

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

AMAZON.COM, INC.,

Plaintiff,

v.

ATTORNEY GENERAL LETITIA JAMES, in
her official capacity as the Attorney General of
the State of New York,

Defendant.

Case No. 21-CV-767

COMPLAINT

Plaintiff Amazon.com, Inc. (“Amazon” or “Plaintiff”), by and through its undersigned counsel, brings this action for declaratory and injunctive relief from the New York Attorney General’s unlawful attempts to subject Amazon—at its JFK8 fulfillment center in Staten Island and DBK1 delivery station in Queens—to state oversight of activities governed by federal law and enforced by federal regulators, and alleges as follows:

NATURE OF THE CASE

1. Amazon is an essential business providing much-needed supplies and jobs in its communities. Amazon has been intensely focused on COVID-19 safety, and has taken extraordinary, industry-leading measures grounded in science, above and beyond government guidance and requirements, to protect its associates from COVID-19, earning praise from health and safety officials and law enforcement officers.

2. In developing its response to the COVID-19 pandemic, Amazon has not only relied on its team of top health and safety professionals but also engaged with over 20 leading global medical and health experts, including pandemic response doctors, epidemiologists, and industrial

hygienists, to identify and implement best practices. Based on guidance from these experts, Amazon has implemented over 150 process changes to promote social distancing, hygiene, and the safety of its associates, often well before New York State officials and federal officials recommended analogous measures.

3. In order to protect its employees, in March 2020, Amazon expanded its paid and unpaid leave programs in light of the pandemic, required associates to observe social distancing, formalized its contact tracing process, and instituted daily temperature checks of all Amazon associates entering select sites, including its JFK8 fulfillment center in Staten Island, prior to expanding temperature checks to the entire U.S. operations network. Amazon directed anyone registering a temperature over 100.4 °F (or lower where required by state or local authorities) to return home and only come back to work after they have gone three days without a fever. Amazon also staggered shift times, rearranged facilities, break rooms and work stations, and instituted enhanced cleaning protocols. In April 2020, Amazon distributed face masks to all associates and required that they be worn at all times by anyone in its facilities. It also began daily disinfectant spraying. By November 2020, Amazon had even built its own COVID-19 testing capacity and laboratories, and began testing its workforce for asymptomatic cases of COVID-19.

4. Amazon's efforts far exceed what is required under the law, and, as discussed below, go well beyond measures that the Office of the New York Attorney General ("OAG") has deemed comprehensive. Following an unannounced inspection of JFK8 on March 30, the New York City Sheriff's Office—which was charged by the Mayor with enforcing COVID-19 safety requirements—stated that "[t]he facility appeared to go above and beyond the current compliance requirements" based on "the facility's temperature screening procedure which is required to enter the facility"; "numerous legible signs explaining the six-foot social distancing policy"; "taped

indicators on the floor to enforce this policy”; “work areas, which had every other desk space shut down so that no employees were within the vicinity of any other employee”; a breakroom that “appeared to be in strict compliance”; and Amazon’s “staggering [of] employee shifts to both minimize the amount of staff in the facility at once, and to reduce the amount of staff that was entering and exiting the building at once to further promote social distancing.” The Sheriff’s lieutenant who led the inspection concluded that complaints about JFK8 were “completely baseless” and that “there were absolutely no areas of concern.”

5. The data corroborates these independent law enforcement findings—the COVID-19 infection rate among Amazon and Whole Foods Market front-line employees in New York is *half* that of New York’s general population. And this likely materially *understates* the effectiveness of Amazon’s health and safety measures because case rates do not distinguish between infections that occurred in the community versus those that were work-related. As the U.S. Department of Labor Occupational Safety and Health Administration (“OSHA”) has recognized, “[g]iven the nature of the disease and ubiquity of community spread . . . in many instances it remains difficult to determine whether a COVID-19 illness is work-related, especially when an employee has experienced potential exposure both in and out of the workplace.”¹

6. Amazon takes the health and safety of its employees extremely seriously, and it has taken appropriate steps to enforce its health and safety protocols for the protection of its entire workforce. This is exactly what Amazon did with respect to Christian Smalls and Derrick Palmer, two associates at Amazon’s JFK8 facility who committed severe health and safety violations.

