

hours a day, seven days a week, and is larger than fourteen football fields. The facility employs thousands of workers.

Plaintiffs are employees working at JFK8 and people who live with those employees. Derrick Palmer works as a Warehouse Associate, Process Guide and Picking Master at JFK8. As a Picking Master, he picks customer orders, repeatedly touching items that have been touched by other workers. His role as a Process Guide requires close interaction with other associates. Kendia Mesidor lives with Mr. Palmer and faces a heightened risk of infection or complications from COVID-19.

Benita Rouse works as a Problem Solver at JFK8. In this role, she assesses whether damaged items can be re-sold, requiring her to touch items that have been handled by other workers, and requiring close interaction with other workers and the use of the same equipment. Alexander Rouse is Ms. Rouse's child and lives with her.

Barbara Chandler works as a Process Assistant at JFK8. In this role, she helps manage, supervise, and coach a team of about fifty people and has to interact closely with other workers. Ms. Chandler tested positive for COVID-19 in March 2020 and several members of her household also experienced symptoms, including her cousin, who died in April 2020. Luis Pelot-Chandler is Ms. Chandler's child and lives with her. He also experienced symptoms of COVID-19. Ms. Chandler claims that she was not timely or fully compensated for her COVID-19 sick leave.

Deasahni Bernard is a member of the robotics team at JFK8. Ms. Bernard claims that she was not timely and fully paid for her COVID-19 sick leave.

B. COVID-19 and Workplace Guidance

The novel coronavirus, SARS-CoV-2, and its associated disease, COVID-19, is potentially lethal, has no known cure, no particularly effective treatment, and no vaccine. So far this year, it has infected over 512,000 people and killed over 33,000 people in New York State alone.²

COVID-19 can spread through contact, respiratory droplets, and aerosols.³ To slow the spread of COVID-19, the Centers for Disease Control and Prevention (“CDC”) recommends frequent hand washing and disinfection of surfaces, mask wearing, and social distancing by keeping six feet away from other people and limiting contact with others outside one’s household, whether indoors or outdoors.⁴

The State of New York has issued industry-specific guidance for businesses operating during the COVID-19 pandemic known as the “New York Forward” plan. The guidance for the Wholesale Trade Sector directs businesses to: operate at reduced capacity unless more workers are needed to continue safe operations; implement policies to minimize touching of shared surfaces; increase sanitization of workstations and shared surfaces and equipment; provide hand washing stations and supplies; stagger shifts and tasks to minimize congestion; conduct regular cleaning; allocate time during shifts for cleaning if workers are to clean their own stations; conduct health screenings of all people entering the facility and keep a log of responses; provide

² New York Covid Map and Case Count, N.Y. TIMES (updated Oct. 31, 2020), <https://www.nytimes.com/interactive/2020/us/new-york-coronavirus-cases.html>.

³ Scientific Brief: SARS-CoV-2 and Potential Airborne Transmission, CTRS. DISEASE CONTROL & PREVENTION (updated Oct. 5, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/more/scientific-brief-sars-cov-2.html>.

⁴ How to Protect Yourself & Others, CTRS. DISEASE CONTROL & PREVENTION (updated Sept. 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

information to local authorities to assist in contact tracing; and develop a communications plan to provide employees, visitors, and customers with information.⁵

New York further instituted a new law requiring large employers like Amazon to provide, with certain limitations, at least fourteen days of paid sick leave to employees subject to a mandatory or precautionary order of quarantine or isolation due to COVID-19.

The CDC also published guidance for employers and employees operating during the pandemic. Those guidelines recommend, among other things, that employers develop flexible leave policies, approve sick leave without requiring a positive test or doctor's note, reduce face-to-face contact between employees, take steps to reduce transmission at the workplace, establish policies to identify workers who may have been exposed to COVID-19 and aid in contact tracing, encourage hand washing and social distancing, and increase ventilation and sanitization.

C. The Amended Complaint

Plaintiffs filed this action and a motion for a preliminary injunction. They subsequently withdrew their motion for a preliminary injunction and filed an amended complaint. This case is before me on Amazon's motion to dismiss the amended complaint.

The amended complaint asserts claims for (i) public nuisance and (ii) breach of the duty to protect the health and safety of employees under New York Labor Law ("NYLL") § 200, seeking a declaratory judgment under 28 U.S.C. § 2201 for both of these causes of action, as well as claims for (iii) failure to timely pay earned wages under NYLL § 191, and (iv) an injunction against future NYLL § 191 violations. Plaintiffs seek injunctive relief for their first, second, and fourth causes of action, and damages for their third cause of action.

⁵ I assume for purposes of this motion that the Wholesale Trade Sector guidance as described by plaintiffs applies to Amazon's JFK8 facility.

Plaintiffs claim that Amazon's operations at JFK8 fail to comply with applicable workplace guidance. They first argue that Amazon's productivity requirements prevent employees from engaging in basic hygiene, sanitization, and social distancing. Amazon tracks employees in real time to determine whether they perform a task in each minute and aggregates a total time off task ("TOT") every day. Employees are warned and penalized, including potentially with termination, if their TOT exceeds certain amounts. TOT is automatically counted even during paid rest breaks, including bathroom breaks, and requires supervisors to re-code certain TOT activities to prevent them from being counted against the employee. Plaintiffs claim that employees' fear of accumulating TOT causes them to skip hand washing and sanitizing their workstations, and rush through the facility in a way that prevents social distancing. Amazon officially suspended rate requirements in March 2020, but plaintiffs claim that the change was not effectively communicated to employees until July, there is still confusion over the policy, and the productivity requirements could be reinstated at any time.⁶

Plaintiffs also claim that only two of the breakrooms at JFK8 are air conditioned, causing workers to cluster in those areas on hot days, further impeding social distancing.

Amazon conducts contact tracing for COVID-19 infections among its employees, but plaintiffs claim that it fails to do so adequately. They allege that Amazon uses surveillance to track potentially infected employees' movements but does not interview infected workers to discuss their contacts and discourages those workers from informing others that they may be at risk. In addition, workers who have had contact with infected workers were not asked whether they have any symptoms before Amazon authorized them to return to work.

⁶ In a filing dated October 16, 2020, Amazon admitted that it has resumed productivity feedback for some employees.

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