

PENNSYLVANIA

EMPLOYMENT LAW LETTER

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Family fights to keep first PA COVID-19-related wrongful death case alive in federal court

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by Jessica L. Meller, Saul Ewing Arnstein & Lehr LLP**

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by Jessica L. Meller, Saul Ewing Arnstein & Lehr LLP

A deceased Philadelphia area man's family recently filed Pennsylvania's very first COVID-19-related wrongful death and survival suit against his former employer—a titan of the beef-processing industry—in the Philadelphia Court of Common Pleas. The lengthy complaint (which made claims for negligence, fraudulent misrepresentation, intentional misrepresentation, wrongful death, and survival) alleged unsafe conditions at the plant (e.g., working in tight quarters without proper personal protective equipment or PPE), resulted in the man contracting the virus. Since its filing, the parties have been aggressively litigating whether it belongs in state or federal court and now whether the district court should dismiss the case altogether. The case is a must-watch for Pennsylvania employers because the outcome will influence whether employees or their families flock to file similar suits in the future, as well as their likelihood of success.

Facts

On April 3, Enock Benjamin, a union steward for the JBS meat processing plant in Souderton, died at home from respiratory complications related to COVID-19. He had been experiencing symptoms since at least March 27. His family sued JBS USA Food Company, JBS USA Holdings, Inc., JBS Souderton, Inc., and Pilgrim's Pride Corporation (referred to here collectively as JBS) for his death on May 7.

The complaint essentially alleged the various entities didn't follow U.S. Centers for Disease Control and Prevention (CDC) and Occupational Safety and Health Administration (OSHA) guidelines for safely operating during the pandemic even though they were available nearly a month before Benjamin's death. It also claimed the plant environment put workers at significant risk of contracting the virus from sick coworkers and that JBS misled workers to believe they were working in a safe environment when they were not. His family claimed Benjamin contracted the virus and died as a result.

Although the family filed in state court, JBS was able to move the case to the U.S. District Court for the Eastern District of Pennsylvania. The family responded by filing a request to remand (send) the case back to state court in Philadelphia. While their request was pending, JBS asked the court to dismiss the complaint in its entirety, which the family naturally opposed. The district court hasn't yet decided either the family's request to remand nor JBS's request to dismiss the complaint.

Analysis of the case

JBS asked to dismiss the case on many grounds, including lack of personal jurisdiction, failure to plead the essential facts of the claims, and statutory immunity. Notably, it argued the Pennsylvania Workers' Compensation Act (PWCA) bars the family's claims against JBS Souderton and that only OSHA—not a federal court—should determine whether it might be liable for Benjamin's death, which the family alleged resulted from unsafe working conditions.

The PWCA provides the sole and exclusive means of recovery against employers for any injuries alleged to have occurred within the scope of employment. When an employer assumes liability without fault for a work-related injury under the workers' comp system, it is relieved of the possibility of a larger damage verdict in court. Here, JBS argued that because JBS Souderton (Benjamin's former employer) is a workers' comp subscriber, the family was required to pursue its claims against it according to the PWCA. Because it did not, it cannot proceed with its suit against JBS Souderton as a matter of law.

The family responded:

- The PWCA's protections were limited to Benjamin's direct employer;
- His direct employer was JBS USA Holdings—not JBS Souderton; and
- In any event, JBS USA Holdings didn't qualify for statutory immunity because it denied Benjamin's estate's workers' comp application.

JBS also argued the district court should dismiss the entire case under the primary jurisdiction doctrine, which provides that certain cases should be referred to the *administrative body with special competence* in the issues underlying the case's claims. Primary jurisdiction for an administrative agency such as OSHA exists when the dispute involves issues that are clearly better resolved by the agency charged with regulating the dispute's subject matter.

In this case, the family's allegations would eventually require the district court to determine whether, in what circumstances, and to what extent a meat processing company such as JBS Souderton could be legally responsible for the physical and financial harm an employee who contracted COVID-19 at work suffered. The questions, JBS argued, fall directly under OSHA's unique purview, and the agency should decide them.

The family responded that no Pennsylvania court has ever invoked the primary jurisdiction doctrine to transfer a case of this nature to OSHA. It also argued it didn't file a claim under an OSHA or CDC regulation because there was no common right of action for a wrongful death and survival suit created by OSHA or the CDC and further that the case didn't turn on whether any federal guidance was violated. Thus, the case didn't require OSHA's special competence. *Ferdinand Benjamin v. JBS SA et al.*

Takeaways

The district court's opinion regarding whether to dismiss the case is poised to affect future cases against Pennsylvania employers by employees who believe they have contracted COVID-19 because of allegedly unsafe working conditions. The outcome in general will provide a roadmap for employers in the commonwealth facing similar legal challenges. In particular, you may be able to use the same defenses JBS raised, depending on the particular facts of the case.

Employers confronting potential litigation related to the purported contraction of COVID-19 in the workplace are encouraged to immediately contact employment counsel to begin developing a defense strategy.

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