example of a complainant combining COVID-19 related allegations with unrelated wage and hour allegations.

In [Alba v. Cock-A-Doodle Restaurant, Inc., et al.](#), the plaintiff, a restaurant server and bartender, claims the defendant employer wrongfully terminated her in retaliation for protected whistle blowing. The plaintiff alleges that the director of the California Department of Public Health ordered all Californians to wear masks inside any indoor public space, and ordered indoor dining in San Bernardino County restaurants to cease for 20 days.

According to the plaintiff, the defendant violated this COVID-19 related restriction by allowing guests to enter into the restaurant without masks and continuing to allow guests to dine indoors. The plaintiff claims that while she notified her supervisor of her concerns regarding these violations, her employer ignored her concerns and continued allowing guests to occupy the restaurant without masks. The plaintiff further claims that after she notified the San Bernardino County Department of Public Health that the defendant was acting in violation of the COVID-19 health and safety restrictions, she was

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wrongfully terminated in retaliation.

Unrelated to her COVID-19 allegations, the plaintiff alleges a host of California state law wage and hour violations, including meal break violations, unpaid work performed after clocking out, unpaid overtime, and inaccurate wage statements.

Roosters crow at all times and with a purpose. Sometimes they crow to signal to the hens that it is safe to come outside. Other times, they crow to signal danger is lurking. They even crow when it is time for the hens to take a break for a midday nap. Does this employer need a rooster? The court will decide.

Responding to COVID-19 can be challenging, and as we have consistently seen from these combination lawsuits, they can expose employers to potential liability for all kinds of other workplace employment issues. Now more than ever, employers should be engaging counsel to review their employment policies and practices in order to avoid similar pitfalls.

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 now, stay tuned.