



May 6, 2021

Via Email Only: scott.moss@state.co.us

Scott A. Moss, Esq.
Director of the Division of Labor Standards and Statistics
Colorado Department of Labor and Employment
633 17th Street, Suite 600
Denver, CO 80202

Re: Violations of Public Health Emergency Whistleblower Act of 2020 (“PHEW”)
Complainant: Linda Rodriguez
Respondents: Amazon.com, Inc.
Amazon.com Services, LLC

Dear Mr. Moss:

This complaint is about Amazon’s extraordinary efforts in Colorado to intimidate its workers from expressing their voice to protect themselves and their coworkers from the spread of COVID-19 within Amazon’s warehouses.

Amazon is among the wealthiest and most profitable companies in the world. It employs over 10,500 workers across the State of Colorado. In 2020, even while the COVID-19 pandemic raged and infected more than 20,000 Amazon workers,¹ Amazon reaped enormous financial benefits. Last year, Amazon’s annual revenue increased 38% to \$386 billion, an increase of over \$100 billion versus the prior year.

Despite—or perhaps because of—this enormous wealth and power, Amazon persistently seeks to squelch its workers’ power and voice, especially with respect to their

¹ Matt Day, Spencer Soper, and Josh Eidelson, *Amazon Says Almost 20,000 Workers Had Covid-19 in 6 Months*, BLOOMBERG (Oct. 1, 2020), <https://www.bloomberg.com/news/articles/2020-10-01/amazon-says-almost-20-000-workers-had-covid-19-during-pandemic>.

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 2 of 9

efforts to speak out about the workplace health and safety risks they faced every day while working in Amazon’s warehouses during the pandemic.²

That conduct is expressly prohibited in Colorado. In enacting Colorado’s Public Health Emergency Whistleblower (“PHEW”) Act in the summer of 2020, the State protected workers’ rights to raise concerns about COVID-19 health and safety issues in the workplace and recognized that worker voice is a public health imperative.

TOWARDS JUSTICE and SWAIN LAW, LLC, represent Linda Rodriguez, a former warehouse worker at Amazon’s DEN3 Fulfillment Center in Thornton, Colorado. As the COVID-19 pandemic raged through Colorado, workers at DEN3, including Ms. Rodriguez, raised concerns about Amazon’s workplace safety and health practices, which they feared were putting workers—in particular immigrant workers and workers of color—at substantial risk. When Ms. Rodriguez raised concerns that Amazon was providing important COVID safety and health information in English exclusively—though many of its workers at the DEN3 facility are monolingual Spanish speakers who felt extraordinary pressure to continue coming to work every day, even if they were sick—Amazon fired Ms. Rodriguez for speaking out.

Please accept this letter as Ms. Rodriguez’s formal complaint against Amazon³ under the PHEW Act.

FACTUAL BACKGROUND

Throughout 2020, Amazon failed to implement even the most basic safety precautions to protect its thousands of Colorado workers from COVID-19.

The COVID-19 coronavirus pandemic arrived in Colorado in early March 2020. Within weeks after the State’s first two cases were confirmed on March 5, the number of confirmed infections ballooned to hundreds. On March 25, 2020, Governor Jared Polis announced a stay-at-home order that required all non-essential businesses to temporarily close. By early

² See, e.g., Mary Meisenzahl, *NLRB Rules Amazon Illegally Fired a Warehouse Worker Protesting Safety Conditions in March*, BUS. INSIDER (Dec. 17, 2020), <https://markets.businessinsider.com/news/stocks/nlrp-amazon-retaliated-against-gerald-bryson-for-protests-2020-12-1029903868>.

³ Amazon is comprised of many legal entities. Ms. Rodriguez files this complaint against Amazon.com, Inc., and Amazon.com Services, LLC, which this complaint refers to collectively as “Amazon.”

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 3 of 9

April 2020, the federal government had identified Colorado as an emerging national hotspot for transmission of the disease. As of the date of this letter, over 500,000 Coloradans have contracted the virus and almost 6,500 have died.

Amazon's DEN3 Fulfillment Center has remained open throughout the pandemic. Though Amazon's enormous public relations apparatus has attempted to create the illusion of diligent compliance with safety requirements, Amazon has consistently prioritized productivity and cost-cutting over worker safety. By the early summer of 2020, Ms. Rodriguez became concerned with Amazon's systematic failure to comply with even the most basic safety precautions necessary to protect her and her coworkers workers from exposure to the virus.

