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BREAKFAST & LABOR LAW

AGENDA

1. Top Employment Cases Based on Success at Trial
2. Trends in Employment Lawsuits
3. Three Largest Employment Verdicts in Recent Years
4. Various Employment Topics
5. Q&A

INTRODUCTION

- **Top Employment Claims Based on Success at Trial**
  - Retaliation
  - Race
  - Sex/ Sexual Harassment
  - Age
  - ADA
  - National Origin

TRENDS IN EMPLOYMENT LAWSUITS

- When employment cases are tried, there are bigger verdicts. This is especially true if there are retaliation/discrimination combinations
- Multiple Plaintiffs in retaliation cases
- Juries do not like legitimate retaliation and hostile work environment claims
- Post employment issues are coming up more. Covenants not to compete and post employment obligations.
- More public employer lawsuits – large verdicts. People do not like the government as an employer.

THE TOP THREE LARGEST EMPLOYMENT VERDICTS IN TEXAS

1. YARBROUGH V. SLASHSUPPORT
2. HARRIS V. FEDEX
3. BANGERT V. PAXTON

YARBROUGH ET AL. V. SLASHSUPPORT, INC. (GLOW NETWORKS)

- In the largest employment verdict in Texas, Glow Networks was sued under 42 U.S.C. §1981 for discriminating based on race, maintaining a hostile work environment and retaliating for opposing discrimination.
- One Plaintiff likened his experience to "being raped;" another called it the "new slavery."
- After a ten (10) day trial, a jury awarded each of the ten Plaintiffs $7 million, consisting of $2 million in past pain and suffering, $1 million in future pain and suffering, and $4 million in punitive damages.

YARBROUGH ET AL. V. SLASHSUPPORT, INC. (GLOW NETWORKS)

- Initially, the jury's award was overturned by the district court and appealed to the Fifth Circuit. In the Fifth Circuit's evaluation of this case, the Court noted;
  - "The case was tried to a jury. Much of the plaintiffs' evidence addressed not the complained-of employment actions that they say were discriminatory, but workplace policies that allegedly targeted black employees. For instance, they testified that black employees were required to sit in camera-monitored rooms; were not allowed to take breaks as often as other employees; were singled out for minor workplace infractions; and were not allowed to use cellphones."
- The Fifth Circuit vacated the summary judgment on several claims and remanded the case to the lower court. There is a new trial setting of August 31, 2026.

HARRIS V. FED EX. CORP.

- **$366 million reduced on appeal to $284,000**
- Harris filed suit in May 2021 alleging that FedEx discriminated against her for being African American and fired her for opposing discrimination in the workplace, violating both Title VII of the 1964 Civil Rights Act and 42 USC §1981.
- According to the complaint, the only difference between Harris and her colleagues was Harris's race.

HARRIS V. FED EX. CORP.

- After a seven-day trial, a jury found that Fed Ex would not have terminated her but for her race and that Fed Ex retaliated against her because of racial discrimination.
- The jury awarded Harris; $120,000.00 for past compensatory damages,
- $1,040,00.00 for future compensatory damages;
- $365 million for punitive damages.

HARRIS V. FED EX. CORP.

- This case was appealed to the Fifth Circuit. The Fifth Circuit noted that Harris failed to timely file her lawsuit within a six-month period that was required by her employment contract.
- Subsequently, the Court held that the §1981 claims were time barred and had to be set aside.
- The Court reduced the compensatory damages, eliminated punitive damages, and applied the statutory caps under Title VII which limited recovery to $300,000.00.

RYAN BANGERT, ET AL. V. KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS

Cause No. D-1-GN-20-006861 (250th Judicial District Court, Travis County, Texas)

$6.6 Million – one of the largest whistleblower judgments against a Texas State Office

RYAN BANGERT, ET AL. V. KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS

- The State of Texas agreed to pay a $6.6 million settlement to four former top deputies to Attorney General Ken Paxton who claim that they were fired after reporting their boss to the FBI.
- It is alleged four former deputies accused Paxton of abusing his office to do favors for a real estate investor/political donor. It was alleged that Paxton directed his staff to issue legal opinion that benefited his political donor and diverted State resources to assist with the donor's personal legal matters.

RYAN BANGERT, ET AL. V. KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL OF TEXAS

- A Travis County Judge ordered the AG's office to pay $6 million dollars to the four plaintiffs for lost wages, compensation for emotional pain, attorneys fees and costs.

