

Daily Labor Report®

They've Got Next: Labor & Employment Fresh Face Danny Rosenthal

By Erin Mulvaney

Sept. 22, 2020, 1:01 PM

Name: Danny Rosenthal

Firm: James & Hoffman

Claim to Fame: Secured early wins using a largely untested legal strategy to secure protections against Covid-19 for McDonald's workers in Chicago.

Location: Washington, D.C.

Age: 36

The Covid-19 pandemic left essential workers with few options if their employers failed to protect them from outbreaks on the job. Hurdles are high for success in negligence cases, and some state workers' compensation laws prevent them from bringing lawsuits altogether.

Amid these challenges, workers' rights firms and advocates began to develop a strategy that wielded a public nuisance doctrine, typically used in environmental cases. The argument is that amid the pandemic companies can be on the hook for creating unsafe environments that cause public harm. The approach was largely untested in the workplace context.

Danny Rosenthal and his team at James & Hoffman, a Washington, D.C.-based firm that focuses on labor & employment, represent McDonald's workers at Chicago locations who claim their managers didn't require masks for workers or customers. They also said that the restaurants did little to prevent the spread of the virus in small kitchens and work spaces.

The team, led by Rosenthal, seized upon this new legal theory that had been used sparingly in the context of Covid-19. In June, the firm managed to brush off a motion to dismiss and secured a preliminary injunction that required the restaurants to implement certain safety measures.

The team, including the firm's attorneys Ryan Griffin, Alice Hwang and Michael Ellement, continues to seek permanent standards at the locations. (Rosenthal has been on parental leave with his new son Avi after his wife returned to work in August).

"We tried to think, 'Was there something we could do to help the workers?' It was hard to come up with a good theory for various reasons," Rosenthal said. "Using public nuisance to protect workers from a disease was pretty novel."

The firm's wins boosted the legitimacy of using the public nuisance doctrine during the Covid-19 pandemic. Another firm, also in June, used the strategy to win an injunction in state court on behalf of McDonald's workers at a California location. It was also raised in an ongoing case on behalf of Amazon workers in June. A lawsuit against Smithfield Foods Inc. that included a public nuisance claim was dismissed in May on jurisdictional grounds.

James & Hoffman partner David Dean, who also worked on the Chicago McDonald's case, called Rosenthal, "A calm at the center of a multi-day Zoom hearing for a preliminary injunction, a lightning-fast briefer, and decision-maker."

Rosenthal, a West Lafayette, Ind.-native, has been with the labor firm since 2011, except for the year he clerked on the U.S. Court of Appeals for the First Circuit in 2013. Before getting his law degree at Harvard Law School, he taught math at a public high school in Houston.

During law school, he didn't have an interest, like his peers, to attempt to snag Big Law interviews to practice corporate law. Instead, he said, he was attracted to the smaller practice that spent its time representing unions and workers.

Rosenthal's family has roots in labor. His parents met at an organizing meeting, where his mother was then trying to form a nurse's union in New York City that his father was helping to organize.

During his tenure at the firm, he has argued for pilots unions in bankruptcy courts, and in appeals courts on behalf of public school teacher unions, and for federal employees making wage-and-hour claims against the FBI, State Department, Veterans Affairs, and Consumer Financial Protection Bureau. He made partner in 2018.

"He cut his teeth cross-examining witnesses in our representation of the pilots in the American Airlines bankruptcy proceeding, while his law school peers were carrying water bottles for the corporate lawyers in the court room," Dean said.

To contact the reporter on this story: Erin Mulvaney in Washington at emulvaney@bloomberglaw.com

To contact the editors responsible for this story: Lisa Helem at lhelem@bloombergindustry.com; Jay-Anne B. Casuga at jcasuga@bloomberglaw.com

© 2020 The Bureau of National Affairs, Inc. All Rights Reserved