

Daily Labor Report®

McDonald's Workers Get Second Win on Virus Safety Protocols (1)

By Robert Iafolla

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- Workers claim poor virus safety is public nuisance
 - Follows McDonald's workers' win earlier this week
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Three McDonald's restaurants in Chicago must adopt Covid-19 safety measures related to masks and social distancing, a judge said in the second ruling this week backing worker attempts to sue for pandemic protections.

A judge in Cook County, Ill., on Wednesday granted the McDonald's workers' request for a temporary court order mandating virus precautions. The order affects two locations operated by a McDonald's Corp. subsidiary and one franchise restaurant. The workers had sued the owner of another franchise location, but it was subsequently sold.

The order further boosts the legitimacy of using the long-standing public nuisance doctrine to force employers to protect workers during the Covid-19 pandemic. While the doctrine has traditional roots in land-use disputes, plaintiffs have had some successes in recent decades applying it in cases involving issues like lead paint and the opioid epidemic.

In a similar public nuisance case, a California judge ordered a McDonald's franchise restaurant in Oakland this week to improve its coronavirus safety protocols in order to reopen.

While two state courts have ruled for workers, a federal court threw out a public nuisance lawsuit brought by meatpacking workers at a Smithfield Foods Inc. facility. The workers asked the judge to reconsider his order.

Chicago Case

Cook County Circuit Court Judge Eve Reilly gave the workers their first win earlier this month when she rejected McDonald's bid to dismiss their lawsuit claiming the company's inadequate Covid-19 safeguards constitutes a public nuisance. McDonald's had argued that federal, state, and local regulatory agencies have primary jurisdiction over worker safety and public health.

Reilly on Wednesday partially granted the workers' request for a preliminary injunction mandating several safety measures, saying they had shown that they'll likely succeed on the merits of their public nuisance claim.

Reilly's decision turned in part on whether the McDonald's locations were implementing the protective protocols at the stores in a way that's consistent with an Illinois executive order and federal guidance.

The McDonald's locations weren't enforcing mask requirements or properly training workers on social distancing, Reilly ruled.

But they were following through on other safety protocols, such as supplying hand sanitizer and monitoring their workers' Covid-19 diagnoses, the judge said.

"The hardship McDonald's would suffer by strictly enforcing its mask policy and retraining employees on proper social distancing procedures is slight," the judge wrote. "Now, McDonald's may need to re-envision how it wants to implement the policy so as to ensure full compliance, but that is for McDonald's to decide."

McDonald's said in a statement that it's pleased that Reilly recognized that strong safety measures were already in place across the three restaurants.

"These measures are part of the 50 processes we have enhanced during the pandemic to keep restaurant employees and customers safe," the fast food giant said.

The workers' attorney, Daniel Rosenthal of James & Hoffman, said the judge's order demonstrates that the McDonald's restaurants posed a danger to public health by failing to keep its workers safe.

"Coupled with the temporary restraining order issued against a McDonald's restaurant in Oakland yesterday," Rosenthal said, "this decision shows that companies like McDonald's cannot get away with creating a public nuisance."

The case is *Massey v. McDonald's*, Ill. Cir. Ct., Order 6/24/20.

(Updated to add comments from McDonald's and the workers' lawyer in the 12th-15th paragraphs. Story originally published on June 24.)

To contact the reporter on this story: Robert lafolla in Washington at riafolla@bloomberglaw.com

To contact the editors responsible for this story: Jay-Anne B. Casuga at jcasuga@bloomberglaw.com; John Lauinger at jlauinger@bloomberglaw.com

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