

ATTORNEY GENERAL OF THE STATE OF NEW YORK

IN THE MATTER OF THE INVESTIGATION OF LETITIA
JAMES, ATTORNEY GENERAL OF THE STATE OF NEW
YORK, of

FDR SERVICES, CORP.

ASSURANCE OF
DISCONTINUANCE
PURSUANT TO
EXECUTIVE LAW
§ 63(15)

AOD No. # 21-049

ASSURANCE OF DISCONTINUANCE

In 2020, the Office of the Attorney General of the State of New York (“OAG”) commenced an investigation pursuant to New York Executive Law § 63(12) to determine whether FDR Services, Corporation (“FDR Services”) violated the Families First Coronavirus Response Act (“FFCRA”), the Emergency Paid Sick Leave Act (“EPSLA”), the New York Paid Sick Leave Law (“NY-COVID-PSL”), the New York State Human Rights Law, Executive Law § 296(1)(a), and New York Labor Law § 195, and to determine whether a proceeding or action should be instituted against FDR Services pursuant to New York Executive Law § 63(12) for violating these provisions of federal and state laws.

This Assurance of Discontinuance contains the findings of OAG’s investigation and the relief agreed to by OAG and FDR Services.

FINDINGS

Introduction and Background

1. FDR Services is an industrial laundry company with a principal place of business at 44 Newmans Ct., Hempstead, Nassau County, New York and is licensed to conduct business

as a corporation within New York State. FDR Services employs approximately 209 people, with 22 additional corporate employees. FDR Services provides a full-service laundry and linen management service to healthcare facilities, such as hospitals and nursing homes, across the entire East Coast.

2. Employees have various duties, such as “Uniforms,” “Fluff”, “Soil”, or “Flat.” Each involves the handling of heavy materials and linen with some duties involving the handling of numerous soiled items. FDR Services launders linens from both nursing homes and hospitals. The employees in the New York Facility are primarily immigrants who do not speak English as their first language. Many employees in the New York Facility make at or near minimum wage.

3. Several of the employees have been with FDR Services for many years. In fact, three of the nine workers described below have been employed at the facility for more than a decade, and two had worked there for 25 years before being fired for being out sick with COVID-19.

4. FDR Services has remained operational throughout the COVID-19 pandemic due to its status as an “essential business” under Governor Cuomo’s Executive Orders. As such, FDR Services required its workers to come to work during the height of the pandemic, exposing them to the risk of infection. The risk posed to FDR Services employees was particularly acute due to the nature of their work—cleaning dirty and potentially COVID-19 infected linens from healthcare workers and patients.

5. The ongoing COVID-19 pandemic is the greatest public health emergency in more than a century. New York State has been in a state of emergency from March 7, 2020 to June 24, 2021, with New York City at its epicenter. To date, the virus has killed nearly 600,000

Americans, including more than 52,000 New Yorkers.¹ The novel coronavirus that causes COVID-19 is highly contagious.

6. In response to this public health crisis, the state and federal governments passed emergency sick leave laws that required employers to pay workers who became sick or were exposed to the virus and needed to stay home in order to prevent them from spreading the virus in the workplace.

7. In the spring of 2020, multiple FDR employees (“the Complainants”) became sick with COVID-19 or were exposed to someone with COVID-19. Following public health guidance and FDR’s own instructions, those employees stayed home from work in order to recover from their illness and/or ensure the safety of their coworkers. They called out sick and also obtained orders of quarantine, despite facing language barriers in doing so.

8. Rather than pay these employees during their sick leave as required by state and federal law, FDR Services fired seven of them. In fact, the employees—several of whom worked at the facility in Hempstead for decades—only learned that they were fired when they came back into work after recovering from COVID-19. FDR Services did not provide any of these with any written notice of termination or pay any of the Complainants their federal and state mandated sick pay.

9. One of the Complainants is a 78 year-old, 12-year employee at the facility who became ill with COVID-19 in March 2020. He obtained a positive COVID-19 test result and sent it to FDR Services. This worker became very ill and still felt sick up until July 2020 and needed an extended sick leave to recover from his disability. Instead, in early August 2020, he was fired.

¹ See *CDC COVID Data Tracker*, Centers for Disease Control and Prevention, available at https://covid.cdc.gov/covid-data-tracker/#cases_casesper100klast7days_Fatalities, New York State Department of Health, available at <https://on.ny.gov/2MxLRsJ>.

