













#### Employment Litigation in Federal Courts

- 12% decrease in federal employment law cases since 2019 (16% compared to average filings from 2010-2019
- Significant decreases in some areas
- Harassment claims are down 22%
- ADA claims are down 20%
- Discrimination claims are down 17%



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## Employment Litigation in State Courts

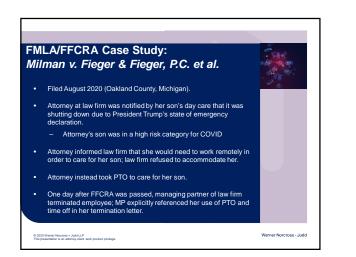
- 650+ cases
- State court increased activity
- Similar list to federal cases California, New Jersey, Florida, Michigan, New York, Texas, and Ohio



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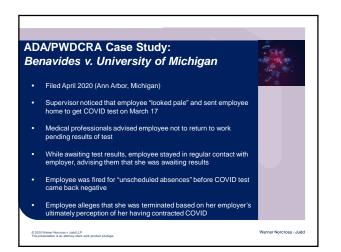




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# Americans with Disabilities Act (ADA) and Persons With Disabilities (Xvil Rights Act (PVDCRA) protect workers from discrimination because of a disability COVID "Regarded as" disabled Mental Health issues ADA/PWDCRA also gives workers a right to request a "reasonable accommodation" that allows them to do their job One potential accommodation: telework Nor retaliation





### FLSA Case Study: Peralta v. Eton Street Restaurant Inc. Filed July 2020 (Birmingham, Michigan) Employer, a restaurant, was forced to close down during Governor Whitmer's "Stay Home, Stay Safe" order Restaurant allegedly encouraged employees to stay home and collect unemployment while continuing to perform unpaid work for restaurant Restaurant manager refused to perform unpaid work while on unemployment

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 When restaurant reopened, manager and other employees who refused to perform unpaid work while on unemployment were not reinstated

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#### Whistleblower Protection Act (WPA)

- It is illegal for employers to discharge, threaten or otherwise discriminate against employee regarding compensation, terms, conditions, location or privileges of employment because reports or is about to report a violation or a suspected violation of federal, state or local laws, rules or regulations to a public body
- · Complaints of safety violations
- Public Policy/Wrongful Discharge

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### WPA Case Study: brothers v. PetSmart, Inc. Filed October 2020 (Midland, Michigan) Findo October 2020 (Midland, Michigan) Employee worked for employer in as an associate in retail store During pendency of "Stay Home, Stay Safe" order, associate noticed a customer without a mask in the store (and had a visible firearm). Associate called local police and had them remove the customer from the store Two days later, store fired associate for violating store policy. Associate claims that customer's violation of the Governor's executive order was a violation of law, and he was accordingly fired for reporting a violation of law.

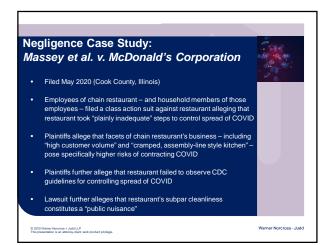
#### Negligence

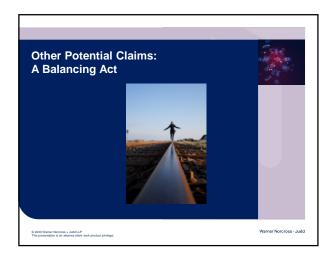
- Employers may be found negligent when they fail to develop a COVID response plan, fail to take effective steps to combat the spread, and fail to protect workers and the public
- Both employees and customers are bringing these suits against entities

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 Often brought as class actions, which can be especially messy

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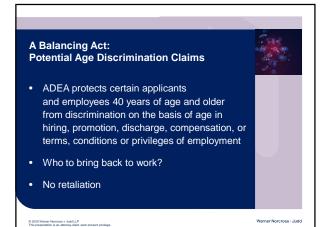




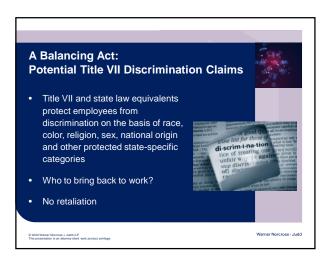
#### A Balancing Act

- As more and more businesses reopen or partially reopen, employers will be exposed to potential claims
- A cohesive thought process that does not negatively impact specific protected classes will be important

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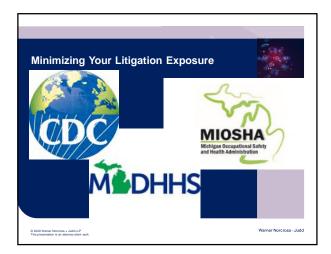

















#### **Minimizing Your Litigation Exposure** Preparedness Plans • Face Coverings STOP THE SPREAD • Screening • Contact tracing • Facility Cleaning Remote work

• Gathering limitations

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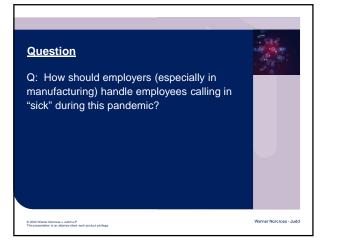


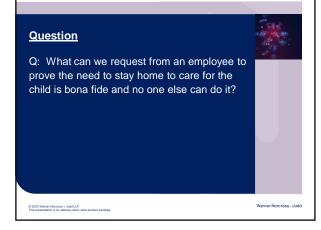


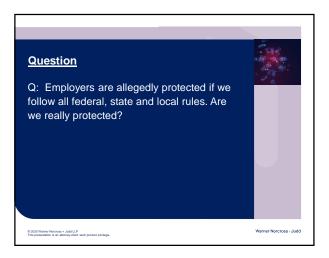


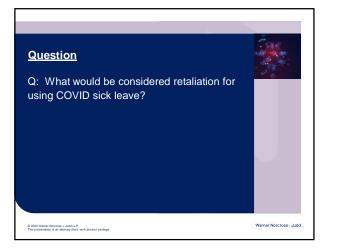
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#### **Question**

Q: What really does "must" work from home mean? We have been mostly following this policy but it is taking its toll and continues to mount, especially onboarding new employees.

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