



Federal Court Puts Employee Suit Under Wrong COVID Statute Behind Bars

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Now in its 21st week, the Barnes & Thornburg Wage & Hour Practice Group's [COVID-19 related workplace litigation tracker](#) has summarized and catalogued nearly 400 complaints nationwide. More than six months after the filing of the first COVID-19 related complaints featured on our tracker, these cases are beginning to make their way through the courts, as at least three cases have been decided under the FFCRA. One such case on our tracker is *Thornberry v. Powell County Detention Center*, where Judge Danny C. Reeves of the Eastern District of Kentucky dismissed the plaintiff's complaint because, in the court's view, she conflated provisions of the Families First Coronavirus Response Act's (FFCRA) Emergency Paid Sick Leave Act (EPSLA) with the provisions of the Emergency Family and Medical Leave Expansion Act (EFMLEA).

In *Thornberry*, the plaintiff alleged that she was employed as a substance abuse counselor at the Powell County Detention Center, and that her job required her to meet in-person with inmates to conduct a residential counseling program. The plaintiff claimed that "these in-person meetings became complicated in mid-March by the COVID-19 pandemic," because she and her colleagues were ordered to stay home from work between March 18 and March 30 while the facility reacted to the situation. The plaintiff alleged that she returned to the facility for one day, but stayed home due to illness the following day. That day, the plaintiff claims that she expressed concerns to her supervisor about the lack of COVID-19 protections at the facility, which

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could place her or her family at risk of infection. The plaintiff clarified with her supervisor that she would return to work once appropriate COVID-19 protections were in place. The next day, the plaintiff was “dismissed,” and subsequently filed suit, alleging that her employer interfered with her rights under the EFMLEA, and retaliated against her in violation of the EFMLEA. Specifically, the plaintiff alleged that she was entitled to EFMLEA leave, because she experienced COVID-19 symptoms and was ordered to quarantine.

The court, however, dismissed her complaint, explaining that an employee is entitled to EFMLEA leave only if “the employee is unable to work (or telework) due to a need for leave to care for the son or daughter under 18 years of age of such employee if the school or place of care has been closed, or the child care provider of such son or daughter is unavailable, due to a public health emergency.” The court determined that the “Amended Complaint contains no allegation that she informed the defendants that she had to stay home to care for her child.” Instead, according to the court, the plaintiff did not allege that she requested leave to take care of her child; rather, she alleged only that she refused to work in unsafe conditions. The court also noted that the complaint’s reference to COVID-19 symptoms and government-ordered quarantine were circumstances that would entitle the plaintiff to EPSLA leave, but not EFMLEA leave. As such, the court determined that because the plaintiff did not allege that she requested leave to care for a school-aged son or daughter whose school has closed due to COVID-19, her complaint under the EFMLEA must be dismissed.

There are several cases summarized on the tracker where the complaints allege violations of the EFMLEA and the FFCRA. The *Thornberry* court’s decision reiterates the eligibility requirements for leave that are available to employees under the FFCRA and under the EFMLEA. As courts continue to grapple with these lawsuits, contributors to the COVID-19 Related Workplace Litigation Tracker will continue to monitor any further developments that may impact employer’s rights and obligations under the FFCRA. We will continue to track these trends as they unfold, and will continue to update the tracker each week. 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. As always, stay tuned.