10. Another employee had worked at the facility for 25 years when she became ill with COVID-19 in March 2020. She obtained a doctor's note excusing her from work and a Quarantine Order from the Nassau County Department of Health, both of which were sent to FDR Services. When she returned to work, she was informed that she no longer had a job.

11. Another 25-year employee became sick with COVID-19 in March 2020. She was unable to be seen by any doctor's office based on her symptoms. This worker called FDR Services throughout the course of her illness and inquired numerous times about the status of her job. Yet no one from FDR Services responded to her requests to return to work.

12. In addition, two employees became ill with COVID-19 in March 2020 and provided doctor's notes to FDR Services. Both employees are still employed by FDR Services but have not been paid any federal or state mandated COVID-19 sick pay.

Violation of the FFCRA, EPSLA and NY-COVID-PSL.

13. Based on its investigation, the OAG has concluded that FDR Services violated the FFCRA, EPSLA and NY-COVID-PSL when it fired seven workers who were ill with COVID-19, and failed to provide sick pay to them and to two others.

Violation of NY Labor Law

14. The OAG has also concluded that FDR Services did not provide the discharged complainants with written termination notifications as required by New York's Labor Law, and therefore violated section 195 of the Labor Law.

Violation of NYS Human Rights Law

15. As Complainants' COVID-19 illnesses qualified as temporary disabilities caused by infection from a contagious disease, FDR Services was on notice that they required a short

leave of absence to recover. By refusing to provide Complainants with a reasonable accommodation of a short leave of absence, FDR Services violated the NYSHRL.

16. Based on the foregoing, the OAG has concluded that FDR Services engaged in persistent and repeated illegality in violation of FFCRA, EPSLA, NY-COVID-PSL, NYSHRL, N.Y. Exec. Law § 296 et seq., and NY Labor Law § 195.

17. For purposes of resolving the OAG's inquiry, FDR Services have agreed to enter into this Assurance.

18. None of these findings constitute admissions by FDR Services, and this Assurance is not to be used by any third party against FDR Services for any purpose. For the purpose of resolving the OAG's inquiry, FDR Services has agreed to enter into this Assurance to avoid future expense of time and resources involved in this investigation and any further litigation.

19. The OAG finds the relief and agreements contained in this Assurance appropriate and in the public interest. THEREFORE, the OAG is willing to accept this Assurance pursuant to Executive Law § 63(15), in lieu of commencing a statutory proceeding for violations Executive Law § 63(12) based on the conduct described above.

IT IS HEREBY UNDERSTOOD AND AGREED, by and between the parties:

RELIEF

Entities Bound By Assurance

20. This Assurance binds FDR Services, their principals, beneficial owners, officers, and shareholders.

Compliance with the federal Families First Coronavirus Response Act, Emergency Paid Sick Leave Act, the New York Paid Sick Leave Law, the New York State Human Rights Law, and New York Labor Law

21. FDR Services hereby acknowledges that it understands and will comply with all applicable state and federal labor laws pertaining to COVID-19 related leaves of absence and such laws prohibiting discrimination and retaliation, including but not limited to the FFCRA, EPSLA, NY-COVID-PSL, N.Y. Exec. Law § 296 et seq., and NY Labor Laws. FDR Services acknowledge that any future violation of such laws is a violation of this Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 16, in addition to any other appropriate investigation, action, or proceeding.

Programmatic Relief

22. FDR Services will begin to implement the relief described in paragraphs 23 to 24 below immediately upon the full execution of this Assurance (“the effective date”) and continue to implement the relief for three (3) years from the effective date (“the effective period”).

23. FDR Services agrees to revise their policies and practices and train their employees and managers on FFCRA, EPSLA, NY-COVID-PSL, NYSHRL, N.Y. Exec. Law § 296 et seq., and NY Labor Law § 195 and compliance. Specifically, FDR Services will submit the following proposed written materials within 30 days of the effective date to the OAG:

- a. Sick leave workplace policy related to NY-COVID-PSL to be provided to all employees in accordance with state and federal standards.
- b. Sick leave rights and responsibilities related to NY-COVID-PSL poster to be displayed for employees in English and Spanish in an open and obvious place.
- c. Sick leave rights and responsibilities notices or fact sheets related to NY-COVID-PSL to be distributed to all current and future employees.

- d. NY-COVID-PSL sick leave complaint process for employees, including designated individuals or management to receive complaints on behalf of FDR Services, and instructions to be given to management on how to handle such complaints.
- e. A written policy confirming FDR Services' obligation not to retaliate against employees for protected activity, including taking related to NY-COVID-PSL sick leave.