¹ Patrick J. Kapust, Acting Director, Directorate of Enforcement Programs, *Revised Enforcement Guidance for Recording Cases of Coronavirus Disease 2019 (COVID-19)* (May 19, 2020), <https://www.osha.gov/memos/2020-05-19/revised-enforcement-guidance-recording-cases-coronavirus-disease-2019-covid-19>.

7. Amazon terminated Mr. Smalls' employment after he repeatedly violated social distancing requirements and an order to quarantine and stay off Amazon property—for which he was paid—due to a potential COVID-19 exposure. Amazon issued a final warning to Mr. Palmer for failing to comply with social distancing requirements.

8. Amazon necessarily took these actions because Mr. Smalls and Mr. Palmer deliberately violated Amazon's health and safety rules and directives and knowingly placed themselves and their co-workers at risk.

9. However, within hours of Mr. Smalls' termination, and before conducting any investigation to ascertain these or any other facts, the New York Attorney General publicly condemned Amazon's termination of Mr. Smalls.

10. The OAG then launched and pursued an investigation of Amazon's COVID-19 response. Less than a month later and based on its cursory investigation to that point, the OAG took the highly unusual step of making a "preliminary assessment" that Amazon had violated safety requirements—including the federal Occupational Safety and Health Act ("OSH Act") and its regulations—in connection with Amazon's response to the COVID-19 pandemic, and that Amazon had unlawfully retaliated against Mr. Smalls and Mr. Palmer. The OAG's letter to Amazon containing the preliminary assessment did not mention the New York City Sheriff's Office's findings that Amazon went "above and beyond" applicable compliance requirements and that complaints to the contrary were "baseless," or include any other facts favorable to Amazon.

11. From the outset of the OAG's investigation, Amazon provided the OAG with extensive information about its extraordinary efforts to protect its associates against COVID-19. Amazon also provided evidence of its compelling safety-related reasons for taking action against Mr. Smalls and Mr. Palmer, including photographs of Mr. Smalls violating Amazon's social

distancing guidelines at the JFK8 facility after Amazon instructed him to quarantine for a potential COVID-19 exposure. The evidence showed that Mr. Smalls not only failed to comply with social distancing requirements, but that, as someone directed to quarantine, he was required to stay off Amazon property—and was paid for doing so—yet he violated those clear requirements by returning to the JFK8 property.

12. Nevertheless, the OAG refused to give any weight to the substantial amount of detailed information and documents that Amazon provided regarding its comprehensive health and safety program or the New York City Sheriff's Office's reports—information that squarely rebuts the OAG's preliminary assessments. Instead, the OAG continued to claim that Amazon violated health and safety standards and retaliated against Mr. Smalls and Mr. Palmer.

13. The OAG has now threatened to sue Amazon if it does not immediately agree to a list of demands, many of which have no connection to health and safety and have no factual or legal basis. Among other things, the OAG has demanded that Amazon “disgorge” profits, subsidize public bus service, reduce its production speeds and performance requirements, reinstate Mr. Smalls and pay large sums to Mr. Smalls and Mr. Palmer for “emotional distress,” retain a health and safety consultant to oversee safety and production, and adopt safety-related policies it already implemented.

14. The OAG's exorbitant demands are based on a standard for workplace health and safety far more stringent than the standard adopted by the OAG when defending, in other litigation, the New York State Courts' reasonable but more limited safety response to COVID-19 in the face of threats greater than those present in Amazon's private facilities. The New York State Courts, for example, implemented temperature screening months after Amazon, and, unlike Amazon, has not developed its own testing capacity and provided free tests to its employees. Nevertheless, in

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