

SHARE:



[Join Our Email List](#)



[View as Webpage](#)



February 7, 2022

Unprecedented: COVID-19 Litigation Insights, Volume 3, Issue 2

Welcome to our second issue of *Unprecedented* for the year. Have you gotten a chance to participate in our survey? There is still time. Please let us know how you find this information. Is it useful? Is the format easy to read? What changes would you like to see? We want to make this publication as helpful as possible and your input is essential.

You can access the survey [here](#) or at the bottom of this e-newsletter.

Thank you for reading.

[James E. Simon](#), Co-Editor of *Unprecedented*

and

[Joseph A. \(Jay\) Ford](#), Co-Editor of *Unprecedented*

[COVID-19 Task Force](#)



**[Syracuse University Hit with Another Class Action Lawsuit Over
Pandemic Refund Policy](#)**

"She is looking to represent an estimated tens of thousands of students who paid for tuition in the spring semester of 2020."

Why this is important: Colleges and universities around the country continue to face proposed class action lawsuits in connection with their decisions to move classes online in response to the pandemic. In December 2021, a Syracuse University student filed a proposed class action against the school, arguing that she did not receive the benefit of the on-campus education for which she had paid. Three similar lawsuits have been filed against Syracuse, although one was withdrawn and another was dismissed. Plaintiffs in these types of lawsuits seeking reimbursement of tuition and fees typically face an uphill battle because courts often require the plaintiffs to identify specific representations the school made regarding in-person education. So far, we have not seen students achieve much success with these claims. --- [Joseph A. \(Jay\) Ford](#)

Va. Universities 'Cannot Mandate the COVID-19 Vaccine': AG Miyares Issues Legal Opinion

"The opinion contradicts that of his democratic predecessor Mark Herring, who had previously issued an opinion saying that colleges and universities have the authority to require the COVID-19 vaccine."

Why this is important: In an abrupt reversal from his predecessor, Virginia Attorney General Jason Miyares issued an advisory opinion stating that Virginia state universities cannot impose vaccine mandates on students. This opinion took many in Virginia academia by surprise, given that prior Virginia Attorney General Mark Herring had issued the exact opposite opinion affirming the authority of Virginia universities to do so. Although the Miyares opinion does not have the force of law, one can easily see it being cited as persuasive authority in lawsuits if Virginia universities continue to impose vaccine mandates as a prerequisite for enrollment or attendance. Given the chilling effect that the Miyares advisory opinion will undoubtedly have on such vaccination efforts, it is expected that this opinion will be subjected to legal challenges in the days to come. --- [James E. Simon](#)

Grocery Store Employee Leilani Jordan Died of Covid-19 at the Start of the Pandemic. Her Mom Wants Justice.

"Legal experts say Shepherd's lawsuit is one of a small but likely growing number of cases filed by family members who claim their loved ones contracted the coronavirus and died as a result of an employer's negligence."

Why this is important: A lawsuit pending in Maryland's Prince George Circuit Court is representative of negligence and wrongful death claims filed against employers seeking damages relating to COVID-19 exposure, but its uniqueness is grabbing national attention as a test case for establishing employer negligence. Leilani Jordan, a 27-year-old with cerebral palsy, was placed by an assisted living facility for the developmentally disabled with a Giant store to receive on-the-job training. It is alleged that the store and the assisted living facility were negligent in not providing Leilani with necessary supervision, training, and protective equipment resulting in her death after she contracted COVID-19. Given that Leilani was participating in a work training program for the developmentally disabled when she allegedly worked without appropriate personal protective equipment and without mandatory supervision, the claim may surmount the workers' compensation bar that might otherwise result in summary dismissal. As a result, employers should be watching as this case progresses as it may be one of the few to get to a jury and provide guidance on the extent of an employer's duty to protect essential workers during the pandemic and whether it is feasible to establish that an employee's illness was proximately caused by an exposure that occurred in the workplace. --- [Lori D. Thompson](#)

Virginia Lawmaker Wants to Add COVID Vaccine Requirement to List of Workplace Discrimination Protections

"House Bill 27 forbids state entities and local governments from mandating employees to receive the vaccine."

