

THE UNIVERSITY OF MICHIGAN
REGENTS COMMUNICATION
ITEM FOR INFORMATION

Subject: Litigation

September 2018

NEW CASES

Tanya Wallace v Board of Regents of the University of Michigan. Court of Claims. (Judge Stephen Borello) (Filed June 27, 2018)

Plaintiff brings a breach of contract claim against the University out of an alleged denial of her long-term disability benefits. Plaintiff seeks an amount in excess of \$25,000, an accounting from Defendant as to Plaintiff's rate of LTD benefits, an Order instructing Defendant to file the LTD Plan and all documents constituting Plaintiff's claim file, together with interest, costs and attorney's fees.

Charles Garry Javizian, and Patricia Javizian v Wayne County, Wayne County Medical Examiner, Carl J. Schmidt, MD jointly and severally. United States District Court, Eastern District of Michigan. (Judge Laurie J. Michelson) (Filed August 2, 2018)

This lawsuit was filed by parents of a deceased person claiming that the Wayne County Medical Examiner's Office failed to timely identify the body and notify the family that the body was in the county morgue. Plaintiff alleges due process violations and gross negligence. Plaintiff claims compensatory, exemplary and punitive damages, together with interest, costs and attorney's fees.

Brennan Cain v University of Michigan-Dearborn, University of Michigan. United States District Court, Eastern District of Michigan. (Judge Victoria A. Roberts) (Filed August 5, 2018)

Plaintiff is a former Secretary Intermediate for Dearborn's CASL department and claims she was terminated due to her alleged disability in violation of the ADA. She also claims she suffered retaliation in violation of the FMLA. Plaintiff seeks damages, interest, costs and attorney's fees. Defendant filed a motion to dismiss.

Lana Tyrrell v. University of Michigan, Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Filed August 1, 2018) **AND** Lana Tyrrell v Teri Grieb, Valerie Hill, Melissa Dyson, Jessica Durkin, and Carrie Peterson. Court of Claims. (Judge Christopher M. Murray) (Filed July 31, 2018)

Plaintiff is a former employee of the University's Unit for Laboratory Animal Medicine ("ULAM") and claims she was terminated due to her alleged disability. Plaintiff's two-count complaint in the Washtenaw County Circuit Court includes violations of the PWDORA and retaliation. Plaintiff seeks in excess of \$25,000, interest, costs and attorney's fees. On September 6, 2018, Defendant filed a motion for summary disposition.

CASE UPDATES

Don M. Bosco, Personal Representative of Estate of Heping Zhao v Ameer Raof. Washtenaw County Circuit Court. (Judge Timothy Connors) (Filed March 22, 2017)

Plaintiff, Don M. Bosco, has been appointed as Personal Representative of the Estate of Heping Zhao by the Probate Court of Washtenaw County. Plaintiff claims that as a result of wrongful acts by former Michigan employee Defendant Raof, Zhao suffered injuries resulting in his death. Plaintiff seeks economic and non-economic damages, together with costs, interest and attorney's fees. On May 22, 2017, Defendant filed a motion to dismiss and for summary disposition that was denied. On August 17, 2017, Defendant-Appellant filed a delayed application for leave to appeal that was denied. Defendant filed a second motion to dismiss on alternative grounds that was denied on July 16, 2018. On July 25, 2018, Defendant-Appellant's filed an application for leave to appeal.

Rebecca Foster v The University of Michigan, The Board of Regents of the University of Michigan, and Alison Davis-Blake, in her official capacity as Dean of the Ross School of Business at the University of Michigan. United States District Court, Eastern District of Michigan. (Judge Bernard Friedman) (Filed May 10, 2017)