Among other things, Amazon did not provide masks to its DEN3 staff until May 2020, and for weeks after that, Amazon simply hung unpackaged masks along a hallway where employees could touch them or cough and sneeze on them. Amazon also did not require employees to wear masks when they clustered before clocking into work and having their temperatures screened. Amazon's strict productivity quotas required workers to rush frantically through their work, without physical distancing and without washing their hands or sanitizing their workstations.

Amazon's contact tracing was also an ineffective sham. Throughout the summer of June 2020, Amazon informed its workers that it engages in contact tracing and encouraged them to rely solely on the company's judgment and instructions when determining whether to quarantine following a potential exposure. But Amazon failed to adequately investigate who had been in contact with infected workers, failed to notify workers known to have potentially been exposed to the virus, and openly discouraged employees from discussing confirmed infections at the DEN-3 Fulfillment Center.

Amazon needlessly endangered all of its workers by refusing to provide Spanish-language COVID-19 training, instructions, and notifications.

In addition to its systematic failures to enforce mask-wearing and social distancing, to provide workplace policies that allowed workers to protect themselves, and to institute effective cleaning and contact tracing protocols, Amazon placed all of its workers at risk, especially its immigrant workers and workers of color, by depriving its Spanish-speaking employees of meaningful training and COVID-19 safety communications.

Many of Ms. Rodriguez's coworkers at Amazon's DEN-3 Fulfillment Center were Spanish speakers who speak and read little or no English. As a result, Spanish-speaking

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 4 of 9

employees often needed an interpreter when completing applications, submitting to drug tests, asking questions of human resources, and so on. And when Amazon needs to communicate with those workers about matters Amazon wants those workers to understand, Amazon communicates with them in Spanish.

Amazon did not, however, make efforts to communicate with Spanish-speaking workers about important COVID-19 health and safety information. Though Amazon's contact tracing program was initially a sham, in the summer of 2020, the company began more regularly notifying employees of confirmed COVID-19 diagnoses at the facility by email or text messages sent through an automated messaging system called AtoZ. Text messages were sent in English only, with no option to translate to Spanish or other languages. When email messages did include an option to translate to Spanish, employees were required to scroll to the bottom of the message and select a "translate" button in English.

Even worse, beginning-of-shift instructions were also provided only in English. As a result, Spanish-speaking employees often missed out on crucial safety warnings, such as Amazon's instructions for employees not to clock in and enter the facility if they had been experiencing COVID-19 symptoms.

On multiple occasions, Ms. Rodriguez observed Amazon's English-only instructions result in dangerous lapses in the company's already-ineffective health and safety protocols. Specifically, employees waiting in line to enter the facility were instructed (in English only) not to clock in if they had recently experienced cough or fever. But Spanish-speaking employees who did not understand these instructions were pressured to simply swipe in and begin working. By providing COVID safety and health information in English exclusively—even though Amazon provided its workers with information in Spanish when necessary to Amazon's bottom line—Amazon was able to maintain pressure on its Spanish-speaking workers to continue attending work even if they felt sick. Additionally, Amazon's English-only communication about these matters undermined effective contact tracing of cases involving Spanish-speaking workers.

Ms. Rodriguez repeatedly raised concerns about Amazon's COVID-19 failures, and Amazon angrily dismissed her complaints.

In early June 2020, Ms. Rodriguez began raising concerns to her supervisors and human resources about several aspects of Amazon's response to COVID-19.

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 5 of 9

Ms. Rodriguez first complained about the failure of Amazon's contact tracing program when the company failed to notify her that she had been exposed to the virus by a coworker who tested positive after being sent home sick. As Ms. Rodriguez was arriving for work on June 2, she ran into a coworker who was leaving partway through her shift. The coworker explained that Amazon was sending her home because she felt sick and was exhibiting COVID-19 symptoms. The coworker later sent a text message to some of her close colleagues explaining that she had tested positive for COVID-19 and had become very ill. Ms. Rodriguez learned about the positive diagnosis not from Amazon, but from one of the coworkers who had received the text message.

Instead of interviewing the COVID-positive employee to determine which coworkers she had potentially exposed before she left work, Amazon attempted to cover up the infection with threats and intimidation, as described in detail below. Even worse, Amazon's public relations department was simultaneously working to create the illusion of a cutting-edge contact tracing program at the company.

On June 6, Ms. Rodriguez approached her supervisor to ask about Amazon's failure to notify her about her coworker's positive COVID-19 test. Ms. Rodriguez complained that she was also very concerned that the employee's workstation had not been cleaned after the employee was sent home sick. Instead, another employee had been re-assigned to the station immediately. Ms. Rodriguez's supervisor immediately shut down the conversation, responding that Amazon had instructed him not to discuss the confirmed infection.

