



Preemptive Strike: Employee Files TRO To Avoid Return To Workplace

September 18, 2020 | [Employment Discrimination, Labor And Employment](#)



Scott J. Witlin
Partner
Wage and Hour
Co-Chair



Mark Wallin
Partner

Now in its 20th week, the Barnes & Thornburg LLP Wage & Hour Practice Group's [COVID-19 related workplace litigation tracker](#) has summarized and catalogued more than 360 complaints nationwide. This week's spotlight is on a category of COVID-19 related workplace complaints concerning the difficulties transitioning from remote work back to the office.

One such case presents a somewhat novel circumstance in which an employee sued their employer for disability discrimination preemptively – that is, before the employee was required to permanently return to the office. The allegations in this case demonstrate the importance of employers communicating clearly and consistently to their workforce, not to mention ensuring that adequate health and safety steps are implemented for a return to the office.

In *Peeples v. Clinical Support Options, Inc.* the plaintiff, a licensed clinical social worker, began working for defendant on March 2, 2020, just before the declaration of the COVID-19 pandemic. Upon declaration of the pandemic on March 18, the plaintiff immediately requested the ability to telework. The plaintiff, who uses non-binary gender pronouns, alleges they worked remotely from March 18 to June 26 using Zoom, phone and email, was complimented for their performance and received no complaints. However, in May 2020 the defendant insisted that all program managers return to the office, and after an

RELATED PRACTICE AREAS

COVID-19 Resources
Disability, Leave and Medical Issues
Employment Litigation
Labor and Employment
Wage and Hour

RELATED TOPICS

Discrimination
Employee Health

interactive process and a month of additional telework, the plaintiff was required to return to the office. The plaintiff complains that rather than having disinfectant and hand sanitizer placed on the plaintiff's desk, this equipment was only available in the defendant's supply closet, and that the defendant supplied KN95 masks, rather than N95 masks. The plaintiff also complains that they were constantly dehydrated due to the necessity to never take off the mask. The plaintiff contends that every task performed in the office could have been done virtually, and that the return to the office negatively impacted the plaintiff's health and the services provided to therapy clients. The plaintiff initially resigned, but when the defendant began allowing parents to work remotely part-time, the plaintiff rescinded that resignation and announced an intent to telework instead. When the defendant explained that the telework accommodation did not apply to managers, the plaintiff nonetheless persisted in the assertion that they would continue to telework beginning on Sept. 8. The plaintiff preemptively filed this lawsuit prior to that date, presumably to attempt to avoid termination. The plaintiff asserts claims for disability discrimination under state and federal law, and seeks a temporary restraining order (TRO) and preliminary injunction permitting telework pending the outcome of the case.

As many employers have continued to allow their employees to work remotely, where possible, through the summer and into the early fall, requiring employee populations to return to the workplace is becoming ever more difficult. Mindful employers would do well to develop clear and consistent policies related to the impending return to the workplace, and to incorporate public health guidance coming out at the local, state, and federal levels. When in doubt, seek guidance from your labor and employment attorney. Contributors to the COVID-19 Related Workplace Litigation Tracker will continue to present on the trends we are seeing in our monthly webinar, with the next one scheduled for [Oct. 7](#). We will continue to track these trends as they unfold, and will continue to update the tracker each week. As always, stay tuned.