

COVID-19 Litigation Tests the Limits of Employment Discrimination Law

By [Joseph E. Abboud](#)
August 21, 2020

As COVID-19 has spread throughout the country, it has created severe disruptions for most American workplaces. Information about the nature of the virus threat, official guidance on how individuals should protect themselves, and local rules regulating businesses have all shifted rapidly. This left many workers afraid to go to work, worried that they were putting themselves or their loved ones at too great a risk if they contracted COVID-19 in the workplace. This fear was amplified where the age or underlying health conditions of workers and their loved ones increased the chances of severe illness or death from the virus. However, while many [workers wanted to protect themselves](#) by staying home, many businesses seeking to keep their doors open required some or all of their workers to come into the workplace. This clash is generating a series of lawsuits that are proceeding through the courts throughout the country, pitting the interests of [workers in health and safety](#) against employers' ability to control the terms and conditions of employment. However, most of this litigation involves employment discrimination statutes designed for the pre-pandemic era, forcing workers to fit the facts of the current public health and economic situation into an often ill-suited legal framework. A lawsuit currently working its way through the United States District Court for the District of Massachusetts, *Lin v. CGIT Systems, Inc.*, illustrates how the pandemic will test the limits of our [employment discrimination laws](#).

Mr. Lin's Termination

Yiyu Lin, who describes himself in his [lawsuit](#) as "a 55-year-old Chinese-American with a history of high blood pressure," worked for nearly fifteen years as senior engineer at CGIT Systems, Inc. in Massachusetts. On March 16, 2020, the Governor of Massachusetts issued an order closing all non-essential businesses to curb the spread of COVID-19, and Mr. Lin began working remotely. However, Mr. Lin's General Manager informed the engineering department that "corporate" was preventing him from implementing COVID-19 safety measures. Mr. Lin saw other signs that the company wanted to continue business as usual, including downplaying the seriousness of the virus.

On March 25, 2020, the company instructed all employees who were working from

home to report to the office on March 27. Mr. Lin submitted a written request to continue working from home, explaining to his manager that he was concerned about COVID-19, particularly given his health condition and that he lived with his 81-year-old mother who had heart disease, high blood pressure, and diabetes. Mr. Lin used paid-time off and his remaining sick days to postpone his return to work while the company considered his request to work remotely. On March 28, 2020, CGIT informed Mr. Lin his request to work remotely was denied, and that he had to return to the office or lose his job. Although CGIT denied Mr. Lin's remote work request, it granted the requests of two other engineers. After Mr. Lin exhausted his sick days, he was terminated for "job abandonment" on March 31 when he failed to return to the office. Within a few days after Mr. Lin's termination, CGIT ordered all of its employees to work remotely because more and more employees were getting sick or testing positive for COVID-19. Despite the subsequent policy reversal, CGIT did not offer to rehire Mr. Lin.

Legal Dispute

Mr. Lin brought suit against CGIT on June 3, 2020, asserting four claims under Massachusetts employment discrimination law, including claims for disability discrimination, age discrimination, race/national origin discrimination, and retaliation for using earned sick days. Mr. Lin claimed disability discrimination based both on his own health condition (high blood pressure), and his association with his disabled mother. On June 26, 2020, CGIT filed a motion to dismiss the disability, age, and race/national origin discrimination claims.

On the disability discrimination claim, CGIT argued that Mr. Lin failed to plead facts to show that he was in-fact "handicapped" as defined by Massachusetts anti-discrimination law. Mr. Lin's high blood pressure is certainly associated with many significant health risks, and [evidence](#) has suggested that high blood pressure may increase risk of severe illness from COVID-19. It is thus quite easy to understand Mr. Lin's fear of returning to the office and his request for a remote working accommodation. However, according to CGIT, in order to invoke the protections of disability discrimination law Mr. Lin was required to provide more information about the history of his medical condition and how severely the medical condition impacted his major life functions. CGIT argued that it was not enough for Mr. Lin simply to claim that his medical condition put him at severe risk from COVID-19.

CGIT also argued that Massachusetts' disability discrimination law did not give Mr. Lin the right to a remote work accommodation because of his elderly mother's disabilities. CGIT acknowledged that Massachusetts courts have previously protected employees from discrimination based on their association with a disabled person, such as holding it was illegal to fire an employee to avoid paying for the medical care for the employee's wife's cancer treatment. However, CGIT

noted that courts have expressed a reluctance to require employers to give reasonable accommodations to employees based on their association with a disabled person. Notably, until now, courts were not facing a widespread public health crisis during which governments and experts encouraged people to reduce their activities to protect vulnerable relatives from virus exposure. Whether courts will expand associational discrimination protection in light of the pandemic remains to be seen.

CGIT also argued that the Court should dismiss Mr. Lin's age and race/national origin discrimination claims because he failed to provide evidence that CGIT fired Mr. Lin because of his age or race/national origin. Employees typically have much less information than employers about the employers' personnel decisions and underlying rationales. Furthermore, Mr. Lin was not even in the office during the relevant time period, so his access to information about what decisions CGIT made and why was even more limited. Although Mr. Lin did allege that other engineers were allowed to work remotely while he was not, Mr. Lin provided no information about their age, race, or national origin, perhaps because he did not know it. However, it is quite plausible that these other employees were younger or of a different race or national origin. Mr. Lin may have the opportunity to take discovery on these issues and prove his claims if the Court denies CGIT's motion to dismiss.

The Shape of Legal Battles Ahead

Many employees have lost work during the coronavirus pandemic under circumstances like Mr. Lin's, raising serious questions about whether their terminations were fair and legal. Mr. Lin's case shows some of the challenges such employees will face in court. While disability discrimination law is a promising source of rights for workers trying to protect themselves and their families from a public health emergency, it is filled with intricacies and technicalities that bear no relation to the very real health concerns of workers. Similarly, employees who are physically isolated from their supervisors and coworkers may have even less information than normal, making it that much more difficult to assert claims of discriminatory treatment. If you've lost your job because you refused to work during the pandemic, it is important that you work with an experienced employment lawyer who can help you navigate a legal world which was not designed to protect the needs of workers facing COVID-19. Courageous workers and creative advocates will spend the foreseeable future pushing, and hopefully expanding, the limits of employment discrimination law as they seek redress for unfair terminations during the pandemic.