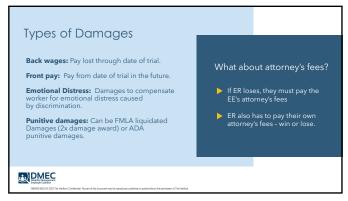


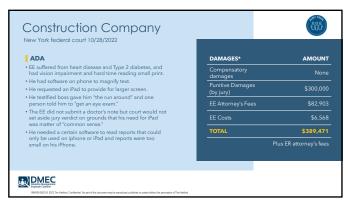


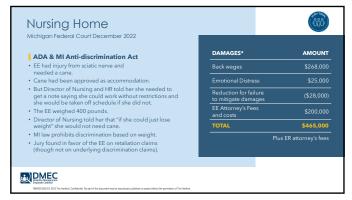
# Agenda • Different Types of Damages Employers Can Face • Lessons Learned - Pitfalls, Protocols & Common Sense • Overview of Recent FMLA/ADA Verdict Judgements • Accommodation Hot Topics: Service Dogs and Work from Home • Updates on Last Year's Jury Trials • Q&A

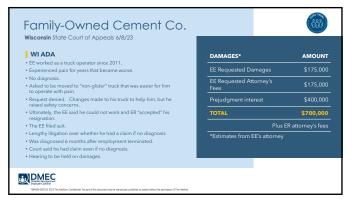


DAMAGES	EE'S ATTORNEY'S FEES/COSTS	STATE		DAMAGES	EE'S ATTORNEY'S FEES/COSTS	STATE
\$274,200	\$123,335	Texas		\$320,000	\$530,000	Washington
\$300,000	\$89,471	New York		\$1,020,922	\$395,000	Idaho
\$265,000	\$200,000	Michigan		\$2,000,000	???	California
\$575,000	\$175,000	Wisconsin	1	\$1,700,000	\$1,237,000	California
\$622,498	\$224,951	Ohio		\$24,000,000*	\$647,000	Massachusetts
\$800,000	????	Rhode Islan	nd	\$3,248,000	\$262,000	Alabama
				ITTORNEY'S COSTS	STATE	
	\$2,045,000 reduced to \$345,000		\$135,000		Florida	
	\$3,792,973 reduced to \$553,000		??		Texas	
	\$43,970,000 reduced to \$1,666,469		\$1,323,680		Wisconsin	

