



**2023 DMEC ANNUAL CONFERENCE**  
AUGUST 14-17, 2023 • SAN DIEGO, CA

FMLA/ADA: The Verdict Is In...  
**Cost of Compliance**

Megan Holstein, Head of Absence Management, The Hartford  
Marjory Robertson, AVP & Senior Counsel, Sun Life

August 14, 2023





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**Today's Presenters**



**Megan Holstein**  
Megan Holstein, is the head of absence management for The Hartford. A nationally known authority in employment law and leave solutions, Megan oversees the strategic design and marketing of The Hartford's absence management, disability and accommodations products.



**Marjory Robertson**  
Marjory Robertson is the Assistant Vice President & Senior Counsel at Sun Life. A frequent speaker at client, broker and industry events, she advises the Sun Life business on law and compliance issues related to absence management and accommodation services.



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**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



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## Types of Damages

**Back wages:** Pay lost through date of trial.


**Front pay:** Pay from date of trial in the future.

**Emotional Distress:** Damages to compensate worker for emotional distress caused by discrimination.

**Punitive damages:** Can be FMLA liquidated Damages (2x damage award) or ADA punitive damages.

What about attorney's fees?

- ▶ If ER loses, they must pay the EE's attorney's fees
- ▶ ER also has to pay their own attorney's fees - win or lose.



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## A Snapshot Overview

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	\$1,700,000	\$1,237,000	California
\$622,498	\$224,951	Ohio	\$24,000,000*	\$647,000	Massachusetts
\$800,000	????	Rhode Island	\$3,248,000	\$262,000	Alabama

DAMAGES (with reductions)	EE'S ATTORNEY'S FEES/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

\* MA state law has no cap on punitive or other damages, unlike federal ADA



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## Cosmetics Company

Texas federal court 3/28/23

**FMLA**

- EE worked for company for 17 years and was 3 years away from eligibility for early retirement program.
- In July 2019, EE severely injured her foot with multiple fractures.
- She asked to WFH for 2 weeks as accommodation and ER denied request.
- EE took FMLA leave from 7/30 to 8/18/2019.
- When she returned on 8/19, she received "chilly" reception from her manager and co-workers.
- She learned that her duties had been assigned to others and was given new duties.
- She was concerned that she was given too much work to do and not enough time to learn how to do it.
- She reported to HR that she felt she was being retaliated against for taking FMLA.
- No investigation was conducted.
- On 8/29, while still in a walking boot for her foot injury, she was assigned to walk all over the office while pushing a cart and carrying wooden assets.
- On 8/30, she was out of work with severe hip pain.
- She returned to work on 9/3 with medical documentation and was called into a meeting and fired.

DAMAGES*	AMOUNT
Past wages	\$137,100
FMLA liquidated damages requested	\$137,100
EE Attorney's Fees requested	\$123,335
<b>TOTAL (if approved)</b>	<b>\$397,535</b>

Plus ER attorney's fees



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## Construction Company

New York federal court 10/28/2022

**ADA**

- EE suffered from heart disease and Type 2 diabetes, and had vision impairment and hard time reading small print.
- He had software on phone to magnify text.
- He requested an iPad to provide for larger screen.
- He testified boss gave him "the run around" and one person told him to "get an eye exam."
- The EE did not submit a doctor's note but court would not set aside jury verdict on grounds that his need for iPad was matter of "common sense."
- He needed a certain software to read reports that could only be used on iPhone or iPad and reports were too small on his iPhone.

DAMAGES*	AMOUNT
Compensatory damages	None
Punitive Damages (by jury)	\$300,000
EE Attorney's Fees	\$82,903
EE Costs	\$6,568
<b>TOTAL</b>	<b>\$389,471</b>

Plus ER attorney's fees

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## Nursing Home

Michigan Federal Court December 2022

**ADA & MI Anti-discrimination Act**

- EE had injury from sciatic nerve and needed a cane.
- Cane had been approved as accommodation.
- But Director of Nursing and HR told her she needed to get a note saying she could work without restrictions and she would be taken off schedule if she did not.
- The EE weighed 400 pounds.
- Director of Nursing told her that "if she could just lose weight" she would not need cane.
- MI law prohibits discrimination based on weight.
- Jury found in favor of the EE on retaliation claims (though not on underlying discrimination claims).

