# Next Up: Employment Law Revue Two-O-Two-One

TNACUA
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VIRTUAL
CONFERENCE

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### **Legal Trends We Will Cover**

- Disability and Race Discrimination Cases
- COVID Vaccine Mandates in Case Law
- First Amendment
- Pay Equity in Higher Education
- Sexual Orientation and Gender Identity Discrimination
- Sexual Harassment/Title IX & Title VII
- Age Discrimination
- OSHA and Labor Law
- Q & A



## **Disability Discrimination**

- . Lee v. Univ. of Pennsylvania School of Dental Medicine
- Stratton v. Jackson State
- Weiss v. Pa. Hosp. of Univ of Pa
- Hudnell v. Thomas Jefferson Univ
- Steckloff v. Wayne State Univ





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#### **Race Discrimination**

• Champion v. Texas Southern University





#### **COVID**

Where we are on mandating vaccines?

- Bridges v. Houston Methodist
- Kiel





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#### **First Amendment**

- Meriwether v. Shawnee State Univ
- Klein v. Arizona State Univ





#### Pay Equity/Federal Law

- Pending Legislation to Amend the EPA
- The Paycheck Fairness Act is currently before Congress
- Proposed changes:
  - · Significantly narrows the "factor other than sex" defense
  - Requires employers to demonstrate that the wage differential is a matter of business necessity





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#### **Pay Equity/State Laws**

- Many jurisdictions have their own equal pay protections stronger than federal law and providing greater damages.
- E.g., New Jersey and New York: treble damages if willful violation
- Generally, state and local laws are (a) expanding comparators;
   (b) limiting defenses; (c) increasing remedies and penalties; and
   (d) expanding opportunities for class and collective action
   litigation





#### Pay Equity/H.E. Contested Issues

- Battle of the Statistical Experts
- Who is the Appropriate Comparator?
- Justification for Removing Outliers
  - Retention Raises
  - Administrative Appointments
  - High Student Evaluations
  - Allegations of Bias in All of the Above





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### **Pay Equity/The Future?**

Freyd v. Univ. of Oregon

- About Plaintiff Jennifer Joy Freyd
- Ruling by Ninth Circuit
  - Whether Positions are Comparable is Question of Fact for Jury
  - Retention Raises—Title VII Disparate Impact
  - Statistical Expert Analysis—Question of Fact for Jury
- Impact on colleges/universities in 9th Circuit





# **Sexual Orientation & Gender Identity Discrimination**

- Bostock v. Clayton County
- Banford v. Bd. Of Regents of Univ. of Minn
- Philpott v. State University of New York (pre-Bostock)





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# A Brief Word on Religious/Ministerial Exemption

- Our Lady of Guadalupe v. Morrissey-Berru
- Koenke v. Saint Joseph's University
- DeWeese-Boyd v. Gordon College





#### **Wage and Hour**

Federal Minimum Wage \$7.25 (has not been change since 2009)

Raise the Wage Act of 2021
 Joint Employer Status Under the FLSA
 Independent Contractor Rules
 Exempt "White Collar" Salary Minimums





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#### Sexual Harassment/Title IX & VII

- The first year under the TIX regulations we're still here...
- Courts still looking carefully at the kind of conduct being alleged
- Circuit split TIX or TVII or both?
- Following policies still paramount including adhering to requirements of CBAs; equitable application
- Retaliation claims management still an important area of focus





## **Age Discrimination**

- Federal case law continues to follow Gross "but for" causation required
- EEOC focus on age cases systemic litigation; supportive of more expansive causation standard
- State and Federal legislative activity in support of older workers





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#### **OSHA**

- New Administration New Focus
- "Ensuring the health and safety of workers is a national priority and a moral imperative."
- Avoiding retaliation claims is key





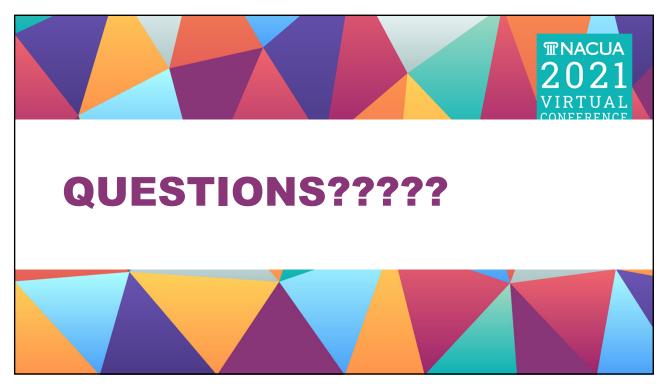
### Labor

- Again...New Administration New Focus
- Ongoing issues
  - Whiplash?
  - Graduate Student Organizing
  - Adjunct Organizing





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