DMEC
2026 ANNUAL CONFERENCE

2026 Update
Jury Verdicts Involving Leave and/or Accommodation Laws

Marjory Robertson, J.D., Sun Life
Sarah Simmons, J.D., Sun Life

This content of this presentation is not to be considered legal advice.

Lessons Learned from Recent Trials

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 EE for emotional distress caused by discrimination.
- **Punitive damages:** Can be FMLA liquidated Damages (2x damage award) or ADA/PWFA or state law punitive damages.
    - ADA/PWFA punitive damages capped at $300,000
    - Many states have no caps on 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.



A Snapshot Overview

Damages	EE Attorney's fees	State
$46,419	$789,537	Pennsylvania
$80,000	$1,264,734	Illinois
$87,500	???	New York
$112,047	???	Texas
$125,890.98	$61,823	Arkansas
$226,500	$0	Mississippi
$1,125,000	$1,173,621	Vermont

Damages	EE Attorney's Fees	State
$1,489,702	$444,935	Idaho
$3,550,000	???	New York
$4,675,000	$930,000	Massachusetts
$6,458,000	$2,127,827	Missouri
$10,034,951	???	Michigan
$22,500,000	N/A	Ohio
$26,952,863	$758,829	Oregon
$52,460,862	???	California



University

Pennsylvania Federal Court

Damages Award after court granted Summary Judgment 12/16/2025

Federal Rehabilitation Act (due to receipt federal funds)

- EE was professor at University who underwent heart transplant surgery in 2021 and requested accommodation to work remotely.
- Post-transplant treatment includes life-long use of immunosuppressive medications to reduce risk of organ donation failure.
- ER denied request to WFH or accommodation during Fall Semester 2021 on ground that working on site is an essential function of job and if he were to WFH it would cause undue hardship.
- ER adopted an inflexible policy to prevent remote teaching.
- Court noted that EE could not recover either punitive damages or emotional distress damages under Rehabilitation Act.
- EE still works for ER – was placed on unpaid leave for Fall Semester of 2021.

Damages	Amount
Back wages	$41,296
Retroactive Retirement Account Contributions	$5,123
Restore Paid Sick leave, PTO and seniority	????
Total Damages	**$46,419**
EE Attorney's fees	**$789,537**

City Government

Arkansas Federal Court 8/26/2025

FMLA & Retaliation for free speech rights

- EE worked as police lieutenant for city government from 12/2017 to 12/2023 and received exemplary reviews.
- In 2023, EE worked on a wage survey to address low employee morale.
- In 10/2023, EE communicated results of survey to Police Chief who then transferred EE from day shift to night shift without explanation.
- In 11/2023, EE advised his manager (a Captain) and HR he needed to take leave for treatment of cancer affecting his chest and his esophagus.
- HR began to prepare paperwork for FMLA leave.
- In 12/2023, Captain ordered EE to stop discussing wages.
- On 12/12/2023, EE was seen discussing wage survey with city council member who held grudge with Police Chief.
- On 12/13/2023, Captain called EE and told him his role had been eliminated but would not give a reason.
- ER argued EE was terminated for insubordination and also claimed police chief did not know he had cancer.

Damages	Amount
Jury Verdict: Back wages	$58,970
EE attorney's fees & costs requested	$61,823
Total of above	$120,793
Agreed upon Judgment Total	**$187,713.98 (unexplained increase of $66,920)**

Biopharmaceutical Company

Illinois Federal Court (3/13/2026)

Damages	Amount
Jury Verdict: FMLA Back wages	$57,500
Prejudgment Interest	$22,500
Total Damages	**$80,000**
EE attorney's fees & costs requested	**$1,264,734**

FMLA

- EE worked for ER for five years.
- In March 2018, EE was approved for intermittent leave to care for his 17- year-old son who had asthma.
- EE had attendance issues and in August 2018, he was at the point where one more instance of unexcused tardiness or absence would result in termination of employment.
- ER had call-in requirements that EEs must call in 30 minutes before start of their shift.
- EE worked the night shift and was due at work at 11:00 p.m.
- On 8/21/2018 at around 10:30, he was getting ready for work and heard his son having an asthma attack.
- EE had to locate and administer medication – wife could not help because she had had surgery.
- EE called in as soon as the emergency passed and it was 25 minutes before his schedule start.
- When he called in, he said it was for FMLA but provided no detail.
- ER never interviewed him to see what specifically caused him to be late.
- Court declined to award liquidated damages because ER had good faith belief that its policy covered his late arrival.