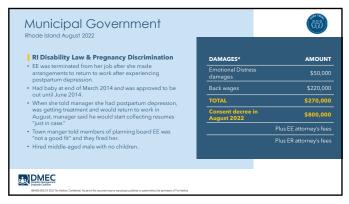


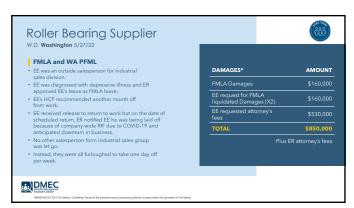


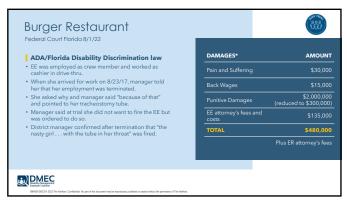


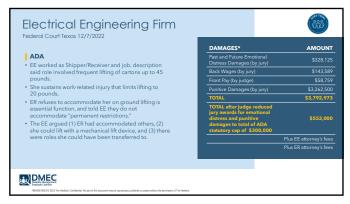




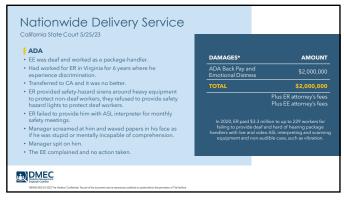




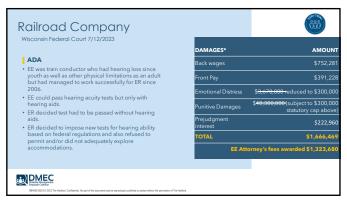


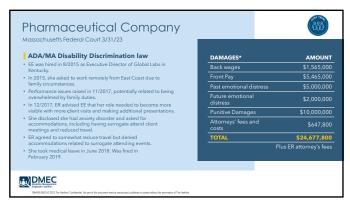


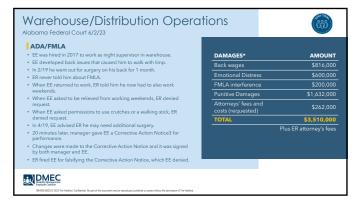


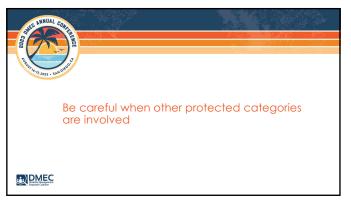


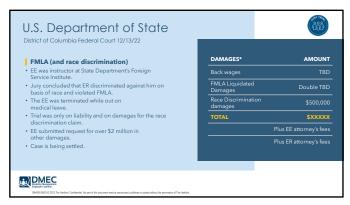












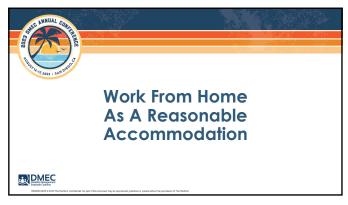








# Contrasting Service Dog Case Hospital Michigan Federal Court 1/19/23 • EE was student intern at hospital and asked to bring service dog to work. • Service dog assisted her with panic attack by alerting her when she has a rise in anxious behaviors. • The dog caused severe dog-allergy reactions in a patient and to another EE. • The court granted ER summary judgment on ground that it had shown direct threat to safety.



# Facility Management Company (N.D. Georgia 12/19/22)

- EEOC filed lawsuit against ER who denied EE requests to continue working from home because of her obstructive lung disease and hypertension.
   She had been allowed to WFH during the COVID-19 pandemic and found it helped her manage
- her medical conditions.

  When staff was required to return to the office 5 days per week, she asked to WFH 2 days per week.

  Her request was denied even though others were allowed to WFH.

  Shortly after that, her employment was terminated.

  EEOC and ER settled through Consent Decree:

  Pay this EE \$47,500.

  Conduct training.



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# Regenerative Medicine Company (Massachusetts Commission Against Discrimination 6/9/23)

- EE , who was employed by ER as buyer, had severe neck, shoulder, and back pain, as well as neuropathy.

  EE asked to work from home 2 days per week.

  ER denied the request on the grounds, among others, that EE was not sufficiently focused at work and it would be difficult to ensure she got her work done.

  MCAD found that ER had not engaged in meaningful interactive process.

  MCAD cited MA authorities that WFH is a reasonable accommodation.

  MCAD concluded ER did not show undue hardship.

  EE ultimately quit and MCAD awarded \$75,000 in emotional distress damages.

  12% prejudgment interest.

  Attorney's fees petition pending.

  PRE-COVID LOGICI



# Telecommunications Company (D. Maine 1/19/23) Job description said he needed to be physically present in call center. However, he worked remotely during COVID-19 from 4/10/20 to 6/29/20. No evidence his team's performance suffered. Court held that this experience during COVID was relevant in deciding whether work from home was a reasonable accommodation. **DMEC**

Defense and IT Contractor

- EE suffered from Usher's syndrome (Inherited disorder that causes retinal degeneration and hearing loss).
- By August 2018 she was declared legally blind and was unable to drive.
   A coworker moved in with her to take her to and from work.
   EE alleged that her manager and team leader discriminated against her, including calling her
- She asked to WFH as an accommodation for her medical condition.
  The court concluded that ER did not have to accommodate because ERs do not have to accommodate an EE's commute.
  ERs have to grant reasonable accommodations that eliminate barriers "in" the workplace.



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## County Government Office (E.D. Michigan 6/6/23)

- (E.D.). Michigan 676/25]

  E asked to work from home as accommodation for depression, anxiety and ADHD.