These proposed notices must be approved by the OAG prior to implementation.

24. FDR Services will disseminate the written policies set forth in paragraph 30 within thirty (30) days of OAG approval. Dissemination shall include posting the written policies in all offices of FDR Services and sending the policies to current employees by email and/or notifying employees by text messages that new policies have been issued and will be distributed in hard copy to employees with their paychecks by regular mail or in person during employees' in-service. The written policies must be disseminated in English, Spanish, and if employees so request, a different language.

Monetary Payment

Payments to OAG

25. FDR Services agrees to pay **\$400,000.00** in resolution of the OAG's investigation, which will be paid directly to the OAG and will be used for distribution as restitution to current or former employees for violations of laws specified in Paragraph 16 of this Assurance.

26. The Settlement Funds shall be paid within thirty (30) calendar days of the date of execution of this agreement, other than any funds that are designated for Medicare beneficiaries,

which will be held in escrow and paid upon the resolution of any potential lien, as agreed upon by the parties.

27. Payments from FDR Services to the OAG must be in the form of a wire transfer, certified check, bank check, money order, or attorney's check made payable to "The New York State Department of Law," and forwarded to the New York State Attorney General's Office to the attention of:

Christina Bedell
Assistant Attorney General
200 Old Country Road, Suite 240
Mineola, New York 11501.

The payment and all correspondence related to this Assurance must reference "Assurance # 21-049."

28. The OAG has the sole discretion to determine which employees shall be eligible for restitution and damages and to determine the amount of such restitution and damages. FDR Services agrees to provide reasonable cooperation necessary to locate current and former employees who may be eligible for restitution. In consideration for receiving any monetary award pursuant to this agreement, each employee shall execute a written release of claims to FDR Services.

29. The requirements of this Assurance will expire three (3) years after the effective date, except that the OAG may, in its sole discretion, extend the Assurance term in good faith upon a determination that FDR Services has not complied with this Assurance. FDR Services will be given 30 days to cure non-compliance with the Assurance before the Assurance is extended.

Non-Dischargeable Judgment

30. In the event of bankruptcy, FDR Services expressly agrees not to seek to discharge or extinguish the amounts owed as part of this Settlement.

Monitoring and Oversight

31. Periodic Compliance Reports: FDR Services shall provide the OAG with a report detailing its compliance with the requirements set forth in this Assurance, paragraphs 23 to 24 (Programmatic Relief), to be submitted to the OAG within forty-five (45) calendar days of the date of execution of this agreement. This report shall be in writing and shall set forth in detail the manner and form of compliance with this Assurance. These reports shall include a description of all sick leave complaints that were made (whether orally or in writing) and how they were handled by management. This report shall be signed by FDR Services. Thereafter, a report of compliance shall be submitted to the OAG on a biannual basis for the following three (3) years. In any case where the circumstances warrant, the OAG may require the FDR Services to file an interim report of compliance upon thirty (30) days written notice.

32. Periodic Certification of Compliance: FDR Services shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 23 to 24 to be submitted to the OAG by October 20, 2021. This certification shall be in writing and be signed by FDR Services. Thereafter, a certification of compliance shall be submitted to the OAG on an annual basis for the following three (3) years. In any case where the circumstances warrant, the OAG may require FDR Services to file an interim certification of compliance upon thirty (30) days written notice.

33. Certification of Compliance on Demand: At any time through the effective period of this Assurance, and upon thirty (30) days' written notice from the OAG, FDR Services shall provide the OAG with a certification affirming its compliance with the requirements set forth in this Assurance, paragraphs 23 to 24.

34. FDR Services expressly agrees and acknowledges that a default in the performance of any obligation under this paragraph during the effective period is a violation of the Assurance, and that the OAG thereafter may commence the civil action or proceeding contemplated in paragraph 16, in addition to any other appropriate investigation, action, or proceeding, and that evidence that the Assurance has been violated shall constitute prima facie proof of the statutory violations described in paragraph 16, pursuant to Executive Law § 63(15).

Re-instatement

35. FDR Services expressly agrees to reinstate an agreed-upon list of employees who wish to return to work to positions they held prior to discharge, or to positions approved by the OAG. In consideration for such reinstatement, pursuant to this agreement, each of these employees shall execute a written release of claims to FDR Services. FDR Services agrees to reinstate these employees to the seniority levels they held before being fired, including and not limited to their respective vacation leave accruals, sick leave accruals, and other benefits held by the reinstated employees prior to being discharged by FDR Services. FDR Services agrees not to retaliate against these reinstated employees.