LIABILITY OF INDIVIDUALS IN THE WORKPLACE

Jackson v. Duff

Debra Mays Jackson was the Vice President and Chief of Staff at Jackson State University (“JSU”) with extensive education and experience.

When JSU’s president was placed on administrative leave, Jackson applied for the presidency but was denied an interview.

JACKSON V. DUFF

1. Soon after she was denied the interview, Thompson, a male employee that did not apply for the job was hired.
2. Jackson filed suit against each of the individual board members that denied her an interview, and which voted to appoint Thompson in their individual and official capacities under the Equal Protection Clause, Title VII and First Amendment.

JACKSON V. DUFF

- Section 1983 allows a lawsuit against individual actors, like supervisors (and not just the “employer”) who violated the Plaintiff’s civil rights.

- However, each named individual must have taken an action or participated in the denial of civil rights. In this case, the Plaintiff adequately pleaded that each member of the Board refused to interview or consider her for a position, and that their refusal was because of her sex.

BUTLER V. COLLINS

- Assistant Law Professor Cheryl Butler was denied tenure after a negative recommendation from the tenure committee.
- She alleged that the tenure committee's report and discussions leading up to the negative recommendation contained false and defamatory statements about her.
- In her claims against SMU, she included the Law School Dean, the Provost, the Associate Provost, Vice President of Executive Affairs and General Counsel.
- She also alleged that the employee defendants concealed and denied making the defamatory statements as part of a plan to cover up discrimination and retaliation.

BUTLER V. COLLINS

- In her lawsuit, Butler alleged discrimination under Texas Labor Code Chapter 21 and common-law claims (fraud, defamation, conspiracy) against the employees.
- Lower courts dismissed the common-law claims, holding Chapter 21 preempted them.

BUTLER V. COLLINS

- The Supreme Court of Texas held that Chapter 21 does not bar employee-level tort claims (fraud, defamation) that overlap with statutory discrimination claims. Employees may still be sued individually for separate tortious misconduct.
- The court held that Chapter 21 imposes liability only on employers not individual employees and that allowing common law claims against employees for their own tortious conduct does not undermine the statutory intent of the law.

FIRST AMENDMENT CONSIDERATIONS IN EMPLOYMENT CASES

- QUATRO OPERATING V. BYRD

QUATRO V. BYRD

- Clayton Byrd worked as a pipeline technician for Quatro. As part of his job, he was required to take a company drug test in March of 2024.
- The test showed high creatinine levels and was canceled (neither a pass nor fail). He was terminated for violation of the company's substance abuse policy.
- The employer emailed 17 employees stating that a pipeline technician was terminated for violating the company's substance abuse policy.

QUATRO V. BYRD

- On appeal, the employer argued that its communication about the plaintiff's alleged drug use was an exercise of free speech about a "matter of public concern:" public safety, particularly for work in the energy industry.
- The court rejected this argument. The court distinguished other cases in which an employer's disparaging communication referred to an employee's poor job performance endangering the public.
- In this case, the employer's communication simply alleged that the plaintiff had violated the employer's drug use policy.

LOWERY V. MILLS

- Professor Lowery teaches at the Mc Combs School of Business and serves as an Associate Director at the Salem Center for Public Policy.

- Through his social media and written online opinion articles, Lowery criticized the actions of UT officials and asked elected state officials to intervene in the affairs of the school. He alleges that UT officials responded by trying to silence him by “threatening his job, pay, institute affiliation, research opportunities, and academic freedom.”

- After he was presented with a tweet criticizing a campus event, Lowery was told to “take it easy” on the Department that had sponsored the event. In response, Lowery set his Twitter account to “private” and then stopped tweeting altogether.

LOWERY V. MILLS

- Lowery sued the Dean of the Business School, Senior Associate Dean for Academic Affairs, Finance Department Chair, Interim President of the University of Texas in their official capacities under §1983 for “chilling his free speech” and retaliation for protected speech as a citizen and an academic.
- While the lawsuit was pending, Lowery’s reappointment to the Salem Center was confirmed and he received a $5,000.00 raise to his salary for his tenured teaching position for the following academic year.
- Initially, the district court upheld Lowery’s free speech claims but dismissed the retaliation claim because there had not been an adverse employment action.

