



Hot Off The Press: Verdict Against Plaintiff In COVID-19 Leave Lawsuit

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Since last year, the Barnes & Thornburg [COVID-19 Workplace Litigation Tracker](#) team has been following [O'Bryan v. Joe Taylor Restoration](#), a case filed in federal court for the Southern District of Florida. We can now report that this case went to trial last week, and a jury verdict was returned in favor of the employer.

To recap, the plaintiff in this case sued his employer for denial of benefits and for retaliation under the FFCRA. The plaintiff had told his employer he needed to quarantine for 14 days per his doctor's order. When given necessary paperwork for completion in order to qualify for paid sick leave under the new law, the plaintiff submitted it with a discrepancy suggesting he was under a government quarantine order. After his 14-day quarantine, the plaintiff wanted to return to work and his employer requested a doctor's note clearing him to return. However, when the plaintiff provided the doctor's note, it became clear the plaintiff had never seen his doctor or been directed to quarantine.

We spoke with employer defense counsel Daniel R. Levine of the law firm of Padula Bennardo Levine. When asked what he thinks tipped the verdict in favor of the defense, Levine reported that it all boiled down to the plaintiff's lack of credibility. Levine emphasized, "During cross-examination of the

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plaintiff, he repeatedly admitted in open court to lying to his employer. That the jury did not reach the question of the employer's affirmative defense speaks volumes, I believe, as to how much the plaintiff's credibility was shot."

The lesson? After a court complaint, a plaintiff needs credible evidence to support the claims presented. Here, the jury rejected the plaintiff's claims after hearing evidence that the plaintiff lied to his employer. Employers often can focus on exposing inconsistencies and deficiencies in credibility, as Levine did in this case.

The Barnes & Thornburg COVID-19 Workplace Litigation Tracker team will continue to monitor employment-related COVID-19 litigation, and will provide updates as more developments emerge.