

LET THAT SINK IN: ELON MUSK'S BRUSH WITH LABOR LAW VIOLATIONS

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I. INTRODUCTION

Days before the holidays, Elon Musk fired all janitors who worked at Twitter's San Francisco headquarters after they went on strike and demanded better wages and working conditions.¹ In New York City, janitors were given notice of their termination, with no notice as to why.² Musk claims that these layoffs were the result of Twitter's financial strain and is reportedly attempting to cut more than \$500 million in expenses from Twitter's budget.³ Coincidentally, the recent firings at Twitter targeted unionized workers protected under a collective bargaining agreement, sparking Unfair Labor Practice strikes to protest these decisions.⁴ This article examines what these strikes mean for Musk and Twitter within the context of private labor law.

II. MUSK, TWITTER, AND UNIONS

A. Musk's History with Unions

Following their termination, many janitors noted that despite them being imperative to Twitter's daily functioning, they believed that Musk laid them off to spite their union membership.⁵ But this speculation surrounding Musk's anti-union attitude is not new. In 2019, Musk laid off 280 unionized employees at Tesla.⁶ The National Labor Relations Board in 2021 ruled that as CEO of Tesla, Musk was guilty of unfair labor practices for various actions. These included anti-union speech, firing union organizers, and forbidding

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¹ Thomas Barrabi, *Twitter Employees Using Own Toilet Paper After Elon Musk Cuts Janitors*, NEW YORK POST (Dec. 30, 2022, 9:55 AM), <https://nypost.com/2022/12/30/twitter-employees-using-own-toilet-paper-offices-stink-after-musk-cut-janitors-report/>.

² Michael Sainato, *'It's a Nightmare': Twitter's New York City Janitors Protest Over Sudden Layoffs*, THE GUARDIAN (Jan. 12, 2023, 5:00PM), <https://www.theguardian.com/technology/2023/jan/12/twitter-janitors-new-york-city-protest-layoffs-elon-musk>.

³ Barrabi, *supra* note 1.

⁴ Passant Rabie, *Janitor Picket Outside Twitter's HQ in Elon's Latest Mess*, GIZMODO (Dec. 6, 2022), <https://gizmodo.com/twitter-strike-janitors-elon-musk-picket-line-1849859526>.

⁵ Teddy Ostrow, *Elon Musk's Takeover Through the Eyes of Twitter's Janitors*, IN THESE TIMES (Dec. 12, 2022), <https://inthesetimes.com/article/twitter-janitors-on-elon-musk-takeover>.

⁶ *Id.*

workers from wearing pro-union logos in the workplace.⁷ As a result of this finding, Musk, as CEO of Tesla, was ordered to delete his tweets stating his anti-union sentiment and reinstate a terminated employee and compensate him for lost wages and earnings.⁸

B. Musk's Current Conflict

More recently, Musk has continued to face allegations of labor law violations as the new head of Twitter. In addition to a series of suits brought by employees alleging termination without proper notice, inadequate severance payments and retaliation against workers, Musk is being investigated for potential violations of San Francisco law.⁹

In the most recent incident, former employees explained that they found themselves locked out of the building, with no prior warning the company was terminating their contract.¹⁰ These janitors were members of the union SEIU Local 87 and decided in early December to demonstrate outside Twitter's offices.¹¹ The employees claimed that the "tech giant" did not properly negotiate a new contract with FlagShip, the janitorial company that employed them, as required by federal law.¹²

Other former employees are taking it a step further and are lawyering up to bring arbitration claims against the new owner of Twitter.¹³ The primary issue in these cases is that employees are claiming they did not receive the proper level of severance and compensation as promised before Musk took over the company.¹⁴

⁷ *Id.*

⁸ Lora Kolodny, *Tesla Ordered to Have Elon Musk Delete Anti-Union Tweet*, CNBC (updated Mar. 25, 2021, 7:43 PM), <https://www.cnbc.com/2021/03/25/tesla-elon-musk-anti-union-tweet-must-be-deleted-nlrb.html>.

⁹ *Id.* See Displaced Worker Protection, S.F. POLICE CODE § 33C.

¹⁰ Courtney Vinopal, *Twitter's Workplace Practices Draw Fire as Janitors Picket and Musk Defends Bedrooms*, THE OBSERVER (Dec. 7, 2022, 10:43 AM), <https://observer.com/2022/12/twitters-workplace-practices-draw-fire-as-janitors-picket-and-musk-defends-bedrooms/>.

¹¹ Nicholas Reimann, *Elon Musk's Latest Headache: Twitter Office Janitors Go on Strike*, FORBES (Dec. 5, 2022, 8:05 PM), <https://www.forbes.com/sites/nicholasreimann/2022/12/05/elon-musks-latest-headache-twitter-office-janitors-go-on-strike/?sh=c181e121ef44>.

¹² *Id.*

¹³ See *Strifling & Turkal v. Twitter, Inc.*, No. 3:22-cv-07739 (N.D. Cal. 2022).

¹⁴ Cyrus Farivar, *Ex-Twitter Employees Begin Lawyering Up to Face Elon Musk*, FORBES (Dec. 5, 2022, 2:34 PM), <https://www.forbes.com/sites/cyrusfarivar/2022/12/05/twitter-elon-musk-lawyers/?sh=5eab469a10b9>.

