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May 27, 2020

REFUSAL TO RETURN TO WORK – NOW WHAT?

COVID-19 created numerous employment issues as businesses closed down or adjusted their operations. Now with the opening of many businesses, new issues have arisen. Among them is whether an employee can refuse to return to work because of fear of contracting the virus. The simple answer is yes – maybe.

In *Parsons v. United Technology Corporation, Sikorsky Aircraft Div.*, the Connecticut Supreme Court explicitly recognized a public policy requiring an employer to provide a safe workplace for its employees. In reliance on Connecticut's safe workplace policy, the court recognized the plaintiff employee's claim for wrongful discharge in violation of public policy.

Gary F. Parsons, a helicopter maintenance instructor, was ordered to go to the Middle East during a time when war seemed imminent to train employees of a customer. He refused and was terminated. He sued for wrongful termination in violation of public policy regarding an employer's obligation to provide a safe workplace. As noted, the Connecticut Supreme Court recognized the claim and held that Connecticut employees may bring "a cause of action for wrongful discharge against an employer ... if the employee is discharged for refusing to work under conditions that pose a substantial risk of death ... or serious injury."

In *Lopez v. Burriss Logistics Co.*, employees working in a refrigerated warehouse were terminated when they refused to clean up an ice spill that had resulted from a water main break. The employees insisted that cleaning up the ice without adequate protective gear was unreasonably dangerous. The court agreed and held that employees terminated for refusing to follow an employer's directive that would have posed a serious threat to their health and safety, which was not contemplated within the scope of their employment duties, stated a claim for wrongful termination.

Thus an employer terminating an employee for refusing to come to work for fear of contracting COVID-19 risks liability for wrongful termination. However, although an employer may not terminate an employee for refusing to come to work because of the virus, an employer is not obligated to pay the employee.

If you have any questions about this or any other employment issue, please feel free to contact **Bernard E. Jacques** at bjacques@mdmc-law.com.

Offices

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