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Twitter's Elon Musk is warned to prepare for 'hundreds or even thousands' of arbitration cases

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Powerhouse labor attorney Shannon Liss-Riordan and former Twitter employees stood in front of San Francisco's federal courthouse on Thursday with a message for Elon Musk: They won't back down.

"The richest man in the world is not above the law," said Liss-Riordan, whose team represents clients in four different class-action lawsuits against Twitter.

Since Elon Musk took control of the social media giant in October, he has followed through on his promise of a mass layoff and a complete overhaul of the company. Even as managers and staffers resigned, he issued an ultimatum: commit to a new, "hardcore" Twitter 2.0 at which employees were expected to work long hours, or leave with three months' worth of severance.

The lawsuits came instantly.

As questions continue to swirl around Musk's next move, ex-employees through their attorneys are seeking every possible avenue to obtain the benefits they feel entitled to in the aftermath of the tumultuous takeover. But they may face a long road ahead before they see any results — in part because many uncertainties remain over how they will proceed.

The first case was filed one day before Twitter's first round of mass layoffs Nov. 4 with Emmanuel Cornet as one of the lead plaintiffs. Cornet was the first employee to be terminated from Twitter and has also filed charges with the National Labor Relations Board for unfair labor practices. The case alleges Cornet was a part of the layoffs and did not receive proper notice under the federal and state Worker Adjustment and Retraining Notification Act or severance pay.

The latest case was filed late Wednesday alleging the company disproportionately targeted women in its layoffs. The complaint cited a report that 57% of female employees and 47% of male employees were laid off Nov. 4, which was found to be statistically significant.

Liss-Riordan also represents Dmitry Borodaenko, the lead plaintiff in a case against the company alleging discrimination against employees with disabilities. Borodaenko, a cancer survivor vulnerable to COVID-19, said he was fired after refusing to return to the office.

Despite the legal challenges that have already begun, a great deal hinges on two major court decisions that will determine what course of litigation the workers are able to take.

First, the court is expected to decide early next week on an emergency motion Liss-Riordan filed Nov. 9 in Cornet's case. Though laid-off employees still have not received their official severance agreements from the company, Twitter has indicated that it will have employees sign a release of claims document to receive their severance. Signing the document would prevent the former employees from taking legal action, Liss-Riordan said.

The emergency motion would prevent Twitter from seeking those releases without first notifying employees of the pending class-action lawsuit and contact information for legal counsel. A similar motion was filed in a case against Tesla requiring the automaker to notify laid-off employees of pending litigation.

The second decision, which is set for a hearing in January, centers around arbitration agreements most Twitter employees signed as a term of employment.

Under this clause, employees with legal claims against Twitter must pursue individual arbitration, preventing them from participating in or benefiting from any class-action lawsuit filed against the company. Twitter has filed a motion to enforce that agreement, which Liss-Riordan is opposing.

Liss-Riordan said her team is ready to help file hundreds of arbitration cases against the company should the court choose to enforce the arbitration agreement.

"We'll show you one by one and then we'll file hundreds or even thousands of individual cases," she said.

Liss-Riordan has waged similar mass arbitration campaigns against companies such as IBM, which also required workers to sign arbitration agreements and successfully enforced them, she said.

Some ex-Twitter workers have already taken the path of arbitration. Former employee Helen Sage-Lee filed a claim with the help of her attorney, Lisa Bloom, on the basis that the terms of Musk's deal to purchase Twitter require him to provide a severance package and benefits "no less favorable" than the one promised by its prior leadership for at least a year.

The pre-acquisition package offered at least two months' worth of severance pay as well as prorated performance bonuses, extended visa support, money for healthcare continuation and the cash value of equity that would vest within three months, according to laid-off employees as well as company documents reviewed by The Times.

Two of the class-action lawsuits Liss-Riordan filed are based on similar arguments. While employees were offered two months of pay during a "non-working" period to abide by the federal WARN Act, which requires 60 days' notice ahead of mass layoffs, Liss-Riordan argued that does not count toward actual severance promised to employees.

Twitter, which no longer has a formal communications team, could not be reached for comment.

While some are preparing themselves for extended legal battles, not everyone is prepared to pursue legal action just yet. A number of former Twitter employees are still biding their time while consulting attorneys and weighing their options.

An engineering manager who was a part of the Nov. 4 layoff said some are concerned they are still bound by employee guidelines because they are still in the non-working period and tethered to Twitter while not actually working for the company.

"So we're supposed to act like employees right now even though we're not working," he said. "The last thing I want to get is being fired for cause."

The employee said he was most concerned about the next stock vesting date, which is Feb. 1. The terms of the merger agreement should protect equity that vests within three months, which for many employees on the technical side can be worth a lot more than a month of salary.

“For me, that would be the main reason why I would consider joining a lawsuit — if that were not delivered as promised,” he said.