DAMAGES*	AMOUNT
Back wages	\$268,000
Emotional Distress	\$25,000
Reduction for failure to mitigate damages	(\$28,000)
EE Attorney's Fees and costs	\$200,000
<b>TOTAL</b>	<b>\$465,000</b>

Plus ER attorney's fees

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## Family-Owned Cement Co.

Wisconsin State Court of Appeals 6/8/23

**WI ADA**

- EE worked as a truck operator since 2011.
- Experienced pain for years that became worse.
- No diagnosis.
- Asked to be moved to "non-glider" truck that was easier for him to operate with pain.
- Request denied. Changes made to his truck to help him, but he raised safety concerns.
- Ultimately, the EE said he could not work and ER "accepted" his resignation.
- The EE filed suit.
- Lengthy litigation over whether he had a claim if no diagnosis.
- Was diagnosed 6 months after employment terminated.
- Court said he had claim even if no diagnosis.
- Hearing to be held on damages.

DAMAGES*	AMOUNT
EE Requested Damages	\$175,000
EE Requested Attorney's Fees	\$175,000
Prejudgment interest	\$400,000
<b>TOTAL</b>	<b>\$700,000</b>

Plus ER attorney's fees

\*Estimates from EE's attorney

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**Sleep Accessory & Mattress Store**  
 S.D. Ohio 2/18/22

**ADA**

- EE worked as a company sales professional.
- Promoted to sales expert in 8/2016.
- EE suffered from essential tremors that limited normal operation of neurological system.
- EE said manager mocked him because of tremors.
- In 10/2017, manager asked EE about sharing friends and family discount - which was not allowed.
- The EE denied it. The EE also yelled and raised voice and called customer a liar and left store during working hours without approval.
- The EE was terminated.
- Argued it was pretext for discrimination and that manager believed hand tremor was sign of alcohol abuse.

DAMAGES*	AMOUNT
Back wages	\$61,249
Non-economic damages	\$61,249
Punitive Damages	\$500,000
EE attorney's fees (requested)	\$215,847
EE costs (requested)	\$9,104
<b>TOTAL</b>	<b>\$847,449</b>

Plus ER attorney's fees



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**Municipal Government**  
 Rhode Island August 2022

**RI Disability Law & Pregnancy Discrimination**

- EE was terminated from her job after she made arrangements to return to work after experiencing postpartum depression.
- Had baby at end of March 2014 and was approved to be out until June 2014.
- When she told manager she had postpartum depression, was getting treatment and would return to work in August, manager said he would start collecting resumes "just in case."
- Town manger told members of planning board EE was "not a good fit" and they fired her.
- Hired middle-aged male with no children.

DAMAGES*	AMOUNT
Emotional Distress damages	\$50,000
Back wages	\$220,000
<b>TOTAL</b>	<b>\$270,000</b>
<b>Consent decree in August 2022</b>	<b>\$800,000</b>

Plus EE attorney's fees

Plus ER attorney's fees



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**Roller Bearing Supplier**  
 W.D. Washington 5/27/22

**FMLA and WA PFML**

- EE was an outside salesperson for industrial sales division.
- EE was diagnosed with depressive illness and ER approved EE's leave as FMLA leave.
- EE's HCP recommended another month off from work.
- EE received release to return to work but on the date of scheduled return, ER notified EE he was being laid off because of company-wide RIF due to COVID-19 and anticipated downturn in business.
- No other salesperson from industrial sales group was let go.
- Instead, they were all furloughed to take one day off per week.

DAMAGES*	AMOUNT
FMLA Damages	\$160,000
EE request for FMLA liquidated Damages (X2)	\$160,000
EE requested attorney's fees	\$530,000
<b>TOTAL</b>	<b>\$850,000</b>

Plus ER attorney's fees



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### Burger Restaurant

Federal Court Florida 8/1/22



**ADA/Florida Disability Discrimination law**

- EE was employed as crew member and worked as cashier in drive-thru.
- When she arrived for work on 6/23/17, manager told her that her employment was terminated.
- She asked why and manager said "because of that" and pointed to her tracheostomy tube.
- Manager said at trial she did not want to fire the EE but was ordered to do so.
- District manager confirmed after termination that "the nasty girl... with the tube in her throat" was fired.