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In addition, others claim that they were given an “illegal ultimatum” when the company asked workers to take a three month severance deal if they did not buy into Musk’s new “hardcore” values and no longer wanted to work at the company.¹⁵ These cases claim that Twitter is in alleged violation of the WARN Act, which requires advance sixty-day notice of termination before separation from the company actually takes place for companies of 500 or more people.¹⁶ An employer who has violated the WARN Act can be ordered to give laid-off workers sixty days of back pay. It also imposes a penalty of \$500 per violation per day.¹⁷ Other complaints before the National Labor Relations Board alleged that employees were fired for organizing a strike against Twitter on November 17.¹⁸ These cases, brought mostly in November and December of last year, have yet to be decided by courts or the National Labor Relations Board.

III. HAS MUSK ACTUALLY VIOLATED FEDERAL LABOR LAW?

Although many suits against Twitter and Musk allege that it is, is it actually legal to terminate thousands of workers with little or no warning? Many employment and labor law experts state that it is. According to Raymond Hogler, it is doubtful that Twitter and their new management team will face much legal fallout for the mass layoffs because of at-will employment, the foundation of US labor laws. At-will employment allows employers to fire an employee at any time for any legal reason and conversely allows workers to quit at any time without facing legal consequences.¹⁹ Courts began to enshrine the at-will doctrine in the 19th century.²⁰

But as stated above, most lawsuits against Twitter allege that Twitter failed to give the required legal notice before their layoffs as required by

¹⁵ *Id.*

¹⁶ *Id.* See *WARN Act Compliance Assistance*, US DEP’T. OF LAB., <https://www.dol.gov/agencies/eta/layoffs/warn> (last visited April, 4, 2023).

¹⁷ Daniel Wiessner, *Explainer: Will Twitter Layoffs Violate U.S. Law?*, REUTERS (Nov. 6, 2022, 10:59 AM), <https://www.reuters.com/legal/will-twitter-layoffs-violate-us-law-2022-11-04/>

¹⁸ *Id.*

¹⁹ *At-Will Employment – Overview*, NATIONAL CONFERENCE OF STATE LEGISLATURES, <https://www.ncsl.org/labor-and-employment/at-will-employment-overview> (last updated April 15, 2008).

²⁰ Raymond Hogler, *Why it May Not Matter Whether Elon Musk Broke U.S. Labor Laws with His Mass Firings at Twitter*, COLORADO STATE UNIVERSITY (Nov. 14, 2022), <https://source.colostate.edu/why-it-may-not-matter-whether-elon-musk-broke-u-s-labor-laws-wth-his-mass-firings-at-twitter/>.

federal and California laws.²¹ Musk has claimed, though, that fired employees will receive severance packages that amount to three-months' pay.²² Since that claims, it is reported that Twitter has been inconsistent with the severance packages it has offered fired employees.²³

Here, it is unclear whether all of its U.S.-based workers were offered the legally required 60 days of compensation. Widespread reports also indicate that Twitter has demanded that fired workers sign documents that would release Twitter from any claims made against the company.²⁴

Given these circumstances, it is highly unlikely that former employees who are suing Twitter will prevail.²⁵ The U.S. Department of Labor offers advice and services for workers who believe their employers failed to abide by the WARN Act's requirements.²⁶ But those measures provide only limited relief, such as recommendations about unemployment insurance. So unfortunately for fired Twitter employees, there are few legal options available for those who refuse packages Musk offers them or those who choose to go after the tech-giant in court.

IV. CONCLUSION

After his acquisition of the tech-giant, Twitter, Musk's mass layoffs of dedicated employees came as shock not only to those who were fired, but also labor law proponents across the country. Although Musk previously has been found to be in violation of federal and state labor law as the head of Tesla and suffered subsequent consequences, the current situation at Twitter is proving to be not as fruitful for Musk's legal opponents. In the upcoming

²¹ Sarah Perez & Ivan Mehta, *Twitter Sued in Class Action Lawsuit Over Mass Layoffs Without Proper Legal Notice*, TECHCRUNCH (Nov. 4, 2022, 9:50 AM), <https://techcrunch.com/2022/11/04/twitter-faces-a-class-action-lawsuit-over-mass-employee-layoffs-with-proper-legal-notice/>.

²² Hogler, *supra* note 20.

²³ Alex Heath & Mia Sato, *Elon Musk's Twitter Layoffs Leave Whole Teams Gutted*, THE VERGE (Nov. 4, 2022, 3:06 PM), <https://www.theverge.com/2022/11/4/23439790/elon-musk-twitter-layoffs-trust-and-safety-teams-severance>.

²⁴ Alex Baker, *"Today is Your Last Working Day at the Company": Twitter Employees Receive Layoff Email*, KTLA (Nov. 4, 2022, 5:29 PM), <https://ktla.com/news/today-is-your-last-working-day-at-the-company-twitter-employees-receive-layoff-email/>.

²⁵ Hogler, *supra* note 20.

²⁶ See Rapid Response Services for Workers, US DEP'T. OF LAB., <https://www.dol.gov/agencies/eta/layoffs/workers>.

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months, Musk and Twitter will either be affirmed in their layoffs or be dishing out hundreds of thousands of dollars to former employees.