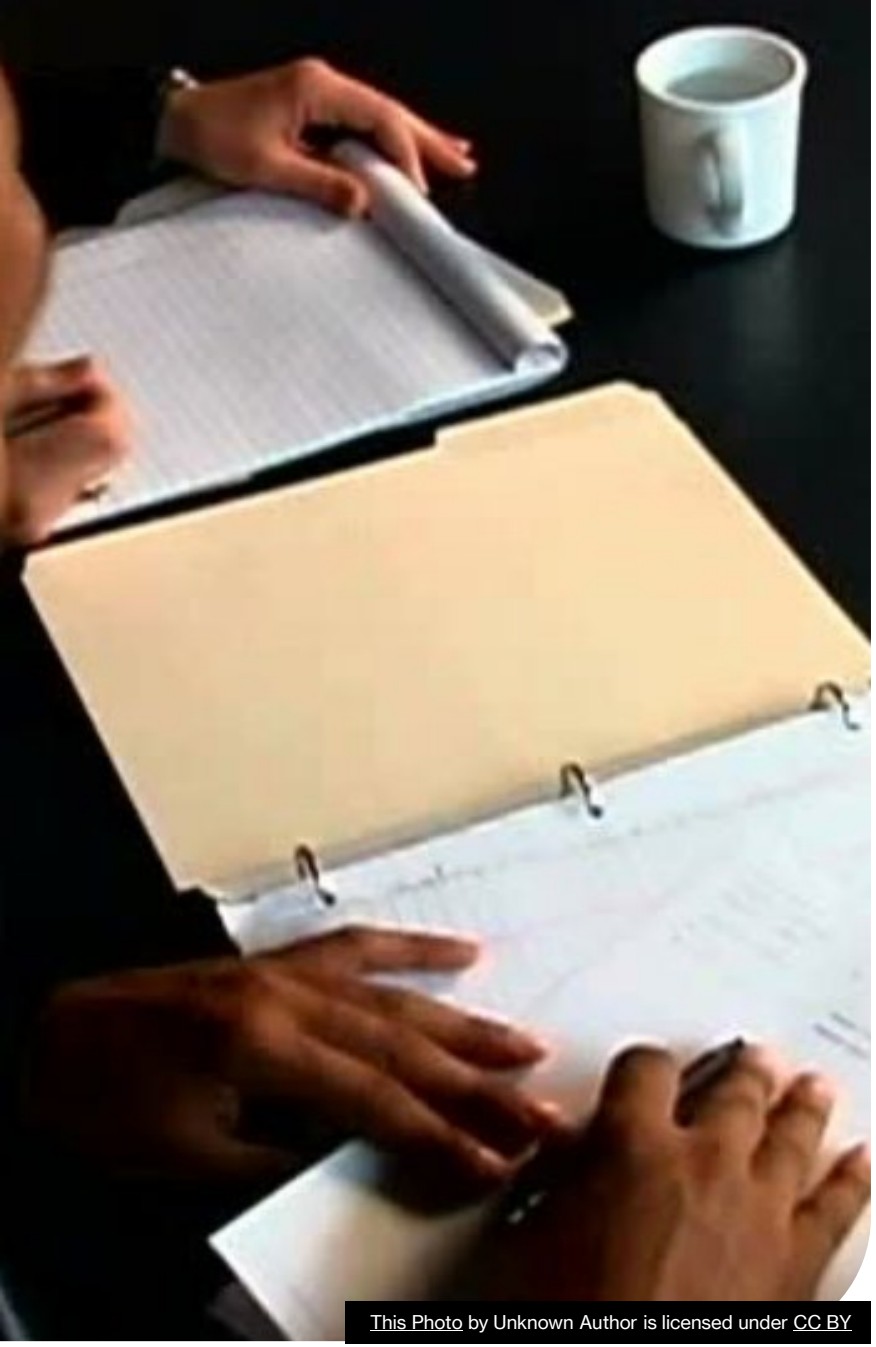
LOWERY V. MILLS

- On appeal, the Fifth Circuit held that when a claim is under the First Amendment, adverse action means “discharges, demotions, refusals to hire, refusals to promote, and reprimands.” In academic employment, such as for the professor in this case, “decisions concerning teaching assignments, pay increases, administrative matters, and departmental procedures … do not rise to the level of a constitutional deprivation.”
- Therefore, the Fifth Circuit affirmed summary judgment for various defendant university officials alleged to have retaliated against the plaintiff professor.

HARASSMENT & DISCRIMINATION

Harmon v. Collier

- Kimberly Harmon was a correctional officer with the Texas Department of Criminal Justice with multiple medical conditions including diabetes, hypertension, and chronic back pain.
- The Texas Department of Criminal Justice provided employees with 180 of leave without pay on a 12-month rolling basis. Harmon was a qualified individual under the Rehabilitation Act even though attendance was an inherent job requirement.



