



# FMLA & ADA Trials

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# 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 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
\$52,540	?????	Illinois
\$55,750	\$170,960	Kansas
\$65,230	\$274,334	Arizona
\$75,000	\$458,245	Pennsylvania
\$175,793	\$295,000	Massachusetts
\$278,721	\$119,268	Illinois
\$320,000	\$413,737	Washington
\$321,573	\$748,000	Pennsylvania

Damages	EE Attorney's fees	State
\$581,428	\$184,000	Connecticut
\$778,694	\$240,199	Missouri
\$1,610,000	????????	New Jersey
\$1,675,000	???????	New York
\$1,735,000	???????	New York
\$3,669,000	\$221,382.71	Alabama
\$6,450,000	????????	Missouri
\$36,100,000	?????	Nebraska



## FMLA

- EE suffered from severe migraines with auras.
- He began working for ER in 2015.
- In June 2018, he accumulated excess attendance/absence points.
- In July 2018 he went to HCP who filled out and submitted FMLA paperwork.
- ER terminated his employment.
- At trial, EE testified he suffered from migraines his whole life and that he treats them by drinking ginger root tea, taking Tylenol and avoiding foods that trigger migraines.
- Jury returned verdict of \$20,000 on FMLA interference for EE.
- Judge reversed verdict on ground EE did not prove he had FMLA serious health condition.
- EE did not prove a chronic condition because he did not prove that he obtained treatment from an HCP on a periodic basis.
- Only one HCP visit in July.

**The ER won . . . . But did they really win?**



## State Transportation Authority

Penn. Federal court  
11/2/2023



Damages*	Amount
Past wages	\$20,000
Judge Reversed the Verdict	(-\$20,000)
<b><i>Employer still had to pay their own lawyers' fees!</i></b>	

## FMLA

- EE was employed as maintenance technician for ER.
- EE had injured his back before joining ER when he fell from ladder.
- A year after he started working for ER, he applied for intermittent leave.
- HCP certified that he had chronic neck and low back pain, small disc herniation, myofascial back pain relieved by rest.
- Approved for intermittent leave for flare-ups once per month lasting 1-2 days per flare-up.
- EE's manager made comments to co-workers that EE "was on his last leg and digging his own grave, and if he continued calling off, he was going to lose his job."
- ER ultimately fired EE and argued he was insubordinate and had a bad attitude.



## Metal Finishing + Plating business

Illinois federal court  
8/25/2023



Damages*	Amount
Past wages	\$52,540
FMLA liquidated damages*	???
EE attorney's fees*	???
• <i>Plus ER's Attorney's Fees</i>	

EE and ER settled case confidentially before court ruled on FMLA liquidated damages or EE attorney's fees

## ADA – Associational Discrimination

- EEs were father and son who worked as Lube Technicians.
- On 3/29/22, EEs' wife/mother had a hemorrhagic stroke and was hospitalized.
- EE told manager that his wife had suffered a traumatic brain bleed and was at risk for dying if she did not wake up.
- EE kept manager informed, advising it may take a while before EE's wife woke up and was on feeding tube and respirator.
- On 4/7/24, EEs' manager informed the Chief Operating Officer that EEs' wife/mother had had a stroke and was still unresponsive.
- COO said that these EEs just need to "put their big boy pants on and get back to work." COO said the EEs need to be terminated and if the manager would not do it, he would do it.
- On 4/8/24, manager fired the father "with tears in his eyes" and fired the son the next day.
- Manager told COO he did not feel comfortable saying the termination was due to absenteeism and COO told him to just say they left without notice.

