

In the
United States Court of Appeals
For the Second Circuit

August Term, 2020
No. 20-3989-cv

DERRICK PALMER, KENDIA MESIDOR, BENITA ROUSE, ALEXANDER
ROUSE, BARBARA CHANDLER, LUIS PELLOT-CHANDLER, DEASAHNI
BERNARD,
Plaintiffs-Appellants,

v.

AMAZON.COM, INC., AMAZON.COM SERVICES, LLC,
Defendants-Appellees.

On Appeal from a Judgment of the United States
District Court for the Eastern District of New York.

ARGUED: MAY 19, 2021
DECIDED: OCTOBER 18, 2022

Before: JACOBS, CHIN, and NARDINI, *Circuit Judges.*

This case involves claims brought by workers at Amazon's
JFK8 fulfillment center and members of the workers' households in

connection with the COVID-19 policies, practices, and procedures at JFK8. In their amended complaint Plaintiffs allege causes of action for public nuisance, breach of the duty to protect the health and safety of employees under New York Labor Law (“NYLL”) § 200, violation of NYLL § 191 for failure to pay, on time and in full, COVID-19 sick leave under New York’s COVID-19 sick leave law, and injunctive relief against future violations of NYLL § 191. The United States District Court for the Eastern District of New York (Brian M. Cogan, *Judge*) dismissed Plaintiffs’ amended complaint, relying on the doctrine of primary jurisdiction, as well as alternative grounds, to dispose of the public nuisance and NYLL § 200 claims, and dismissing Plaintiffs’ § 191 claim for failure to state a claim for relief based on COVID-19 sick leave payments not falling within § 191’s definition of “wages.” Plaintiffs now appeal. First, we reject Amazon’s contention that we should partially dismiss this appeal as moot. Second, we agree with Plaintiffs that the district court wrongly applied the primary jurisdiction doctrine to their public nuisance and NYLL § 200 claims. Ultimately, however, only their § 200 claim survives. Accordingly, we hold: (1) Plaintiffs’ public nuisance and NYLL § 200 claims are not moot; (2) the doctrine of primary jurisdiction does not apply to Plaintiffs’ public nuisance or NYLL § 200 claims; (3) Plaintiffs fail to state a claim for public nuisance under New York law because they do not allege a special injury; (4) Section 11 of the New York Workers’ Compensation Law does not preclude injunctive relief under NYLL § 200; and (5) COVID-19 sick leave payments are not “wages” under NYLL § 191. We therefore AFFIRM the district court’s dismissal of Plaintiffs’ public nuisance and NYLL § 191 claims; and we VACATE the district court’s dismissal of Plaintiffs’ NYLL § 200 claim and REMAND to the district court for further proceedings on that claim.

Judge Chin concurs in part and dissents in part in a separate opinion.

KARLA GILBRIDE, PUBLIC JUSTICE,
Washington, DC (Emily Villano, Public
Justice, Washington, DC, Juno Turner,
David H. Seligman, and Valerie Collins,
Towards Justice, Denver, CO, Beth Terrell,
Terrell Marshall Law Group PLLC, Seattle,
WA, *on the brief*), *for Plaintiffs-Appellants*.

JASON C. SCHWARTZ, Gibson, Dunn &
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Dunn & Crutcher LLP, Washington, DC,
Avi Weitzman, Zainab N. Ahmad, Gibson,
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the brief*), *for Defendants-Appellees*.

WILLIAM J. NARDINI, *Circuit Judge*:

Workers at Amazon’s JFK8 fulfillment center and members of their households (together, “Plaintiffs”) challenge workplace COVID-19 policies, practices, and procedures at JFK8. Their suit against Amazon.com, Inc. and Amazon.com Services LLC (together, “Amazon”) in the United States District Court for the Eastern District of New York (Brian M. Cogan, *Judge*) asserts causes of action under

New York law for public nuisance, breach of the duty to protect the health and safety of employees under New York Labor Law (“NYLL”) § 200, violation of NYLL § 191 for failure to pay, on time and in full, COVID-19 sick leave under New York’s COVID-19 sick leave law, and injunctive relief against future violations of NYLL § 191. Amazon moved to dismiss Plaintiffs’ amended complaint. In a memorandum decision and order filed on November 2, 2020, the district court granted Amazon’s motion. On November 3, 2020, the district court entered judgment dismissing Plaintiffs’ amended complaint.

The district court dismissed Plaintiffs’ public nuisance and NYLL § 200 claims without prejudice under the primary jurisdiction doctrine, concluding that the questions before the court turned on factual issues requiring the technical and policy expertise of the Occupational Safety and Health Administration (“OSHA”). In the alternative, the district court concluded that Plaintiffs failed to allege

the special injury required to state a claim for public nuisance; that New York's Workers' Compensation Law preempts suit under NYLL § 200 for injunctive relief for past harm; and that Plaintiffs failed to allege a cognizable injury under NYLL § 200 based on the threat of future harm. The district court then dismissed with prejudice Plaintiffs' NYLL § 191 claims, concluding that COVID-19 leave payments are not "wages" as defined by § 191.

Plaintiffs now appeal the district court's dismissal. This appeal presents five key questions: (1) whether Plaintiffs' public nuisance and NYLL § 200 claims are moot because they are premised on New York Forward, a state-issued plan with industry-specific guidance for businesses that has since been rescinded; (2) whether the district court correctly applied the primary jurisdiction doctrine in dismissing Plaintiffs' state law claims in deference to OSHA; (3) whether Plaintiffs plausibly plead a special injury to support a public nuisance claim against Amazon; (4) whether the New York Workers'

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