Ms. Rodriguez then walked to Amazon's human resources offices, where she again raised her concerns about Amazon's failure to notify her about the known workplace infection. Speaking to a group of human resources employees, Ms. Rodriguez complained about Amazon's failure to notify her and other employees of the exposure and the fact that no one had cleaned the infected employee's workstation before other employees began working there.

Human Resources Lead Matt Ramos reacted to Ms. Rodriguez's good-faith complaint with explosive anger. Ramos screamed at Ms. Rodriguez that she should not be discussing her coworker's COVID-19 diagnosis at work and demanded to know how she had learned of the positive test. He then falsely told Ms. Rodriguez her only option if she was concerned about her health was to take an unpaid leave of absence.

In June and July, Ms. Rodriguez repeatedly complained to her supervisors, team leads, and human resources about various aspects of Amazon's COVID-19 response. On numerous other occasions, Ms. Rodriguez met with human resources representatives to express her

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 6 of 9

concerns about (1) the company's failures to consistently enforce mask-wearing and social distancing; (2) the overall lack of cleaning at the facility, especially the cleaning of work stations used by employees known to have tested positive for COVID-19; (3) the lack of available cleaning supplies; (4) incorrect information being provided by human resources employees about Amazon's contact tracing and leave policies; and (5) Amazon's failure to provide COVID-19-related Spanish-language instructions and communications to employees who did not speak English.

Ms. Rodriguez attempted to escalate her complaint that the lack of Spanish-language COVID-19 communications was endangering employees, and Amazon retaliated by firing her.

Throughout June and July 2020, Amazon's human resources employees typically either ignored Ms. Rodriguez's repeated complaints or responded with anger. In August 2020, Ms. Rodriguez began documenting her safety complaints in writing, first by sending an August 10 email to Human Resources Manager Kat Gordon and then by sending a written memorandum to one of her supervisors a few days later.

By August 22, Ms. Rodriguez decided that she needed to escalate her complaints to a higher-level human resources employee or else Amazon would keep ignoring them. On that day, Ms. Rodriguez asked supervisor Vanessa Shirley for the name of a human resources manager she could speak to regarding her concerns about the company's coronavirus response. She said that if Amazon was not willing to address her concerns, she would need to take them outside of the company, such as to OSHA. Visibly upset by Ms. Rodriguez's persistence in attempting to resolve the company's numerous failures, Shirley said she would work on getting Ms. Rodriguez contact information for a higher-level human resources manager.

Two days later, on August 24, Amazon retaliated by suspending Ms. Rodriguez partway through her shift. Amazon falsely claimed that it was suspending Ms. Rodriguez for "time theft." On August 28, Amazon fired Ms. Rodriguez, citing its time theft accusations.

Amazon's accusation that Ms. Rodriguez had engaged in time theft was nothing more than a pretext to disguise its unlawful retaliation against her. For instance, during one of the incidents cited by Amazon as "time theft," Ms. Rodriguez had briefly stepped outside of the DEN-3 facility for a moment of fresh air because she was feeling sick. Before going outside, Ms. Rodriguez asked for and received a supervisor's permission to take a quick on-the-clock break. After Ms. Rodriguez's termination, in a filing with the Colorado Civil Rights Division

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 7 of 9

(CCRD), Amazon admitted that Ms. Rodriguez had permission to step outside and was not actually engaged in “time theft” on this occasion. In the other key instance cited by Amazon, Ms. Rodriguez stepped out when trying to contact one of Amazon’s human resources employees. The human resources employee had told Ms. Rodriguez she wanted to have a conversation, so when Ms. Rodriguez saw the human resources employee leaving the building, Ms. Rodriguez left to try to talk to her.

The truth is that Amazon did not fire Ms. Rodriguez for so-called “time theft.” She had worked at a breakneck pace for Amazon for around 60 hours per week during much of the pandemic. Amazon contrived the “time theft” narrative because Ms. Rodriguez spoke up to protect herself, her coworkers, and the public generally from COVID-19. In fact, Amazon also admitted in its CCRD filing that it first began scrutinizing Ms. Rodriguez’s time records on August 13, 2020—just three days after Ms. Rodriguez sent a written complaint about her COVID-19 concerns to Human Resources Manager Kat Gordon.

Amazon’s termination of Ms. Rodriguez based on false allegations of “time theft” is consistent with a nationwide pattern of singling out whistleblowers for undeserved termination based on capricious and inconsistent application of company rules.⁴ Amazon targeted Ms. Rodriguez for termination because she dared to complain about the company’s pandemic response failures.