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DAMAGES*	AMOUNT
Pain and Suffering	\$30,000
Back Wages	\$15,000
Punitive Damages	\$2,000,000 (reduced to \$300,000)
EE attorney's fees and costs	\$135,000
<b>TOTAL</b>	<b>\$480,000</b>

Plus ER attorney's fees

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### Electrical Engineering Firm

Federal Court Texas 12/7/2022



**ADA**

- EE worked as Shipper/Receiver and job description said role involved frequent lifting of cartons up to 45 pounds.
- She sustains work-related injury that limits lifting to 20 pounds.
- ER refuses to accommodate her on ground lifting is essential function, and told EE they do not accommodate "permanent restrictions."
- The EE argued (1) ER had accommodated others, (2) she could lift with a mechanical lift device, and (3) there were roles she could have been transferred to.



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DAMAGES*	AMOUNT
Past and Future Emotional Distress Damages (by jury)	\$328,125
Back Wages (by jury)	\$143,589
Front Pay (by judge)	\$58,759
Punitive Damages (by jury)	\$3,262,500
<b>TOTAL</b>	<b>\$3,792,973</b>
<b>TOTAL after judge reduced jury awards for emotional distress and punitive damages to total of ADA statutory cap of \$300,000</b>	<b>\$553,000</b>

Plus EE attorney's fees  
Plus ER attorney's fees

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### Welding & Industrial Supplier

Idaho Federal Court 12/13/22



**ADA + FMLA**

- EE worked as Inside Sales and Back-up Driver.
- He was diagnosed with lumbar spondylosis, lumbar radiculopathy and herniated disc.
- He was on FMLA leave from 5/3/17 to 7/4/17 and scheduled for surgery in August 2017. Was approved for intermittent leave and light duty work.
- In July 2017, the EE had leg up on desk because of leg pain and manager confronted him, asking if he needed something to do.
- Manager ended up sending him home and later his employment was terminated.
- Senior management argued they knew nothing about FMLA/ADA issues.
- Court commented that executives were aware they would have to pay for EE's surgery because health insurance was self-insured.



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DAMAGES*	AMOUNT
Back wages	\$51,711
FMLA Liquidated Damages	\$51,711
Emotional Distress	\$877,500
Prejudgment interest	\$40,000
Attorneys' fees requested	\$395,000
<b>TOTAL</b>	<b>\$1,415,000</b>

Plus EE attorney's fees  
Plus ER attorney's fees

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### Nationwide Delivery Service


California State Court 5/25/23

**ADA**

- EE was deaf and worked as a package-handler.
- Had worked for ER in Virginia for 6 years where he experience discrimination.
- Transferred to CA and it was no better.
- ER provided safety-hazard sirens around heavy equipment to protect non-deaf workers, they refused to provide safety hazard lights to protect deaf workers.
- ER failed to provide him with ASL interpreter for monthly safety meetings.
- Manager screamed at him and waved papers in his face as if he was stupid or mentally incapable of comprehension.
- Manager spit on him.
- The EE complained and no action taken.

DAMAGES*	AMOUNT
ADA Back-Pay and Emotional Distress	\$2,000,000
<b>TOTAL</b>	<b>\$2,000,000</b>

In 2020, ER paid \$3.3 million to up to 229 workers for failing to provide deaf and hard of hearing package handlers with live and video ASL interpreting and scanning equipment and non-audible cues, such as vibration.



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### Wholesale Distribution Retail Co.

S.D. California 2/10/23

**CA FEHA Disability discrimination**

- EE worked as buyer and was responsible for sourcing goods to ensure they were stocked on store shelves.
- In 2018, the company began requiring travel to Mexico at least 3 times per year.
- EE suffers from anxiety that is triggered by trips to Mexico.
- She raised safety concerns and asked for accommodations:
  - Permit her to work remotely for at least 6 months.
  - Distribute travel safety protocol to Buyers.
  - Allow EE to fulfill travel requirements by traveling with group of EEs.
  - Reassign EE to vacant position.
- She took medical Leave from 11/2018 to 1/14/2019.
- She was no longer approved for medical leave.
- On 3/17/19, she resigned, saying she felt forced to resign.

