
Termination During COVID-19

By **Kathleen H. Klaus**

As many of you have heard over the past month or so, America has been at war with an invisible enemy – COVID-19. Unfortunately, many businesses have had to temporarily close their doors and reduce the number of their employees as a result of this pandemic. Most decisions to layoff or terminate employees are difficult to make and are thoroughly evaluated beforehand. With the current war against COVID-19, employers could be forced to make fast-paced decisions in response to the current pandemic. Regardless of the time constraints imposed by America's war against COVID-19, employers must avoid stepping on landmines when deciding how to let go of their employees.

There are myriad claims a terminated employee can bring against an employer and lack of clarity regarding the rationale for termination and timing of their termination can lead to terminations that could conjure up a lawsuit. No employer wants to defend against a lawsuit but, even more so, no employer wants to be tagged as the business that wrongfully terminated an employee in these trying times.

An exemplar of the importance to clearly communicate the rationale for termination and the timing of the decision is reverberated in a claim filed by Amber Gorby against her previous employer. Ms. Gorby was a retail sales manager for a pharmacy chain. Her job, in part, consisted of ordering goods that were sold in the store including beach towels, stuffed animals, phone chargers, and other non-life sustaining goods. When Michigan Governor Gretchen Whitmer issued Executive Order 2020-21 first closing non-essential businesses and suspending non-life sustaining in-person work, Ms. Gorby thought she was going to be working from home. In a staff meeting in which she was informed that she would not be working from home, Ms. Gorby purportedly voiced her disagreement with her employer's decision to remain open. That same day, she was terminated. She has brought her claim in front of the Michigan Occupational Safety and Health Administration.

Hospitals, likewise, have had their share of disagreements with their employees. Kenisa Barkai, a former nurse in a Detroit hospital was purportedly terminated for violating the hospital's social media policy when she shared a brief video on her

social media page dressed in personal protection equipment. Ms. Barkai filed a lawsuit alleging she was fired in violation of the Michigan Whistleblowers Protection Act and not for violating the hospital's social media policy.

Travis Watkins, a mechanic at an automobile component plant is also out of the job purportedly for sounding the alarm that some workers were appearing at work despite being sick. Mr. Watkins asserts that he informed leadership that employees were being walked out of the plant with COVID-19 symptoms and, two days after raising his concerns, he was terminated. The employer disagrees with Mr. Watkins rendition of what occurred and claims his termination was justified. The employer is going through the grievance process with the union.

During this pandemic, employers need to remain vigilant about the new programs that the federal and state governments have implemented to assist their businesses. But they must also remain steadfast when terminating or laying off employees. There are a lot of business decisions to make while battling this war, but employers need to continue to sidestep any landmines they may encounter. The attorneys in Maddin, Hauser, Roth & Heller's Defense Practice Group are here to help.