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Unexpected Side Effect: Breach Of Contract Claims Related To COVID-19 Commissions

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Now in its 29th week, the Barnes & Thornburg Wage & Hour Practice Group's [COVID-19 related workplace litigation tracker](#) has now analyzed 605 complaints filed across the United States, in 12 different categories. This week's spotlight is on a category of COVID-19 related workplace complaints that have arisen in the context of businesses seeing increased revenue as a result of the pandemic.

Two such cases were brought by commission-based employees working in sectors of the economy that have experienced a boost in demand due to the pandemic: healthcare and sales of cleaning products. In both cases, the employees allege they earned large commissions in the first half of 2020 due to pandemic-related revenue, but that their employers have refused to give them their proper share of the windfall.

In *Patterson v. SerVaas*, the plaintiff was executive vice president of sales for a manufacturer of cleaning products. The plaintiff's contract provided for a base salary, and 24 percent of any increase in sales in each "semester" (i.e., the first and second six months of the calendar year). Sales of the defendant's product from March through June 2020 skyrocketed, due to the COVID-19 pandemic. However, the plaintiff alleges that the defendant took

the position that it would not credit all of the sales from March through June towards the plaintiff's commission because the pandemic, and not the plaintiff's sales skills, was responsible for the increase. The defendant proposed to average the amount of sales from January and February, and to extrapolate from that average for the remainder of the semester (i.e. through June). The plaintiff objected to this proposal, insisting on being credited for the entirety of the sales increase, and sued the defendant for breach of contract.

In *Bhaghani v. Round Table Medical Consultants*, the plaintiff was a call center employee for the defendants, who own emergency room clinics. The plaintiff claims that he was supposed to receive \$3 per patient that he referred to the clinics. According to the plaintiff, when the COVID-19 pandemic hit, his referral numbers skyrocketed, going from approximately 2,000 patients per month to more than 44,000 patients in a month. He claims that for the month of July, he is owed referral fees of \$134,235, plus additional amounts for August and September, which the defendants refused to pay. Consequently, he sued the defendants for breach of contract.

While the COVID-19 pandemic has depressed many sectors of the economy, some businesses, such as healthcare facilities, delivery services, and manufacturers of cleaning products, are seeing increased demand. All businesses, including those experiencing revenue growth, would do well to continue paying employees any compensation owed. Should a business choose to do so, it may want to later reevaluate or renegotiate commission structures. If in doubt, seek guidance from your labor and employment attorney.

Contributors to the COVID-19 Related Workplace Litigation Tracker will continue to present on this and other trends we are seeing in our [monthly webinar](#), with the next one scheduled for Dec. 2. We will continue to track these trends as they unfold, and will continue to update the tracker each week. As always, stay tuned.