DAMAGES*	AMOUNT
Past Non-economic damages	\$850,000
Future Non-economic damages	\$850,000
EE attorney's fees	\$1,217,040
EE Costs	\$20,312
<b>TOTAL</b>	<b>\$2,973,352</b>

Plus ER attorney's fees



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### Railroad Company

Wisconsin Federal Court 7/12/2023

**ADA**

- EE was train conductor who had hearing loss since youth as well as other physical limitations as an adult but had managed to work successfully for ER since 2006.
- EE could pass hearing acuity tests but only with hearing aids.
- ER decided test had to be passed without hearing aids.
- ER decided to impose new tests for hearing ability based on federal regulations and also refused to permit and/or did not adequately explore accommodations.

DAMAGES*	AMOUNT
Back wages	\$752,281
Front Pay	\$391,228
Emotional Distress	<del>\$2,700,000</del> reduced to \$300,000
Punitive Damages	<del>\$40,000,000</del> (subject to \$300,000 statutory cap above)
Prejudgment interest	\$222,960
<b>TOTAL</b>	<b>\$1,466,469</b>

**EE Attorney's fees awarded \$1,323,680**



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**Pharmaceutical Company**  
Massachusetts Federal Court 3/31/23

**ADA/MA Disability Discrimination law**

- EE was hired in 8/2015 as Executive Director of Global Labs in Kentucky.
- In 2015, she asked to work remotely from East Coast due to family circumstances.
- Performance issues raised in 11/2017, potentially related to being overwhelmed by family duties.
- In 12/2017, ER advised EE that her role needed to become more visible with more client visits and making additional presentations.
- She disclosed she had anxiety disorder and asked for accommodations, including having surrogate attend client meetings and reduced travel.
- ER agreed to somewhat reduce travel but denied accommodations related to surrogate attending events.
- She took medical leave in June 2018. Was fired in February 2019.

DAMAGES*	AMOUNT
Back wages	\$1,565,000
Front Pay	\$5,465,000
Past emotional distress	\$5,000,000
Future emotional distress	\$2,000,000
Punitive Damages	\$10,000,000
Attorneys' fees and costs	\$647,800
<b>TOTAL</b>	<b>\$24,677,800</b>

Plus ER attorney's fees

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**Warehouse/Distribution Operations**  
Alabama Federal Court 6/2/23

**ADA/FMLA**

- EE was hired in 2017 to work as night supervisor in warehouse.
- EE developed back issues that caused him to walk with limp.
- In 2/19 he went out for surgery on his back for 1 month.
- ER never told him about FMLA.
- When EE returned to work, ER told him he now had to also work weekends.
- When EE asked to be relieved from working weekends, ER denied request.
- When EE asked permissions to use crutches or a walking stick, ER denied request.
- In 4/19, EE advised ER he may need additional surgery.
- 20 minutes later, manager gave EE a Corrective Action Notice3 for performance.
- Changes were made to the Corrective Action Notice and it was signed by both manager and EE.
- ER fired EE for falsifying the Corrective Action Notice, which EE denied.

DAMAGES*	AMOUNT
Back wages	\$816,000
Emotional Distress	\$600,000
FMLA interference	\$200,000
Punitive Damages	\$1,632,000
Attorneys' fees and costs (requested)	\$262,000
<b>TOTAL</b>	<b>\$3,510,000</b>

Plus ER attorney's fees

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Be careful when other protected categories are involved

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**U.S. Department of State**  
District of Columbia Federal Court 12/13/22

**FMLA (and race discrimination)**

- EE was instructor at State Department's Foreign Service Institute.
- Jury concluded that ER discriminated against him on basis of race and violated FMLA.
- The EE was terminated while out on medical leave.
- Trial was only on liability and on damages for the race discrimination claim.
- EE submitted request for over \$2 million in other damages.
- Case is being settled.