HARMON V. COLLIER

While Harmon was out on approved leave, she was advised by HR that she was being transferred to a less desirable shift. Harmon claimed that she was advised she would be returned to her old shift before she returned to work, however, on her first day back, she was placed on the least desirable shift.

She filed an EEO complaint internally. The matter was investigated because Harmon claimed she was being singled out due to her medical condition. The investigation revealed that Harmon was “not singled out due to her medical condition but the situation could have been handled in a better matter.” She was returned to her previous shift.

HARMON V. COLLIER

Six months later, Harmon was out on leave again when she was contacted by HR and was given the wrong return to work date. She was advised that she had to return to work the following day or she would be terminated for exhausting her LWOP. Harmon went to her physician the day she was scheduled to return to work. Her physician faxed a note stating she needed an additional day off.

The same day, Harmon was terminated. HR placed a note in Harmon's file that she was not eligible for rehire.

HARMON V. COLLIER

- Harmon sued under the ADA and §504 of the Rehabilitation Act seeking prospective injunctive relief including an order of reinstated with the benefits she would have held if she had not been terminated. She also requested back pay and lost benefits, seniority, compensatory damages, and attorney's fees.
- After the three-day jury trial, the jury returned a verdict for Harmon awarding $800,000 for past mental anguish, anxiety, and emotional distress and $1 million for wages and benefits.

VASQUEZ V. UNION PACIFIC RAILROAD

- Rolando Vasquez was employed as an Electronic Technician Inspector (“ETI”) with Union Pacific Railroad (“UPR”) . Vasquez was involved in an off-duty motorcycle accident.
- He suffered a traumatic brain injury (TBI), a subdural hematoma, a laceration to his spleen and multiple fractures. He was prophylactically prescribed a course of anti-seizure medication. Approximately, six weeks later, Vasquez returned to work without restrictions.

VASQUEZ V. UNION PACIFIC RAILROAD

- UPR required a fitness for duty evaluation before he could return to work. UPR's Medical Standard for Safety Critical Workers imposed a five-year minimum waiting period for employees that have experienced brain injuries without related seizures.
- Four physicians independently reviewed Vasquez' medical records and each concluded that Vasquez was at an increased risk for sudden incapacitation from seizures and required certain work restrictions to ensure his safety and the safety of those around him.

VASQUEZ V. UNION PACIFIC RAILROAD

- Vasquez sued UPR under the ADA alleging disparate treatment and failure to accommodate.
- Both parties filed summary judgment motions. The District Court adopted the magistrate judge's recommendation and granted UPR's motion for summary judgment.
- The matter was appealed to the Fifth Circuit.

VASQUEZ V. UNION PACIFIC RAILROAD

- The Fifth Circuit held that an employer has an affirmative defense against a claim for disability discrimination under the ADA if employment of the plaintiff in the job he seeks would pose a direct threat to the health and safety of herself or others in the workplace.
- The employer does not need to prove its decision was correct, but it must show it made a “reasonable medical judgment” based on the “most current medical knowledge” or “the best available objective evidence,” and that it made an “individualized assessment” of the plaintiff’s ability to safely perform the essential functions of the job.

UNIVERSITY OF TEXAS AT EL PASO V. ARANDA

- Sergio Aranda applied for a Police Communications Operator (“PCO”) position with the University of Texas at El Paso (“UTEP”). During a preliminary background interview, Aranda disclosed that he suffers from amaxophobia, a fear of driving.
- The officer conducting the interview advised Aranda that driving was required and he could not continue with the application process. Aranda was disqualified from the hiring process because he lacked a driver’s license. The PCO job description did not include a driver’s license requirement.

UNIVERSITY OF TEXAS AT EL PASO V. ARANDA

- Aranda sued UTEP alleging "regarded as" disability discrimination and failure to accommodate. UTEP filed a Plea to the Jurisdiction and Motion for Summary Judgment. The Court denied the Plea to the Jurisdiction and the Motion for Summary Judgment.
- On appeal, the Court held that there was an issue of fact, precluding the university's immunity-based plea to the jurisdiction, as to whether the university refused to continue the plaintiff's hiring process because it regarded him as disabled.
- The University argued that it terminated the hiring process because the hiring official believed (erroneously) that possession of a driver's license was essential. The court of appeals, finding that ability to drive was not an essential function of the job, remanded the case for further proceedings on the issue as to whether rejection was because of disability.