Why this is important: Just before 2022 began, a new bill (HB 27) was introduced by the Virginia Legislature that would add COVID-19 vaccination status to a portion of the Virginia Human Rights Act, thereby prohibiting public employers from treating employees differently based on their COVID-19 vaccination status, and forbidding public schools from requiring students to be vaccinated. If passed, "COVID-19 vaccination status" would join race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, gender identity, and veteran status as a protected class (VA Stat. Sec. 2.2-3900 et seq.). The proposed law therefore seeks to prevent public employers, public schools, and a wide variety of governmental organizations from discriminating against an employee on the basis of COVID-19 vaccination status. Though the proposed law is presented neutrally as "COVID-19 vaccination status" (i.e. whether vaccinated or unvaccinated), the public statements of the proponents of HB 27 clearly intend for the proposed law to primarily protect Virginia state employees who have voluntarily declined COVID-19 vaccination. Virginia is one of the most recent states to propose such a COVID-19 vaccination discrimination law, as roughly one-third of state legislatures have already done so. A leader of those states is Montana, who actually passed a law adding COVID-19 vaccination status as a protected class under the Montana Human Rights Act. Furthermore, at least 20 states, all with Republican governors, have prohibited proof-of-vaccination requirements in certain circumstances. Thus, Virginia is not alone in seeking this to change this particular type of law. If Virginia's Legislature and governor do pass and sign HB 27 into law, the actual impact will likely not be immediately known. For example, though its discrimination law went into effect in May 2021, Montana continues to face legal challenges in both federal and state courts as to the law's overall constitutionality. Virginia's law would likely face similar constitutional challenges. Furthermore, even if the law is deemed constitutional by the courts (a process that may take years), the precise acts prohibited by the law may also be subject to the courts. For example, under this portion of the Virginia Human Rights Act, "discrimination" traditionally may include failure to hire, discharge, or discriminate with respect to compensation, terms, conditions of employment, separation, or deprivation of employment opportunities. Given the outstanding state and federal mandates and/or guidelines for employers regarding COVID-19 safety, however, what exactly "discrimination" based on "COVID-19 vaccination status" may look like would similarly be tested in lawsuits. Looking back to Montana as an example, lawsuits brought by employees claiming discrimination are ongoing, and the Department of Labor and Industry continues to provide guidance and FAQ to clarify the boundaries of its discrimination law as recently as January 2022. In doing so, Montana's government has already clarified that the law does not prohibit an employer from (a) asking an employee's vaccination status, though the employee may choose not to respond, (b) offering incentives to encourage employees to voluntarily vaccinate, or (c) requiring all employees, regardless of vaccination status, to wear masks at work. Should HB 27 be passed, Virginia's government and courts would need to provide a similar type of guidance and/or interpretation. Currently, the Virginia bill is not law, and is being reviewed by the House Health, Welfare and Institutions subcommittee. Spilman Thomas & Battle will monitor the progress of this bill and, as always, continue to provide employers in Virginia and beyond with the most up-to-date and practical recommendations for navigating the ever-changing legal landscape of COVID-19. --- [Chelsea E. Thompson](#)

Lawsuit Accuses COVID-19 Testing Company of Faking Results

"But recently, customers throughout the country have been complaining about the center's delayed or lack of results, leading health authorities in several states, including California and Illinois, to launch investigations."

Why this is important: The lawsuit brought by Washington's Attorney General against the Center for COVID Control is significant in that it highlights the potential for fraud during the pandemic. The Center for COVID Control operated approximately 300 testing centers nationwide promising rapid COVID-19 test results within 15 minutes and the more reliable PCR test results within 48 hours. Instead, what it allegedly delivered were false negative results, invalid results or no results. It has reportedly billed the government for \$124 million in testing of uninsured patients, in addition to billing of insurance carriers. Once the company became unable to keep up with increased demand, management allegedly instructed its employees to lie to patients concerning when results would be available; code insured patients as "uninsured" to simplify processing; submit tests to the lab for processing while knowing the results would be invalid given that the samples had been stored in trash bags instead of a refrigeration unit; and tell patients that their initial results were "inconclusive" such that a retest was required so that it could bill twice for its fraudulent actions. The lawsuit claims that such deceptive practices violate the Consumer Protection Act warranting damages of \$12,500 per violation and injunctive relief. Lawsuits by more attorneys general, insurance carriers and patients of the Centers who were given false results are certain to follow. --- [Lori D. Thompson](#)

Please Fill Out Our Survey!

This survey will help us improve this publication to provide you timely and helpful information. If you have a moment, please let us know how we are doing.

Click [here](#) to take the survey.



This is an attorney advertisement. Your receipt and/or use of this material does not constitute or create an attorney-client relationship between you and Spilman Thomas & Battle, PLLC or any attorney associated with the firm. This e-mail publication is distributed with the understanding that the author, publisher and distributor are not rendering legal or other professional advice on specific facts or matters and, accordingly, assume no liability whatsoever in connection with its use.

Responsible Attorney: Eric W. Iskra, 800-967-8251