Regional Hospital

Texas Federal Court 2/7/2025

FMLA and Texas sex discrimination and retaliation

- EE coordinated clinical trials with third-party clinical trial site monitors.
- A new manager was hired in April 2022.
- EE advised new manager she was pregnant.
- New manager became aware of performance problems in May 2022 and EE was provided with progressive discipline starting with verbal warning on 8/30, first written warning on 9/9, and final written warning on 9/13/2022.
- EE was out due to high blood pressure from 9/20 through 9/25/2022.
- When EE returned to work, she could not catch up on her work, and manager terminated her employment on October 12, 2022, which manager thought was EE's last day before maternity leave began.
- Court denied summary judgment because there was evidence that another EE was given more time (2 months) before being terminated for similar performance issues while EE was given only 1 month.
- Court said that jury could conclude that ER fired EE sooner than they would have if she had not been pregnant.

Damages	Amount
Jury Verdict: FMLA Back wages	$27,047
Past emotional distress	$10,000
Future Emotional Distress	$75,000
Total Damages	**$112,047**
EE's attorney's fees?	???

Public School District

Mississippi Federal Court (3/13/2026)

FMLA and common law retaliation

- EE worked as Director of Building Department.
- EE worked for new Mayor who was subject to a recall vote because others believed the Mayor was spending public funds without board approval, violating policies regarding hiring and firing employees, using village police as personal security, and ignoring FOIA requests.
- The Mayor started directing EE to engage in retaliatory acts toward those who had supported recall measure, such as refusing to answer their FOIA requests and muting them when they were on virtual meetings.
- EE refused to take these actions and was subject to retaliation herself for refusing to do so.
- EE went out on FMLA leave for work-related stress and she was fired.
- EE sued for violation of FMLA and common law retaliation claim. *She lost on FMLA!*

Damages	Amount
Back pay	$126,000
Emotional Distress	$126,500
Total Damages	$226,500

Because she lost on FMLA, no statutory basis for making ER pay for attorney's fees

Hospice and Home Health Care

New York Federal Court 4/21/2026

ADA, Sex Discrimination (Title VII and NY State), Pregnancy Discrimination Act (PDA), and Retaliation

- On 6/17/2021, EE, a nurse, told her clinical supervisor she was pregnant and asked for time off to have emergency ultrasound. Request was granted.
- On 8/24/2021, when she was 5 months pregnant, EE had sharp pelvic pain, and her OB-GYN provided letter advising EE had high risk pregnancy and should stop working indefinitely.
- EE said in email to ER she needed to go out on STD now and needed FMLA.
- Head of HR called EE and told her she was not yet eligible for FMLA because she had not worked for them for one year. EE asked "are you firing me?" and head of HR said they considered this to be a resignation and she could reapply after baby came.
- EE ultimately hung up on ER.
- EE gave birth on 12/6/2021 and on 2/2/2022 she received an offer for employment as nurse at same rate of pay. She did not respond.

Damages	Amount
Back wages	~~$420,000~~ **Reduced to $7,500***
Emotional distress	$30,000
Punitive Damages	~~$600,000~~ **Reduced to $50,000**
Total Damages	~~**$1,050,000**~~ **Reduced to $87,500**
Final settlement amount (would have included attorneys' fees) ??????	

*Judge offered EE choice of reduced back pay or new trial on wage damages – EE opted for trial: Case settled

Regional Hospital

Vermont Federal Court 11/26/2025

Disability discrimination (VT law)

- EE, worked for ER for 20 years.
- EE took medical leave from 12/2015 through 4/2016.
- EE returned 4/2016 and worked 12 hours per week.
- EE went out again on medical leave from 8/2016 to 11/2016).
- In 3/2017, EE returned to work, worked 20 hours/week.
- In 6/2017, ER decided to close EE's department that was focused on fertility issues. ER let go 3 doctors (including EE) but reassigned 1 nurse to OB-GYN.
- ER said not keeping EE because she was on disability.
- EE argued she was terminated because of disability and whistleblower retaliation (she had complained about skills of peers).
- District court judge granted summary judgment for ER but was reversed on appeal, and case was sent back for jury trial.
- Jury found ER liable for disability discrimination but not for failure to accommodate or whistleblower liability.

Damages	Amount
Lost income & expenses	$1,000,000
Emotional distress	$125,000
Total Damages	**$1,125,000**
EE's attorney's fees & costs	$1,173,621



Railroad Company

Idaho Federal Court (10/31/2025)

ADA

- EE had color vision deficiency and worked as conductor for ER 12 years.
- ER tested his vision 3 times.
- He twice failed office-based tests but later passed field tests with real train signals.
- In 2016, ER again tested his vision and used "Light Cannon" (an invention of ER).
- EE failed Light Cannon test and ER denied recertification and terminated.
- ER argued that EE posed a direct threat to safety of others.
- Court said regulations permitted EEs to pass a color-vision test through a variety of methods, including the Light Cannon or an actual field test and that ER could not insist on just Light Cannon.
- Court said that jury should decide whether EE had requisite skill, experience, education and other job-related requirements to be a conductor and whether he could perform essential functions of his role with or without accommodation.

