

IPMA-HR Greater KC
2022 Spring Conference
Legal Update

According to EEOC data, the average out-of-court settlement for employment discrimination claims is about \$40,000. Studies of verdicts have shown that about 10% of wrongful termination cases result in a verdict of \$1 million or more.

Emotional Distress Damages Not Available Under Title VI, Title IX and Other Spending Clause Statutes

U.S. Supreme Court's decision in Cummings v. Premier Rehab Keller, P.L.L.C., which was handed down April 28, 2022, held that emotional distress damages are not available under discrimination statutes enacted by Congress under the Spending Clause

The case involved claims under the Rehabilitation Act (prohibiting disability discrimination), and the Patient Protection and Affordable Care Act (ACA)

Emotional distress damages continue to be available for claims under Section 1983 or Title VII or state law

COVID-19

The Continuing Saga or the Aftermath

- In January, the US Supreme Court ruled that OSHA had exceeded its authority by issuing its Emergency Temporary Standard c/k/a the OSHA vaccine mandate in National Federation of Independent Business v. Occupational Safety and Health Administration; and Ohio v. Occupational Safety and Health Administration
- State and local governments continue to deal with COVID-19 – political, public safety, worker safety and legal challenges
 - Loss of Benefits
 - Loss of Employment

Accommodating Employees Post COVID-19

- Reporting to Work as an essential function
- Working from home as a reasonable accommodation
- Workplace Anxiety as disability - Mental health days
- Medical exemptions from vaccinations and other requirements
- Sunset of Employer's ability to ask medically related questions and maintain medical records

Religious Exemptions

In March, the EEOC updated its guidance on Religious Accommodations for COVID -19 Vaccines. The updated guidance answers the following questions about religious accommodations for COVID-19 vaccination requirements:

- Do employees who have a religious objection to receiving a COVID-19 vaccination need to tell their employer?
- Does an employer have to accept an employee's assertion at face value, or may the employer ask for additional information?
- How does an employer show that accommodating an employee's request would cause an undue hardship?

Kansas Preservation of Religious Freedom Act

Government shall not substantially burden a person's civil right to exercise religion, even if the burden results from a rule of general applicability, unless the government demonstrates, by clear and convincing evidence, application of the burden to the person is in furtherance of a compelling governmental interest and is the least restrictive means of furthering that compelling governmental interest. The Act applies to all government action, including state and local laws, ordinances, rules, regulations, and policies, and to their implementation, whether enacted or adopted before, on, or after the Act's effective date.

Privacy in the Workplace

- Privacy & productivity concerns with remote working
- Data security
- Medical information
- Drug testing
- Investigations and Complaints
- Background checks

Other Issues with Legal Implications

Microaggressions

Decriminalization of Marijuana

Fatigue

Long COVID

Worker Shortage