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In-N-Out Burger Served With COVID-19 Workplace Safety And Wage Violation Lawsuit

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This week's spotlight among [COVID-19 related workplace litigation](#) involves a common trend of employees alleging retaliation for reporting workplace COVID-19 safety hazards along with unrelated wage and hour allegations.

In *Becerra v. In-N-Out Burger*, a former butcher for the burger joint filed a Private Attorney General Act (PAGA) complaint alleging various violations of the California Labor Code and unfair business practices. According to the complaint, In-N-Out failed to enforce COVID-19 safety measures, including social distancing and requiring employees to wear personal protective equipment (PPE). The plaintiff claims the meat department was full of sick employees, many of whom exhibited COVID-19 symptoms, but In-N-Out did not place them on medical leave.

The plaintiff filed a report with the L.A. Public Health Department regarding the meat department's alleged failure to observe safety protocols, and he informed other butchers of their right to report workplace safety concerns. The plaintiff contends that, as a result of his reporting workplace conditions and encouraging other employees to report, In-N-Out retaliated against him by giving him a "final warning" for attendance violations.

In-N-Out reports that it terminated the plaintiff's employment because he provided false documentation about an absence and exhausted his sick

leave. The plaintiff alleges that his previous absences were excused, and that he and similarly aggrieved employees were terminated for attempting to use sick leave. He also claims that In-N-Out failed to pay separated employees their final wages and provide accurate wages statements.

The plaintiff's allegations are based in the early months of the pandemic when PPE was sparse and employers grappled with how to adjust their workplaces. However, the alleged wage-related claims will cover a larger time frame.

Employers have learned a lot over the past year in terms of COVID-19 workplace safety. Employers should remain vigilant, focusing on proper safety protocols and keeping potentially sick employees out of the workplace.

As we have done since the start of the pandemic, the [Barnes & Thornburg Wage and Hour Practice Group](#) will continue to monitor employment-related COVID-19 litigation, and will provide updates as more developments emerge. For now, stay tuned.