

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

PEOPLE OF THE STATE OF NEW
YORK, BY LETITIA JAMES,
ATTORNEY GENERAL OF THE STATE
OF NEW YORK,

Plaintiff,

-against-

AMAZON.COM, INC., et al.,

Defendants.

21-cv-1417 (JSR)

OPINION & ORDER

JED S. RAKOFF, U.S.D.J.

The State of New York by and through Letitia James, Attorney General of the State of New York (the "Attorney General" or "New York"), sued Amazon.com Inc., Amazon.com Sales, Inc., and Amazon.com Services LLC (collectively, "Amazon") in the New York Supreme Court, New York County for violations of New York Executive Law § 63(12) and New York Labor Law §§ 200, 215, and 740. New York alleges that Amazon inadequately implemented worker safety protocols in response to the COVID-19 pandemic and retaliated against workers who protested unhygienic work conditions. The next day, Amazon removed the action to federal court, asserting that this Court has subject matter jurisdiction on diversity and federal question grounds.

New York then moved to remand the case to state court pursuant to 28 U.S.C. § 1447 and Amazon moved to transfer the case to the

U.S. District Court for the Eastern District of New York pursuant to 28 U.S.C. § 1404(a). By bottom-line order dated April 9, 2021, the Court granted New York's motion and denied Amazon's motion. ECF No. 35. This Opinion states the reasons for that decision and directs the Clerk to enter judgment and close the case.

FACTUAL AND PROCEDURAL BACKGROUND

I. Factual Background

The Complaint alleges the following facts. COVID-19 is a deadly respiratory disease caused by a novel and highly contagious coronavirus. Compl. ¶ 17. The novel coronavirus spreads through person-to-person contact and is more transmissible when individuals gather within six feet of one another for longer than 15 minutes over a 24-hour period. Id. at ¶ 18. Mildly symptomatic, pre-symptomatic, and even asymptomatic individuals can spread the virus. Id. at ¶ 19. The resulting disease can ravage the lungs, shut down the organs, and cause severe neurological malfunctions. Id. The first confirmed case of COVID-19 in New York was reported on March 1, 2020. Id. at ¶ 22.

In March 2020, the New York state legislature amended the Executive Law to authorize Governor Cuomo to issue directives necessary to address epidemics and disease outbreaks. Id. at ¶ 25. A series of executive orders affecting New York businesses followed. Id. Governor Cuomo declared a statewide disaster emergency, curtailed nonessential business operations, and

directed the Empire State Development Corporation (ESD) to issue guidance and directives on required closures and the steps necessary to maintain a safe work environment during the pandemic. Id. at ¶¶ 25-29. ESD issued guidance that categorized "warehouse/distribution and fulfillment" as essential and, accordingly, Amazon's fulfillment and distribution centers were not ordered closed. Id. at ¶ 28. Instead, essential businesses like Amazon were directed to "comply with the guidance and directives for maintaining a clean and safe work environment issued by the Department of Health." Id. at ¶ 30. In May, Governor Cuomo issued another executive order "authorizing a phased re-opening of non-essential businesses," similarly "subject to the guidelines promulgated by the Department of Health." Id. at ¶ 31.

The Department of Health issued industry-specific minimum safety standards in June 2020. See id. at ¶ 32. These minimum standards incorporated by reference Centers for Disease Control ("CDC") cleaning guidance issued in February 2020. Id. at ¶ 34. This guidance recommended that facilities: (1) enforce social distancing where possible; (2) encourage regular handwashing; (3) close areas used by infected employees, ventilate affected areas, and wait at least 24 hours before beginning to clean those areas; and (4) cooperate with state and local health departments to implement a contact-tracing program that includes investigation of

COVID-19 cases and prompt notification to employees who may have been exposed to the virus. Id. at ¶¶ 35-38.

Amazon is a Washington-based e-commerce retailer, incorporated in Delaware, that distributes goods nationwide. Id. at ¶¶ 14-16. Amazon operates two facilities in New York: JFK8, a Staten Island fulfillment center, and DBK1, a Queens distribution center. Id. at ¶¶ 3, 45. At Amazon fulfillment and distribution centers, continued employment depends on productivity as measured by digital devices that scan bins and packages to be shipped, record how many units are processed per hour, and calculate the amount of time employees spend "off task." Id. at ¶¶ 56-59. If an employee's time off task drops below certain established thresholds known only to managers, the employee could face termination. Id. at ¶¶ 59-61.

Most workers at JFK8 and DBK1 continued to work on-site after New York became the epicenter of the COVID-19 pandemic. Id. at ¶¶ 4, 45-46. At various times since the coronavirus outbreak, Amazon has allegedly: (1) failed to implement site closure, disinfection, and cleaning protocols when workers infected with COVID-19 had been present at JFK8 and DBK1 within the previous seven days, (2) neglected to create a robust contact-tracing program, and (3) refused to soften its productivity-related discipline policies to allow its workers sufficient time for handwashing and hygiene practices. Id. at ¶ 4. Though Amazon claims

that it paused productivity-related discipline in March 2020, Amazon did not notify workers of this change until July 10, 2020. Id. at ¶ 63. The practice resumed in October 2020. Id. at ¶ 64.

In late March, two employees at JFK8, Christian Smalls, a “process assistant” who had been promoted to a management position, and Derrick Palmer, a “process guide warehouse associate,” raised concerns with their managers and with the media about Amazon’s pandemic response. Id. at ¶ 78. Both had worked at Amazon since 2015, had a history of good work performance, and had received positive feedback from supervisors. Id. at ¶¶ 79-80. During the week of March 22, Smalls and Palmer, along with a dozen other employees, approached JFK8 managers to ask that Amazon close the facility for proper cleaning. Id. at ¶¶ 80-83.

On March 30, Smalls and Palmer protested Amazon’s pandemic response in front of JFK8. Id. at ¶ 88. Amazon fired Christian Smalls in late March 2020 for violating quarantine and social-distancing protocols by attending the protest after being exposed to COVID-19, though Smalls did not enter the facility during his quarantine period and instead remained on an adjacent sidewalk during the protest. Id. at ¶¶ 5, 88-89. In early April 2020, Amazon sent Derrick Palmer a disciplinary letter termed a “final written warning,” reprimanding Palmer for attending the protest and violating social distancing policies. Id. at ¶¶ 5, 95.

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