



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

Junea Williams-Edmund, Deputy General Counsel, The New School
Monica C. Barrett, Member, Bond, Schoeneck & King, PLLC
Lili Palacios-Baldwin, Deputy General Counsel, Tufts University

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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

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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



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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



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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



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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



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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



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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



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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



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Labor

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



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QUESTIONS?????

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