



Labor & Employment Issues Client Alert

Pitta LLP
For Clients
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**“We believe in the ideas of family, mutuality,
the sharing of benefits and burdens
for the good of all, feeling one another’s pain,
sharing one another’s blessing
recognizing that at the heart of the matter
we are bound to each other.”**

-Mario M. Cuomo-

D.C. CIRCUIT COURT TOSSES OUT AFL-CIO LAWSUIT SEEKING EMERGENCY OSHA COVID-19 SAFETY RULES

On June 11, 2020 the D.C. Circuit Court of Appeals dismissed an emergency lawsuit from the AFL-CIO against the Trump administration for failing to enact stronger labor protections amid the COVID-19 pandemic. A three-judge panel denied the lawsuit in a 2-page opinion holding that the Department of Labor’s Occupational Safety and Health Administration (“OSHA”) has the authority to decide whether to issue new rules during the pandemic.

Last month, the AFL-CIO brought a lawsuit against OSHA for refusing to issue a rule forcing employers to take specific steps to protect workers during the COVID-19 pandemic or face fines. OSHA typically takes months or even years to issue enforceable rules, however the agency has the authority to quickly enact emergency temporary standards (“ETS”) when necessary to protect workers from “grave dangers.”

The AFL-CIO, worker safety advocacy groups and Democratic members of Congress have lobbied OSHA to issue ETS since the start of the COVID-19 pandemic. OSHA resisted issuing ETS and have instead issued a series of nonbinding recommendations to employers. OSHA said that it would issue citations to employers that fail to provide a safe working environment under existing rules that mandate general workplace protections but are not COVID-19 specific. OSHA has received thousands of complaints during the pandemic but has only issued one citation as of late May.

The Court dismissed the AFL-CIO’s lawsuit by reasoning that “in light of the unprecedented nature of the COVID-19 pandemic, as well as the regulatory tools that the OSHA has at its disposal to ensure that employers are maintaining hazard-free work environments, ... the OSHA reasonably determined that an ETS is not necessary at this time.”

The AFL-CIO slammed the decision and has maintained that OSHA is in clear “abdication of statutory responsibility” and may consider appealing the Court’s decision. AFL-CIO president Richard Trumka said, “we are very disappointed that three judges did not deem the lives of America’s workers worthy of holding an argument or issuing a full opinion.”

NYC HEALTH + HOSPITALS SEEKS \$1.1 BILLION IN RELIEF TO PAY FOR COVID-19 RELATED EXPENSES

At a New York City Council committee on Finance hearing, NYC Health + Hospitals (“Health + Hospitals”) said that it is seeking \$1.1 billion in federal aid relief to pay for the COVID-19 care it has provided since March.

The Federal Emergency Management Agency (“FEMA”) which administers a \$150 billion hospital fund under the Coronavirus Aid, Relief, and Economic Security “CARES” Act has initially approved \$532 million of \$650 million that Health + Hospitals has previously requested. Health + Hospitals has requested additional funds based upon a reevaluation of its costs.

Health + Hospitals estimates that it will spend:

- \$500 million on staffing;
- \$300 million on infrastructure and equipment;
- \$200 million on personal protection equipment and
- \$100 million on COVID-19 testing and lab costs.

Health + Hospitals reported that prior to the COVID-19 pandemic, its finances were improving. Since the COVID-19 pandemic, the system has reported declines of about \$1.3 million a week from April 19 to May 23. Health + Hospitals had about \$400 million on hand at the end of May, which could cover expenses for 18 days. Health + Hospitals is hopeful that it will close its fiscal year with at least \$400 million in cash on hand.

UNION SUES FDNY AND CITY FOR RETALIATION AGAINST MEMBERS FOR SPEAKING OUT AGAINST COVID-19 WORKING CONDITIONS

Members of Local 2507 AFSCME DC 37 AFL-CIO (“Local 2507”) have brought a lawsuit against the Fire Department of New York (“FDNY”) and the City of New York alleging retaliation for speaking out about the dangers of COVID-19. The lawsuit was filed in Manhattan federal court on June 10, 2020 by three paramedics and one emergency medical technician (“EMT”) and Local 2507. The four Local 2507 members faced discipline from the FDNY after giving the media quotes in connection to Local 2507’s campaign to raise awareness of the dangerous working conditions their fellow members were facing at the onset of the COVID-19 pandemic.

At a City Council hearing in early March, Local 2507 testified that the City’s emergency medical services system was not prepared for COVID-19. The union which represents EMTs, paramedics and fire inspectors working for the FDNY encouraged their members to speak out in order to provide public awareness of their hazardous working conditions. At least six members of Local 2507 have passed away from COVID-19.

The FDNY disciplined Local 2507 members for speaking out against the hazardous working conditions. One member was suspended 30 days for saying that he had not seen his son for 30 days at the height of the COVID-19 pandemic. In addition to the suspensions, the FDNY barred Local 2507 members from working with other ambulance services within the 911 system which many Local 2507 members do to supplement their incomes.

Local 2507 President Oren Barzilay said that his members had an obligation to raise public awareness of the hazardous working conditions and that “the FDNY responded with vengeance by retaliating against our members for exercising their First Amendment rights is an absolute outrage.”

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