**Oil Change Facility**  
Kansas federal court  
5/3/2024



Damages*	Amount
Past wages	\$5,750
Compensatory Damages	\$30,000
Punitive damages	\$20,000
EE attorney fees	\$170,960
<b>TOTAL</b>	<b>\$226,710</b>
<i>Plus ER's Attorney's Fees</i>	

## FMLA

- June 2017: EE submitted request for intermittent FMLA leave for flare ups due to her own serious health condition.
- March 2018: EE inquired about a promotion and was told she not eligible because she was not meeting her quarterly goals.
- April 2018: ER observed suspicious patterns of FMLA usage, including that EE would request FMLA leave when her daughter visited her from out-of-state and also took FMLA leave on Fridays, after weekends, and on 6/29, her birthday.
- At one point, EE's manager asked her to bring in doctor's note for an FMLA intermittent absence.
- 7/3/18: ER sent medical certification to EE's HCP and asked HCP to verify if the prior medical certification was accurate and to verify that EE's recent absences were related to her medical condition.
- 7/13/18: EE placed on Performance Improvement Plan (PIP)
- 7/16/18: EE texted her manager that her daughter was ill, she was trying to arrange childcare and would come to work if she could find childcare.
- That afternoon, ER terminated her employment for violating a company policy that required permission for an absence when the EE had no PTO available.

## Healthcare Staffing Company

Arizona federal court  
4/1/2024



Damages*	Amount
Past wages	\$65,230
EE attorney fees + Costs	\$274,334
<b>TOTAL</b>	<b>\$339,564</b>
<i>Plus ER's Attorney's Fees</i>	

### FMLA and PA Human Relations Act (pregnancy discrimination)

- ER hired EE in August 2016 right out of college.
- On 6/28/19, EE informed manager she was pregnant, whom she said looked “visibly shocked.”
- On 7/15/19, manager gave her a mid-year performance review that said she was Below Expectations.
  - She had never before received a mid-year.
  - No other EE was given a mid-year.
- On 7/29/19, manager and HR told her she was fired as part of a role elimination. They replaced her with a different role and said she was not qualified.
- ER made an “offer of judgment” of \$75,000 which EE accepted.

## Insurance Company

Pennsylvania federal court

1/2/2024

Damages	Amount
Offer of Judgment	\$75,000
EE attorney’s fees + costs	\$438,245
<b>Total</b>	<b>\$533,245</b>

A00

Plus ER attorney’s fees



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**AOO** Found this typo - Had said \$458,245 -note includes copy and paste from decision  
Abigail O'Connell, 2024-07-29T22:55:22.094

## MA Disability Discrimination law

- EE worked as nurse for medical center.
- In 2007 EE submitted doctor's note that she could not work overtime due to her interstitial lung disease.
- EE's manager temporarily excused her from working overtime.
- In 7/2009, EE went on leave and then underwent surgery and exhausted her FMLA.
- When EE was ready to return to work in 9/2009, she applied for positions.
- Her HCP advised she could work a normal daytime shift but could not work overtime and could not work a night shift.
- ER concluded EE was not eligible for a nurse position because the ability to work overtime was an essential job function.
- EE initiated grievance under CBA and with the MCAD for discrimination.
- MCAD concluded that working overtime was not an essential job function.
- Court noted MA law more protective of EE than ADA



## Medical Center MA Comm'n Against Discrimination (MCAD)

Damages*	Amount
Past wages	\$85,793
Emotional Distress Damages	\$45,000
MA prejudgment Interest at the rate of 12% per year from 1/17/20* (est).	\$45,000 (\$15,000 X 3 years)
EE attorney fees and costs	\$295,000
<b>TOTAL</b>	<b>\$ 470,793</b>

- Plus EE attorney's fees for court challenges to MCAD Decision
- Plus ER's Attorney's Fees

## ADA

- EE worked as Deputy Sheriff and suffered from progressive deterioration of left hip that required three surgeries and hip replacement.
- EE requested as an accommodation that he be permitted to wear Under Armour boots which had soft soles and that he be assigned a Ford Explore SUV as his county car as it had a lower platform.
- ER denied accommodation requests.
- EE alleged that ER retaliated against him after he returned from medical leave by:
  - Requiring him to do more extensive training than others
  - Threatening to discipline him for wearing soft-soled boots when others were not disciplined
  - Refusing permission to exchange vehicles with another deputy
  - Assigning him an unsafe vehicle with mechanical problems.
  - Refusing his request to be appointed field training officer