No Retaliation

36. FDR Services agrees that they shall comply with all applicable state and federal laws pertaining to COVID-19 related leaves of absence and such laws prohibiting discrimination and retaliation, including but not limited to, FFCRA, EPSLA, NY-COVID-PSL, NYSHRL, N.Y. Exec. Law § 296 et seq., and NY Labor Law § 195, and shall not in any manner discriminate or retaliate against any of their employees, including but not limited to employees or former employees who cooperated or are perceived to have cooperated with the OAG's investigation of this matter. FDR Services agrees not to discharge, refuse to hire, or take any adverse action against any of these employees except for legitimate, non-discriminatory reasons unrelated to the OAG's investigation or to any past, present or future participation in any activities involving the exercise of their legal rights under the FFCRA, EPSLA, NY-COVID-PSL, NYSHRL, N.Y. Exec. Law § 296 et seq., and NY Labor Law § 195.

Ongoing Cooperation

37. FDR Services agrees to cooperate with all ongoing requests by the OAG for information related to this investigation and to ensure compliance with this Assurance. During the effective period, FDR Services agrees that the OAG shall have full access to the contact information of its employees in order to reach them through by mail, telephone, or electronic means. The OAG will provide 15 days' written notice for full access.

MISCELLANEOUS

Representations and Warranties

38. The OAG has agreed to the terms of this Assurance based on, among other things, the representations made to OAG by FDR Services and the OAG's own factual investigation as set forth in Findings, paragraphs 1 to 16 above. FDR Services represents and warrants that they have not made any material representations to the OAG that are inaccurate or misleading. If any material representations by FDR Services are later found to be inaccurate or misleading, this Assurance is voidable by the OAG in its sole discretion.

39. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Assurance has been made to or relied upon by FDRS Services in agreeing to this Assurance.

40. FDR Services represents and warrants, through the signatures below, that the terms and conditions of this Assurance are duly approved, and execution of this Assurance is duly authorized.

General Principles

41. Unless a term limit for compliance is otherwise specified within this Assurance, FDR Services' obligations under this Assurance are enduring. Nothing in this Agreement shall relieve FDR Services of other obligations imposed by any applicable state or federal law or regulation or other applicable law.

42. Nothing contained herein shall be construed to limit the remedies available to the OAG in the event that FDR Services violates the Assurance after its effective date.

43. This Assurance may not be amended except by an instrument in writing signed on behalf of the parties to this Assurance.

44. In the event that any one or more of the provisions contained in this Assurance shall for any reason be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, in the sole discretion of the OAG, such invalidity, illegality, or unenforceability shall not affect any other provision of this Assurance.

45. FDR Services acknowledges that they have entered this Assurance freely and voluntarily and upon due deliberation with the advice of counsel.

46. This Assurance shall be governed by the laws of the State of New York without regard to any conflict of laws principles.

47. This Agreement shall not be interpreted in favor or against either Party on account of such Party's counsel having drafted this Agreement.

48. The effective date of this Assurance shall be September 21, 2021. The effective period shall be for three years after the effective date.

49. All notices, reports, requests, and other communications to any party pursuant to this Assurance shall be in writing and shall be directed as follows:

From FDR Services to the OAG:

New York State Office of the Attorney General
Christina Bedell, Assistant Attorney General
200 Old Country Road, Suite 240
Mineola, New York 11501
or christina.bedell@ag.ny.gov

From the OAG to FDR Services:

Aaron Solomon, Esq.
Kaufman Dolowich Voluck
135 Crossways Park Drive, Suite 201
Woodbury, New York 11797

or asolomon@kdvlaw.com

Any changes in the person to whom communications should be specifically directed shall be made in writing in advance of the change.

50. This Assurance may be electronically signed, and any electronic signatures are the same as handwritten signatures for the purposes of validity, enforceability, and admissibility.

51. This Assurance may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, this Assurance is executed by the parties hereto on this 21st day of September, 2021.

LETITIA JAMES
Attorney General of the State of New York

By: *Sandra Pullman*
Sandra Pullman
Senior Counsel
Civil Rights Bureau
28 Liberty Street
New York, New York 10005

By: *Christina Bedell*
Christina Bedell
Assistant Attorney General
200 Old Country Road, Suite 240
Mineola, New York 11501

Dated: September 21, 2021



By:

Jesse McCormick,
Vice President, FDR Services
44 Newmans Ct.
Hempstead, New York 11550

Dated: September 21, 2021