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Brace Yourself Essential Businesses Coronavirus-related Class Actions Are Coming

As if COVID-19 (coronavirus) has not presented agricultural employers and other essential businesses with enough challenges, another batch of problems is on the horizon - class action lawsuits. While essential businesses have been working hard to develop workplace solutions for coronavirus, plaintiffs' attorneys have been closely watching for new litigation opportunities to sprout. To be clear, the coronavirus crisis is fertile ground for employment-related class actions. Layoffs, reduction of hours, age discrimination, privacy issues, and unsafe working conditions are all areas where we anticipate the plaintiffs' bar to be targeting.

A recent class action lawsuit filed by a group of DoorDash drivers is among the first of this new wave litigation. The drivers are suing the gig-economy food-delivery service for allegedly failing to reimburse drivers for necessary business expenditures. What are those expenses for you ask? Personal protective equipment (PPE) such as face coverings, sanitizing materials and other disinfectants. In addition, the drivers are alleging that the company failed to compensate drivers for time spent securing PPE. Finally, the drivers are claiming that DoorDash failed to take reasonable steps to keep its drivers safe. Specifically, the drivers allege that DoorDash failed to provide drivers with safety training and allowing them to engage in regular handwashing and social distancing.

What This Means for Employers:

Former Mayor of Chicago, Rahm Emanuel, once said, "Never allow a good crisis go to waste. It's an opportunity to do the things you once thought were impossible." This case confirms that the plaintiffs' bar will use the coronavirus crisis to develop new ways to sue employers. Unfortunately, the "we-had-never-dealt-with-that-issue" defense is not effective for warding off class action lawsuits. Further, while there is no playbook for responding to this novel virus in the workplace, employers cannot afford to assume that courts and juries will take this into consideration when analyzing employers' initial responses to these new issues. As such, employers are strongly encouraged to work closely with their labor and employment counsel to develop responses that are uniquely tailored to their situations. Employers with questions about the ways they are responding to coronavirus-related issues should call the attorneys at Barsamian & Moody.

The goal of this article is to provide employers with current labor and employment law information. The contents should neither be interpreted as, nor construed as legal advice or opinion. The reader should consult with Barsamian & Moody at (559) 248-2360 for individual responses to questions or concerns regarding any given situation.

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