## County Government

Illinois federal court  
6/22/2023



Damages*	Amount
Damages Awarded	\$750,000*
Settlement: Agreed Reduction of damages	\$278,721
EE attorney's fees + costs	\$119,268
<b>Total</b>	<b>\$397,989</b>

Plus ER attorney's fees

\*ADA has damages cap of \$300,000

## FMLA + WA PFML

- EE was hired in 2018 as sales engineer and had to make sales calls and write reports of calls (ROC).
- 2018: manager talked to EE about need to write more ROCs and told him that having no ROC reports is “a death sentence.”
- Feb. 2019: ER placed EE on 60-day performance improvement plan (PIP) for not meeting expectations for writing ROCs.
- Jan. 2020: EE provided with 2019 fiscal year end review that addressed need to write more ROCs and did not include pay raise.
- EE complained that having to prepare more ROCs combined with his expanded sales territory was causing stress and depression and his doctor recommended he take leave from work.
- EE took leave starting 1/13/2020 for 5 weeks.
- ER was delayed returning to work for 2 weeks in order to get fitness for duty certificate.
- When he returned to work on 4/6/2020, ER advised him that his role was being eliminated due to reduction in force caused by economic pressures of COVID-19.
- He was only sales employee who was terminated rather than furloughed.



# Bearing manufacturer

Washington federal court

10/16/2023

Damages	Amount
Back Wages	\$160,000
FMLA Liquidated Damages	\$160,000
EE attorney's fees	\$378,737
Costs, prejudgment interest + other awards	\$ 35,000
<b>Total</b>	<b>\$733,737</b>

Plus ER attorney's fees



## FMLA

- EE (61 years old) worked as facilities manager.
- On 9/8/2020, EE fell ill and left work early.
- EE was subsequently admitted to hospital for pulmonary embolisms and took 3 weeks of medical leave.
- EE notified ER of his need for leave to recover from embolisms.
- Two weeks after he returned from medical leave, EE was advised his employment was being terminated because his role was being eliminated.
- EE argued at trial that his role was not eliminated, and it was given to an individual more than 25 years younger than him.

## Transceiver manufacturer

Connecticut federal court  
12/8/2023

Damages*	Amount
Lost Wages	\$184,714
FMLA Liquidated Damages	\$184,714
Front Pay (requested)	\$212,000
EE attorney's fees + costs (requested)	\$184,000
<b>Total</b>	<b>\$765,428</b>

Plus ER attorney's fees



## City Government

Missouri State Court

4/30/24

Damages*	Amount
Lost Wages	\$278,694
Future lost wages	\$994,584
Emotional distress	\$ 81,000
Punitive Damages	\$500,000
<b>Total Jury Award</b>	<b>\$1,854,278</b>
<b>Reduced by Missouri Cap on Damages to:</b>	<b>\$778,694</b>
<b>EE attorney's fees + costs</b>	<b>\$240,199</b>
<b>Grand Total</b>	<b>\$1,018,893</b>

Plus ER attorney's fees

### Disability Discrimination (ADA + Missouri law) and Retaliation

- EE was employed by City since 1999 as a maintenance person.
- EE had carpal tunnel and underwent several surgeries.
- She filed for WC and her WC benefits ceased in 10/2015, but she was not cleared to return to work.
- She tried to return to work in spring 2016 but had an aggravation and had to have surgery again 12/2016.
- In 10/2017, HCP cleared EE to return to work, but City would not allow EE to return to work.
- In 3/2018, EE filed a charge of discrimination with EEOC and Missouri Comm'n on Human Rights.
- On 7/16/18, City terminated EE's employment.
- Reasons for termination: Failure to report to work/job abandonment and excessive absences due to medical reasons.