Damages	Amount
Back wages	$767,842
Front pay	$121,860
Emotional Distress	$600,000
Total Damages	**$1,489,702**
EE attorney's fees & costs requested	**$444,935**

Uniform Supply Company

Missouri State Court (3/17/2026)

Damages	Amount
Compensatory Damages	$458,000
Punitive Damages	$6,000,000
Total Damages	$6,458,000
EE attorney's fees & costs	$2,127,827

Missouri Disability Discrimination

- EE was hired as District Service Manager (DSM) in 2012 and supervised other employees who ran delivery routes.
- In 2014, EE sustained injury while covering a route and was diagnosed with disc extrusion and left lumbar disc protrusion.
- For 12-14 months, he was treated with steroid injections which enabled him to work.
- ER assigned a "helper" to go on routes him to assist with lifting.
- In 12/2014, EE's HCP advised him to take off one week from work and return on light duty basis.
- EE had new supervisor who berated EE for "unreasonable" accommodation request and also made comments about EE being "fat" and that if he lost weight he would not have back problems.
- In 03/2015, EE's HCP advised he needed surgery and should be on light duty until surgery.
- HR sent EE an email advising that his request for accommodation of a helper was unreasonable and advising he could not return to work until fully functional.
- Job description said lifting 80 pounds was essential job function but EE testified he had never had to lift 80 pounds and ER terminated employment while EE was on leave.



Electric Utility

New York Federal Court (10/19/2025)

Disability Discrimination (ADA + NYS & NYC HRL)

- EEs worked as dispatchers of crews during emergencies for electric utility.
- During COVID-19, EEs worked remotely.
- When ER started bring EEs back to the office, 2 EEs requested reasonable accommodations for medical conditions.
  - EE#1: chronic pain and loss of feeling in back and lower extremities
  - EE#2: failed back syndrome, hip surgery-related disability and anxiety disorder
- ER argued that dispatchers at a utility are safety sensitive positions and, therefore, by definition could not be done remotely.
- ER also argued that there was risk of internet connectivity issues.
- ER argued that given the safety sensitive nature, Court should defer to its judgment.
- ER argued that evidence showed that performance problems of EEs generally increased during remote work during COVID-19.
- Court denied summary judgment and jury trial was ordered.

Damages	Amount
Emotional Distress	$775,000
Back Pay	$775,000
Punitive Damages	$2,000,000
Total Damages	**$3,550,000**
EE attorney's fees & costs	**????**

Online Furniture Retailer

Massachusetts State Court (4/27/2026)

Damages	Amount
Emotional Distress	$600,000
Back Pay	$75,000
Punitive Damages	$4,000,000
Total Damages	**$4,675,000**
EE attorney's fees & costs requested	**$930,000**

MA Paid Family and Medical Leave

- EE (age 53) joined ER as senior program manager on 4/1/2019.
- In 8/2019, EE's manager (age 30) put a new younger hire into EE's role and moved EE into a project manager role.
- In 2/2020, EE was given a performance review of "4" (inconsistent performance).
- In 5/2020 when manager was on maternity leave, EE was rated a "3" (meets expectations).
- Once manager returned from maternity leave in 9/2020, manager started giving EE negative feedback.
- Manager told EE she had until 11/6/2020 to improve performance.
- EE told HR that manager was discriminating on basis of age and creating hostile work environment.
- EE took FMLA from 10/30/2020 to 1/27/2021 and leave under MA PFML from 1/1/2021 to 6/1/2021.
- In January 2021, ER rated EE a "5" (rarely met expectations).
- Upon return to work, EE now reported to the younger new hire and was placed on a 45-day PIP, and then terminated.



Regional Hospital

Michigan State Court (3/12/2026)

FMLA & Michigan State law Sex discrimination

- EE was employed as 2nd year resident in ER's OB/GYN Postgraduate Residency Program.
- ER required her to pass COMLEX Level 3 exam by 12/2020.
- COVID-19 delayed her taking the exam until 9/2020, and she did not pass.
- She began FMLA on 12/7/2020 and gave birth on 12/8/2020.
- In Nov. 2020, ER offered her a 1 month extension to take the exam again in Jan. 2021.
- ER refused to make any other accommodation even though it allegedly offered accommodations to non-pregnant residents who failed the same exam.
- ER expected her to study for and take the exam while on maternity leave.
- EE took exam again in late 1/2021 and learned in late 3/2021 she had not passed.
- ER terminated her in 4/2021.
- EE passed the exam in 6/2021 with high score.
- ER refused to reinstate her.
- Complaint alleged she was a high performing resident with strong evaluations.
- Complaint alleged that other institutions modified their program testing requirements due to COVID-19 disruptions to testing schedule.
- Physician told EE to consider other career avenues since "being a mother made it difficult for her to devote time to the program."