DAMAGES*	AMOUNT
Back wages	TBD
FMLA Liquidated Damages	Double TBD
Race Discrimination damages	\$500,000
<b>TOTAL</b>	<b>\$XXXXXX</b>
	Plus EE attorney's fees
	Plus ER attorney's fees

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**Housing Management Co.**  
New York Federal Court 11/10/22

**ADA (and race discrimination)**

- Two black EEs, who worked as porters, sued together.
- EE #1 alleged race discrimination, including that:
  - He was subject to racially discriminatory comments, including by former general manager.
- EE #2 was diagnosed with leukemia and alleged disability discrimination.
- He went out on leave for 12 months and was terminated.
- When he disputed the termination through his union, he was rehired.
- EE claimed he was wrongfully denied a bonus because of his leave.

DAMAGES*	AMOUNT
Race discrimination damages EE #1	\$500,000
Disability discrimination damages EE #2	\$126,000
<b>TOTAL</b>	<b>\$626,000</b>
	Plus EE attorney's fees
	Plus ER attorney's fees

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**Service/Comfort Dogs as Accommodations**

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### EEOC Service Dog Case

- EE was part-time cashier clerk at large Retail Chain.
- She suffered from depression, anxiety and PTSD.
- Her HCP recommended she bring service dog to work.
- HR denied request saying for undue hardship in store operations (concerns about customer allergies and broken merchandise).
- EE brought her dog in anyway.
- ER sent her home and said don't come back with the dog.
- She could not work without the dog, and ER fired her.
- Consent decree between EEOC and ER.
- Pay \$50,000 and agree to revise policies and do training.



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### City Government

Missouri Federal Court 9/15/22

**ADA**

- EE worked as pharmacist and had Type 1 diabetes.
- HCP recommended she get service dog to alert her when blood sugar dropped.
- She requested permission to bring service dog to work.
- ER denied on ground pharmacy was sterile environment.
- EE's suggestions to reduce risk were rejected.
- At trial, EE argued ER had not done individualized risk assessment and, in fact, parts of pharmacy were not sterile.

DAMAGES*	AMOUNT
Back wages	\$115,549
Emotional Distress	\$18,451
<b>TOTAL</b>	<b>\$134,000</b>
	Plus EE attorney's fees
	Plus ER attorney's fees

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### 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.

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## Work From Home As A Reasonable Accommodation



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### 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 LOGIC!



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**Telecommunications Company**  
 (D. Maine 1/19/23)

- EE worked in a call center.
- 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.



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**Defense and IT Contractor**  
 (S.D. Ohio 9/29/22)

- 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 names.
- 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)

- EE asked to work from home as accommodation for depression, anxiety and ADHD.
- Court quoted *EEQC v. Ford Motor Co.* that "regularly attending work on-site is essential to most jobs."
- County believed that it was an essential function of EE's role of Support Coordinator to work either in the field or in the office so that the ER could "diligently track their time, location and work activities so they could accurately bill Medicaid."
- Court said that the EE's 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 telecommuting is only allowed for EEs who were able to consistently and independently execute their job functions.
  - ER could evaluate a WFH 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 from home, where she would have even less of the supervision, she needed to do the essential functions of her job."



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

- EE developed cataracts and requested a change of schedule to the day shift due to inability to drive at night
- ER denied shift change request, but suggested other ways to commute, such as public transportation and carpooling
- EEOC sued on EE's behalf; EEOC takes the position that ADA requires commuting accommodations
- Original court dismissed the case citing commuting accommodation is not work related
- 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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**Déjà Vu**  
 Updates on last year's jury trial cases

 **DMEC**  
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**Pharmaceutical Packaging Company**  
 Florida federal court trial affirmed 11<sup>th</sup> 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 11<sup>th</sup> 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.

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### Railroad Company

Arkansas federal court trial, affirmed 8<sup>th</sup> 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.*
- 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.
- 8<sup>th</sup> 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.
- "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.
- 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 9/14/22, 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

Kentucky state court trial, affirmed Kentucky Court of Appeals 4/21/23

- 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 the party.
- **Jury awarded \$150,000 in lost wages and \$300,000 emotional distress.**
- Court of Appeals affirmed concluding there was no evidence the EE created safety threat.



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