### Disability Discrimination (ADA + Pennsylvania law)

- EE was full-time contract faculty member with ER hired in 2014.
- EE had Multiple Sclerosis and her symptoms worsened in November 2019.
- EE was on leave from January 2020 to April 2020.
- Her HCP recommended she teach a reduced course load.
- ER claimed it was essential function that she work 24 credits annually, with 12 credits in Fall Semester and 12 credits in Spring Semester.
- EE proposed working the 24 credits over Fall, Spring and Summer terms.
- ER offered EE option to work part-time but part-time employees were not eligible for health insurance or disability insurance benefits.
- ER denied her request for modified schedule and terminated employment.

## University

Pennsylvania federal court  
5/17/2023



Damages*	Amount
Lost Wages	\$71,573
Emotional distress	\$ 200,000
Punitive Damages	\$50,000
EE attorney's fees + costs	\$748,000
<b>Total</b>	<b>\$1,069,573</b>

Plus ER attorney's fees

### ADA and FMLA

- EE hired in 2017 to work as Night Supervisor in Warehouse
- In 1/2019 EE told manager he needed back surgery, but manager replied that “no one was getting time off.”
- EE had surgery on 2/25/2019 and HCP released him to return to work on 3/25/2019 with lifting and other restrictions.
- ER did not notify EE of his FMLA rights and leave was not designated as FMLA leave.
- Manager increased EE's workload when he returned to work.
- On 4/15/2019, EE called in sick due to severe back pain and the V.P. of Operations sent email that EE was on a “very short leash.”
- When EE returned to work, EE requested accommodation to use walking cane or crutches and that request was denied.
- EE also advised that he might need additional surgery and 20 minutes later manager gave EE a Final Written Warning for alleged safety violations by his subordinates.
- EE pointed out he had never been given a prior warning and EE testified manager edited document to be just a verbal counseling.
- Subsequently, manager accused EE of falsifying the change to the warning and fired him.

## Warehouse Management

Alabama federal court  
6/2/2023



Damages*	Amount
Lost Wages	\$1,016,000
Emotional Distress	\$ 600,000
Punitive Damages	\$1,632,000
FMLA liquidated damages	\$ 200,000
EE attorney's fees + costs	\$ 221,000
<b>Total</b>	<b>\$ 3,669,000</b>
<b>Judge reduced verdict (ADA Statutory cap)</b>	<b>\$1,193,000</b>

Plus ER attorney's fees



## New Jersey Law Against Discrimination

- EE, who was member of Jewish faith and suffered from anxiety, was employed as Recreation Supervisor.
- EE alleged ER engaged in religious discrimination by:
  - Yelling at her for needing the Jewish holidays off to pray;
  - Making derogatory remarks about Jewish workers;
  - Banning her from the holiday tree lighting event because she was Jewish; and
  - Rescinding her employee discount for her son to attend the township's pre-school program while children of non-Jewish employees received the discount.
- EE also alleged she was subject to discrimination because of her disability.
- EE took leave twice under FMLA due to stress and anxiety caused by religious discrimination.
- EE alleged that during her FMLA leave, her office was taken away and her belongs were sent to her home.
- EE suffered from: PTSD; moderate depressive disorder; generalized anxiety disorder; panic disorder; migraines; GI issues; and hives.

## New Jersey Township

New Jersey State Court  
5/25/2023



Damages*	Amount
Lost Wages	\$110,000
Emotional Distress	\$500,000
Punitive damages (by jury)	\$1,000,000
EE attorney's fees	\$???
<b>Total</b>	<b>\$1,610,000</b>

Plus ER attorney's fees



## ADA

- This lawsuit was brought by EEOC on behalf of applicant for role who had a hearing impairment.
- Applicant applied for role believing she could effectively lip read and was otherwise qualified.
- ER called applicant to discuss her application and applicant returned call using a telecommunications relay service that uses operator to facilitate calls with people with hearing disabilities.
  - Operator types message to recipient who, in turn, types a message in replay.
- While applicant never “disclosed” hearing impairment, court concluded ER became aware of hearing disability because of the relay communication.
- HR EE who answered call said the EE responsible for job was not available but applicant would receive a call back.
- ER failed to follow-up.
- ER hired person who was not hearing-impaired.