POST EMPLOYMENT ISSUES

- ***Garcia v. Dallas County Hospital District***
- Diana Garcia entered an employment as a nurse with Dallas County Hospital District in September 2015.
- Garcia agreed to remain employed as a registered nurse from February 3, 2016, through February 2, 2019. The agreement required Garcia to pay the Hospital $20,000.00 if she ended her employment on or before February 2, 2019.
- Garcia terminated her employment on March 31, 2018, without paying the $20,000.00.
- The Hospital sued her for breach of contract. Garcia claimed that the contract was an unlawful restraint of trade and that the $20,000.00 damages provision was an unenforceable penalty.

GARCIA V. DALLAS COUNTY HOSPITAL DISTRICT

- On a motion for rehearing, the court held that a contract requiring nurses to pay $20,000 for resigning within less than four years was a legitimate liquidated damages clause. A liquidated damages clause must be justified by the anticipated difficulty of proving damages caused by a breach.
- The court agreed with the hospital district that calculating the loss of its investment in nurse training would be difficult, and that it would also be difficult to prove its costs in finding a replacement for a nurse who resigned.
- The court also held, as a matter of law, that the contract did not constitute a restraint of trade. Therefore, the court affirmed a summary judgment in favor of the hospital district based on its breach of contract claim.

PREGNANT WORKER FAIRNESS ACT

- ***Texas v. Bondi***
- The Pregnancy Workers Fairness Act, which went into effect on June 27, 2023, requires employers to provide reasonable accommodation to workers with known limitations related to pregnancy, childbirth, or related medical conditions, absent undue hardship.
- This is true regardless of whether the “known limitations” constitute a disability under the Americans with Disabilities Act (ADA). Thereafter, the EEOC began enforcement of the PWFA and issued its final regulations.

PREGNANT WORKERS FAIRNESS ACT

1. Texas sought an injunction against federal enforcement of the Pregnant Workers Fairness Act (PFWA) arguing that Congress passed it improperly during COVID-era proxy voting.
2. A year later, a Fifth Circuit panel held that Congress's enactment of the PFWA was valid and lifted the injunction.
3. The Fifth Circuit has now granted en banc review of the panel's decision.

GOVERNMENTAL ENTITIES

Walker v. Tarrant County

Brendan Walker was a Tarrant County sheriff's deputy who sued Tarrant County, the Sheriff and the command staff for racial discrimination and retaliation after reporting misconduct and filing internal human resources complaints and an EEOC. Walker represented himself throughout the proceedings and at trial.

WALKER V. TARRANT COUNTY

- The Court granted the County's summary judgment alleging Walker did not establish a prima facie case on three of the allegations Walker originally alleged. The Court allowed Walker to proceed to trial with the allegations that he was improperly transferred from his unit, his performance evaluations were unfair and an investigation into "dishonesty" by Walker while using his undercover credentials.
- Three weeks later, the remaining three allegations were presented to a jury.

WALKER V. TARRANT COUNTY

1. After a three-day trial, Walker was awarded $625,000 after a federal jury found the sheriff's office retaliated against him for reporting discrimination and misconduct.
2. Walker alleged that he was denied overtime, was subjected to being called racial names in the presence of command staff, worked in a hostile work environment, was denied training for advancement opportunities and was subject to retaliation after he filed complaints.

TEXAS DEPARTMENT OF SAFETY V. TURNER

Kellye Turner is an African American woman for worked for the Texas Department of Public Safety.

Throughout her twenty-six-year career, she held various position including Sergeant, Lieutenant, Captain, and Major. She maintained an excellent record with no disciplinary history.

TEXAS DEPARTMENT OF PUBLIC SAFETY V. TURNER

- Turner applied for a position as a Major in the Investigative Support Section (“ISS”) along with three other male applicants.
- A male applicant with less experience and qualifications was picked for the position. Turner filed an EEOC alleging she was denied the promotion to ISS Major despite being the most qualified applicant.
- She alleged she was denied the promotion because of her sex, race, and in retaliation for past engagement in protected activity.

TEXAS DEPARTMENT OF PUBLIC SAFETY V. TURNER

- In this case, the court held that the Plaintiff's greater seniority and experience in some areas were not enough to show that she was clearly better qualified. The favored candidate had more experience in certain work the employer value for the promotion in question.
- The court also rejected the plaintiff's retaliation claim. While it was true Turner had filed two previous EEOC charges years earlier, the hiring officer only became aware of the claims five months before the ISS Major position was filled.
- Temporal proximity between protected conduct, such as reporting alleged discrimination and a subsequent adverse action can be some evidence of retaliatory intent, but the five months between the protected action and adverse action was too long to support a finding of retaliation in this case.

ANY QUESTIONS?