  Court quoted <u>EEOC, v Ford Motor Co.</u> that "regularly attending work on-site is essential to most jobs."

  County believed that it was an essential function of EEs role of Support Coordinator to work either in the field or in the office so that the EE could "diligently tack their time, location and work activities so they could accurately bill Medicaid."

  Court said that the EEs own experience showed why she needed to be onsite she did not adhere to expectations for attendance, accountability, documentation of her schedule etc.

  She pointed out that some Support Coordinators were permitted to work from home.

  Court said that just because a work-from home program is permitted for some does not prohibit ER from requiring others in same role to be on site.

  Court said that it is okay if elecommuting is only allowed for EEs who were able to consistently and independently execute their job functions.

  ER could evaluate a VMFH request on a case-by-case basis as to whether a worker met sufficiently high-performance targets for productivity, timely documentation and using the calendar to document their whereabouts.

  Court said: "Now consider the consequences of permitting [EE] to work form home, where she would have even less of the supervision, she needed to do the essential functions of her job."

• /	DMEC
	District Management

### Cable Company (7th Cir. Ct. App. 7/28/23)

- ER denied shift change request, but suggested other ways to commute, such as public transportation and carpooling

- Court of Appeals reversed this district court's decision, weighing commuting considerations around
   What is in EE's control, such as residing near work
   What is in ER's control, such as shift change



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### Pharmaceutical Packaging Company Rorida federal court field offirmed 11th Circuit 10/27/22

- Pregnant EE had ptyalism (excessive salivation) and ER denied her request to have a "spit cup."

  Jury awarded: \$34,400 lost wages plus \$10,000 emotional distress plus \$50,000 punitive damages (Total \$94,400).

  Trial judge "set aside" punitive damages but, on appeal, the 11th Circuit reinstated the punitive damages.

  ER acted with reckless indifference because it made no effort to identify a reasonable accommodation that would permit her to perform the essential functions of the job.



### Railroad Company

as federal court trial, affirmed 8th Circuit 5/19/23

- EE was military veteran and experienced PTSD.
- Requested accommodation to bring his service dog to work.
- Jury awarded \$250,000 in damages.
- $\bullet$  Trial Court set aside the jury verdict on the grounds that the EE could perform his job it just helped him "feel better" to have the dog.
- 8th Circuit Court of Appeals Affirmed.
- EE must prove existence of an ER-sponsored or ER-provided benefit or privilege that is provided to workers without disabilities.
- ${\boldsymbol \cdot}$  "Mitigating pain is not an ER-sponsored program or service."



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### County Sheriff Office

Idaho federal court trial, and verdict set aside by judge 9/14/22

- EE went out of work for back surgery. When he returned, he was observed to be impaired.
   He said it was from medication, and ER told him to go home until not taking medication.
   A week later, EE said he was off medication wanted to return to work.

- A week later, EE said he was off medication wanted to return to work.

  ER required fitness for duty.

  EE alleged that ER reached out to and improperly influenced the HCP to write a negative report.

  EE thought he would be fired and drank alcohol, drove to remote location with firearm planning to commit suicide, and then changed his mind.

  Was arrested for OUI on way home and was fired.

  Jury awarded: \$42,000 back pay plus \$75,000 Emotional distress plus \$750,000 punitive damages

  On 9714722, judge set aside the verdict and ordered a new trial because of new evidence indicating that the EE's attorney misled the jury about whether the attorney paid one of his medical witnesses to testify.



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### Diagnostic Testing Laboratory

- $\bullet$  EE suffered from generalized anxiety disorder and panic attacks.
- He asked office manager not to have a birthday party for him.
  Office manager was out on his birthday and workers proceeded with birthday party.
- EE experienced panic attack after bosses criticized him for not attending
- Jury awarded \$150,000 in lost wages and \$300,000 emotional distress.
- $\bullet$  Court of Appeals affirmed concluding there was no evidence the EE created safety threat.