## Distribution Center

New York federal court  
2/9/2024



Damages*	Amount
Lost Wages	\$25,000
Emotional Distress	\$150,000
Punitive damages (by jury)	\$1,500,000
EE attorney's fees	\$???
<b>Total</b>	<b>\$1,675,000</b>

Plus ER attorney's fees

### ADA, New York State Human Rights Law (HRL) and New York City HRL

- EE was attorney for law firm and developed problem with vision.
- EE was diagnosed with Leber's hereditary optic neuropathy. Condition was permanent, EE had become almost completely blind.
- EE asked law firm to purchase tools to help with her vision, including specialized glasses, a magnifying glass and computer software.
- ER refused and EE purchased items on her own.
- Head of Law firm fired her and said:
  - "I don't have a choice. I don't know how you'll handle cases with your condition."
  - "I would be happy to hire you back if your condition somehow improved."
- ER fired her for performance (including attendance) but EE testified head of law firm said he had not seen any decline in her work performance.
- EE offered proof after she was fired, she worked successfully as attorney



No statutory cap on damages under NY law!

## Law Firm

New York federal court  
2/16/2023



Damages*	Amount
Lost Wages	\$535,000
Front Pay	\$300,000
Emotional Distress,	\$300,000
Punitive Damages	\$600,000
EE attorney's fees	\$???
<b>Total</b>	<b>\$1,735,000</b>

Plus ER attorney's fees

## Pregnancy Discrimination Act

- Shortly after EE was promoted to Charge Nurse, she told supervisors she was pregnant and would be taking maternity leave.
- EE alleged that her supervisors began treating her less favorably than others and made discriminatory remarks about her pregnancy (including that EE cared more about her family than her job and, after she had a panic attack, that EE could not handle job because she was pregnant).
- ER decided to terminate EE's employment because she allegedly made a profane comment about not needing to promptly get pain medication for a patient ("I don't give a f#ck . . . he can wait").
- ER also relied upon another comment that EE made after she had a panic attack at work that she "hated" being a nurse and did not know if she was coming back to work after she had her baby.
- ER did not interview EE before terminating her and, at trial, she denied making profane comment.
- EE introduced evidence that others were not terminated for similar comments/behavior and the reasons cited were pretext for discrimination.



## Hospital/Medical Center Indiana Federal Court 3/9/2023



Damages*	Amount
Compensatory Damages – Emotional Distress	\$500,000
Punitive damages (by jury)	\$5,000,000
EE attorney's fees	\$???
<b>Total</b>	<b>\$5,500,000</b>

Plus ER attorney's fees

*Judge set aside verdict and ordered new trial*

**ADA, Missouri Human Rights Act, Missouri Worker’s compensation law**

- EE was hired as District Service Manager (DSM) in 2012 and supervised other EEs 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, EE was treated with steroid injections which enabled him to work.
- ER assigned a “helper” to go on routes with 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 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.

**Textile Corporation + Uniform Delivery**  
 Missouri Court of Appeals  
 5/28/2024



Damages*	Amount
Compensatory Damages	\$150,000 for each count
Punitive damages (by jury)	\$2,000,000 for each count
EE attorney’s fees	\$???
<b>Total</b>	<b>\$6,450,000</b>

Plus ER attorney’s fees



# Commercial Transportation Co.

Nebraska federal court  
1/10/2024



## ADA

- This lawsuit was brought by the EEOC on behalf of hearing-impaired applicant who applied for role as driver.
- ER concluded there was no way trainer could safely communicate with deaf driver.
- Jury rejected this and found purported concern about safety was a pretext for discrimination.

Damages*	Amount
Lost Wages (by jury and by court)	Jury: \$25,000 Court: \$35,682
Emotional Distress	\$75,000
Punitive damages (by jury)	\$36,000,000
JUDGE reduced Emotional Distress and Punitive damages by statutory cap	\$300,000
EE attorney fees	????
<b>Total</b>	<b>\$335,682.25</b>

Plus ER attorney's fees



Thank you!

Questions?