Damages	Amount
Lost future earnings and emotional distress	$10,034,951
EE attorney's fees & costs	???

Railroad Company (the same one!)

Oregon Federal Court (12/1/2025)

ADA & Oregon disability discrimination

- EE, 57 years old, worked for ER for 17 years as brakeman and conductor.
- On 1/22/2019, EE injured his right shoulder outside of work (sustained shoulder dislocation).
- EE obtained physical therapy from 1/28/2019 to 6/26/2019.
- On 4/22/2019, EE's HCP cleared him to RTW without restrictions and opined risk of recurrent dislocation was very low.
- ER's fitness for duty doctor did not examine EE or contact EE's medical providers.
- ER concluded he could not climb ladders because of the risk of re-injuring his shoulder.
- ER removed EE from trainman position permanently.
- ER's doctor said he did not agree with EE's HCP's conclusion that risk of re-injury was l
- ER's doctor said ER had policy that if risk of recurring injury was greater than 1% EE would not be cleared
- ER relied on "direct threat" to safety defense.
- In denying SJ court emphasized very heavy burden of proof and said that ER cannot prevail on this defense just because "some risk exists." Risk must be significant.
- Court also said jury could find that 1% policy was unlawful screening standard.

Damages	Amount
Back pay	$509,849
Front pay	$443,014
Emotional distress	$1,000,000
Punitive Damages	$25,000,000
Total Damages	**$26,952,863**
EE attorney's fees & costs	**$758,829**



Freight brokerage firm

Ohio State Court (March 2026)

Wrongful Death (Ohio State law)

- EE began working for ER on 1/18/2021 and was pregnant when hired.
- On 2/11/2021, EE was hospitalized w/incompetent cervix and preterm labor.
- HCP told diagnosed high-risk pregnancy & advised bedrest/limited activities.
- EE asked manager if she could WFH. Manager asked HR if EE could WFH.
- HR sent EE "Leave of Absence" paperwork. Manager corrected HR about WFH
- HR would not make decision on WFH w/out medical documentation.
- ER placed EE on leave of absence.
- HR rejected HCP letter because (1) no end date for WFH & (2) no medical reason for WFH.
- HR's emailed that EE was "expected physically back in the office on Monday"
- Two hours later, EE provided a 2nd HCP letter with details requested by ER.
- ER denied WFH, and EE worked in the office from 2/22-24/2021.
- On 2/24/2021, EE's manager ultimately overruled HR's denial of WFH.
- Evening of 2/24/2021, EE woke up with cramping and was bleeding.
- EE delivered her baby at hospital.
- Baby was born breathing but died that same day.

Damages	Amount
Compensatory Damages	$25,000,000
Jury apportioned fault 90% to ER and 10% to EE	Multiply by .90
Total Damages	**$22,500,000**
EE attorney's fees & costs	**Not applicable**



Food Distributor & Restaurant Supplier

California State Court (1/30/2026)

FMLA, Disability Discrimination (CA law), Whistleblower retaliation

- 5 EEs sued ER alleging that after they complained about unsafe and illegal work-place practices, including violations of federal and state motor vehicle driving limits, meal and rest break laws, and more, they were subject to retaliation.
- EE#1 claimed was followed, filmed, and forced to resign or face termination. ($10,464,478)
- EE#2 claimed was suspended without explanation and then terminated. ($10,442,627)
- EE#3 claimed his FMLA leave was wrongfully denied, he was improperly followed by managers and terminated for "stealing time" when smoking on a break. ($11,468,000)
- EE#4 asserted claims of disability discrimination as well as FMLA and alleged he was falsely accused of stealing time when he took breaks to deal with migraine headaches for which he had intermittent FMLA. ($9,820,757)
- EE#5 asserted he was physically confronted by a manager which caused him stress-related health issues and ultimately resigned for his own health. ($10,265,000).

Damages (all 5 combined)	Amount
Back pay	$243,862
Past Emotional Distress	$16,142,000
Future Emotional distress	$14,750,000
Punitive Damages	21,325,000
Total Damages	**$52,460,862**
EE attorney's fees & costs	**???**



Questions?

This content is not to be considered legal advice. We recommend Clients speak with legal counsel specializing in labor and employment law.
In all states, except New York, Absence services are provided by Sun Life Assurance Company of Canada (Wellesley Hills, MA). In New York, Absence services are provided by Sun Life and Health Insurance Company (U.S.) (Lansing, MI).
Absence services are not insurance and are not legal advice.

AMSPPT-12001-b

#4495434699 6/26 (exp. 6/28)