⁴ See, e.g., *Amazon Employee Who Advocated for Warehouse Workers Says She Was Fired in "a 30-Second Phone Call,"* CBS NEWS (May 13, 2020), <https://www.cbsnews.com/news/amazon-worker-fired-coronavirus-maren-costa-emily-cunningham/>; Lauren Kaori Gurley, *Whole Foods Just Fired an Employee Who Kept Track of Coronavirus Cases* (Mar. 29, 2020), <https://www.vice.com/en/article/y3zd9g/whole-foods-just-fired-an-employee-who-kept-track-of-coronavirus-cases> (describing how Amazon subsidiary Whole Foods asserted that “time theft” was their justification for firing a worker who tracked the company’s COVID-19 cases because Amazon and Whole Foods had refused to disclose that data); Mary Meisenzahl, *NLRB Rules Amazon Illegally Fired a Warehouse Worker Protesting Safety Conditions in March*, BUS. INSIDER (Dec. 17, 2020), <https://markets.businessinsider.com/news/stocks/nlr-amazon-retaliated-against-gerald-bryson-for-protests-2020-12-1029903868>; Annie Palmer, *Amazon Fires Warehouse Worker Who Led Staten Island Strike for More Coronavirus Protection*, CNBC (Mar. 31, 2020), <https://www.cnbc.com/2020/03/30/amazon-fires-staten-island-coronavirus-strike-leader-chris-smalls.html>.

LEGAL CLAIM

Public Health Emergency Whistleblower (“PHEW”) Retaliation

PHEW prohibits employers from retaliating or taking any adverse action against workers who undertake a variety of protected activities to speak out about workplace practices regarding public health emergencies like COVID-19. As relevant here, PHEW protects workers who (1) raise a “reasonable concern about workplace violations of government health or safety rules, or about an otherwise significant workplace threat to health or safety, related to a public health emergency” or (2) oppose “any practice the worker reasonably believes is unlawful” under PHEW. *See* §§ 8-14.4-102(1) & (4), C.R.S. (2020).

Here, there can be no question that Ms. Rodriguez engaged in protected activity under PHEW on multiple occasions in the short period of time before she was abruptly fired for pretextual reasons. As described above, on multiple occasions in June, July, and August 2020, Ms. Rodriguez raised reasonable concerns about Amazon’s conduct, which was creating a significant workplace threat to her own and her coworkers’ health and safety, in the context of the COVID-19 public health emergency. She did so to protect herself and her coworkers from the threat of workplace exposure and in an effort to advise warehouse workers about what steps they could take to protect themselves from becoming ill with the virus.

Ms. Rodriguez also engaged in protected activity on August 22, 2020, by asking her supervisor and team lead for the contact information of a human resources employee with authority to address her earlier complaints. Amazon retaliated by falsely accusing Ms. Rodriguez of time theft, suspending her on August 24, and firing her on August 28.

Here, Ms. Rodriguez has easily made a *prima facie* case of PHEW retaliation, and Amazon will be unable to prove that its stated reason (time theft) was the real reason for her termination. As described above, Amazon admits that it began carefully scrutinizing Ms. Rodriguez’s time records to look for any inconsistencies just three days after Ms. Rodriguez escalated her complaints in writing to Human Resources Manager Kat Gordon. Even more, the incidents cited by Amazon as “time theft” were either (a) times where Ms. Rodriguez had explicit permission to take a short break while on the clock and off task, (b) times where Ms. Rodriguez was trying to get in contact with human resources, or (c) commonplace short breaks frequently taken by nearly every employee in the facility.

Scott A. Moss, Esq.
Re: Linda Rodriguez / Amazon
May 6, 2021
Page 9 of 9

CONCLUSION

We respectfully request that the Colorado Department of Labor and Employment Division of Labor Standards and Statistics issue a finding that Amazon violated PHEW, and award Ms. Rodriguez all available damages and remedies, including lost wages and benefits, compensatory and punitive damages, and attorney's fees.

Sincerely,

/s/ David H. Seligman
David H. Seligman
Brienne Power
Towards Justice
PO Box 371680, PMB 44465
Denver, CO 80237-5680
Telephone: (720) 248-8426
david@towardsjustice.org
brienne@towardsjustice.org

/s/ Hunter A. Swain
Hunter A. Swain
Swain Law, LLC
1490 North Lafayette Street, Suite 303
Denver, CO 80218
Telephone: (720) 815-5281
hunter@swainemploymentlaw.com

Attorneys for Complainant