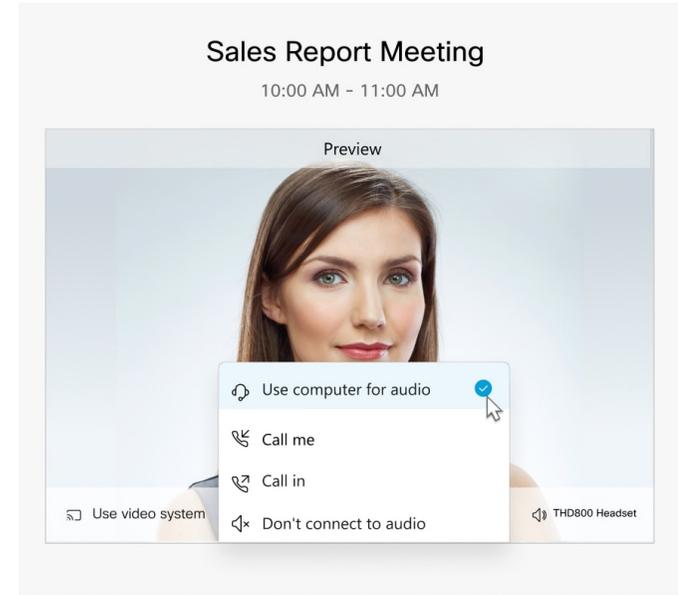
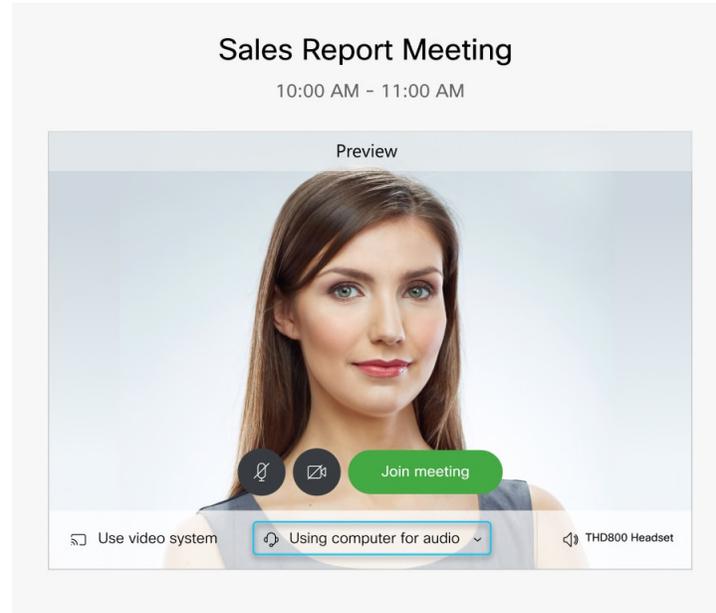


Welcome and thank you for joining us for today's presentation. Our topic is **“Employment Litigation: What Employers Have Learned from the Pandemic & What Comes Next.”**

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Employment Litigation: What Employers Have Learned from the Pandemic & What Comes Next

Presenters

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Colin Dougherty, Blue Bell, PA

Colleen E. McCarty, Las Vegas, NV

Welcome!

Introducing Our Presenters and Agenda

Agenda

1. Unique insight into the employment lawsuits most often filed in relation to COVID-19
2. Five months into the pandemic, the current and coming challenges for employers



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The Fox Rothschild LLP COVID-19 Tracking Project

- Objective: Identify empirically with daily data the COVID-19 related employment lawsuits being filed nationally, identify common scenarios and alert clients
- Method: Three credible tracking services, state and federal courts
- Categorize cases, identify common scenarios/allegations
- Alert clients to the highest risks, armed with preventive advice

Wrongful Termination Actions

- Pre-text actions are being commonly filed, including for employees released in reductions in force
- RIF plans deserve extra consideration in this pandemic
- Look, in part, for disparate impact and red flags among those tentatively identified for discharge



Employee Fear Over Workplace Safety

- Wrongful termination actions arising from Ees raising workplace safety concerns
- OSHA complaints – Ee files complaint claiming “dangerous condition in the workplace.”
- NLRA – Unfair Labor Practices can be filed in union shop or non-union shop
- ADA – Failure to accommodate (in coming topics)
- State and local claims – EO’s requiring WFH (e.g., PA and MN)





Alleged PSL and FMLA Leave Violations

- Employees impacted by COVID-19 regularly filing actions for violations EPSL or EFMLA, or standard paid sick leave
- Allegations range from wrongfully denied leave requests to terminations for requesting leave
- Ensure decision makers know leave rules under FFCRA and local jurisdictions

Failure to Accommodate Actions

- Lawsuits by employees claiming to have disabilities making them particularly vulnerable to coronavirus
- Consider investing all the more in thorough interactive processes
- There may be a solution outside the choice between “return to work” or “work from home”



The Next Wave: Current and Coming Challenges For Employers

- “We haven’t even begun to see the end of it yet.”
 - *Dr. Anthony Fauci, White House Coronavirus Task Force, July 14, 2020*
- “The United States is a ‘new phase’ of the coronavirus epidemic.”
 - *Dr. Deborah Birx, White House Coronavirus Task Force, August 2, 2020*



Degrees of Separation Problem

- When do you keep Ee home?
 - If they show symptoms – YES
 - What if family member has symptoms/positive?
 - What if contact with other Ee?
 - What if contact with someone who tests positive outside of work?
 - How many degrees of separation do you consider?
- Response to Ee who shows symptoms/positive?
- How does Ee get cleared to return?



Back to the Classroom – Or Not

- Back to school = remote learning or hybrid model
- 41 million workers have children under the age of 18
- 40% of child care programs at risk of closing permanently





Families First Coronavirus Response Act

- Applies to public employers and private employers with fewer than 500 employees
- Businesses with fewer than 50 employees may be exempt
- 80 hours of Emergency Paid Sick Leave (EPSL)
- 12 weeks of Emergency Family Medical Leave (EFMLA)

Back to School: Solutions/Red Flags

- Flexibility is key to retaining employees and maintaining productivity
- Survey workforce
- Creative solutions – working remotely, flexible schedules, on-site child care
- Watch for claims of disparate impact against women or discrimination on basis of family responsibilities



Travel Restrictions

- In state with restrictions? In state that is restricted?
- Quarantine post work-related travel? Personal travel?
- Commuting concerns?
 - Ees cross state lines commuting to/from work?
 - Public transportation ban/discouragement?
- Intra-state travel issues?
 - Hot zones (e.g., Philadelphia County and Delaware County, PA) vs. more contained (e.g., Montgomery County, PA)



Questionable Requests to Work From Home

- Determine why the employee says they need to work remotely
- If claiming a disability, use the tools available under the ADA and state law
- *Do you want to know* the employee's concern with workplace safety and coronavirus protocols?
- Caution regarding certain employer-conducted "investigations"



Thank You For Joining Us!

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