Plaintiff is a 2014 graduate of the Executive Masters of Business Administration program (“EMBA”) at the University of Michigan’s Stephen M. Ross School of Business. She filed a one-count complaint claiming a violation of Title IX, alleging that, during her time in the EMBA program, she was stalked and harassed by a fellow EMBA student. Plaintiff claims Defendants failed to provide a prompt and equitable response to Plaintiff’s complaints. Plaintiff seeks repayment for all tuition and related expenses; payment of expenses incurred as consequence of the alleged harassment and retaliation; damages for deprivation of equal access to the educational benefits and opportunities provided by Defendants; damages for lost economic opportunity; and damages for past, present, and future emotional pain and suffering, and ongoing and severe mental anguish. Plaintiff also seeks pre- and post-judgment interest, costs, and attorney’s fees. On March 17, 2017, Plaintiff filed a motion for pseudonymous status or in the alternative to seal the court file. This motion was denied on May 2, 2017. On May 10, 2017, Plaintiff filed a revised Complaint adding Plaintiff Rebecca Foster’s name. On May 24, 2017, Defendant’s filed a motion to dismiss that was denied as moot after Plaintiff filed a first amended complaint. On July 11, 2017, Defendant’s filed a motion to dismiss Plaintiff’s first amended complaint that was denied on November 7, 2017. On August 3, 2018, Defendants filed a motion for summary judgment.

John Doe v. University of Michigan, Board of Regents of the University of Michigan, Pamela Heatlie, Robert Sellers, Martin Philbert, Erik Wessel, Laura Blake Jones, E. Royster Harper, Suzanne McFradden and Paul Robinson. United States District Court, Eastern District of Michigan (Filed June 4, 2018) (Judge Arthur Tarnow)

Plaintiff, a student at the University of Michigan, alleges violations of the University’s Policy and Procedures on Student Sexual and Gender-Based Misconduct and other Forms of Interpersonal Violence (Sexual Misconduct Policy). His five-count complaint includes alleged violations of the Fourteenth Amendment, Title IX, and the Elliott-Larsen Civil Rights Act. Plaintiff seeks equitable relief to include an injunction halting the investigation and decision-making process with regard to the University’s Office for Institutional Equity complaint against Plaintiff, and an injunction prohibiting Defendants from further use of the Sexual Misconduct Policy. Plaintiff further seeks legal relief to include compensatory, exemplary and punitive damages, interest, costs and attorney’s fees. On June 4, 2018, Plaintiff filed an *ex parte* motion to proceed under pseudonym and a motion for temporary restraining order and preliminary injunction. Defendants’ opposition to Plaintiff’s motion for preliminary injunction was filed on June 15, 2018. On July 6, 2018, the Court entered its Order Granting In Part and Denying In Part Plaintiff’s Motion for a Temporary Restraining Order and Preliminary Injunction. Despite Plaintiff’s request for campus-wide changes to the University’s policies and procedures, the Court limited its relief to the ongoing investigation regarding Plaintiff’s alleged misconduct. The Court ordered that as soon as practicable, the University shall provide Plaintiff with the opportunity for a live hearing in accordance with the procedures set forth in the Statement of Student Rights and Responsibilities. On July 25, 2018, Defendants filed a notice of appeal and motion to stay pending appeal. On August 22, 2018, the court granted Defendants’ motion for a stay.

Stacy Deitert v. Board of Regents of the University of Michigan. Washtenaw County Circuit Court. (Judge Carol Kuhnke) (Served June 23, 2017)

Plaintiff was a patient services associate who claims she was suffering from various medical maladies and that her request for an accommodation to file for long-term disability and extended sick leave was denied. Plaintiff alleges violations of the Family Medical Leave Act and the Person’s With Disabilities Civil Rights Act. Plaintiff requests an Order awarding her compensatory damages, punitive damages, costs and attorney’s fees. On September 18, 2017, an Order of partial voluntary dismissal with prejudice was entered dismissing the FMLA claim and any claim for punitive damages or equitable relief under the PWDCRA claim. Defendant filed a motion for summary disposition.

T'Nea Jenkins v The Regents of the University of Michigan Health System, Carelynn Flaucher in her official capacity, Jennifer Stalmack in her official capacity, Sue Kofflin in her official capacity, Linda Gobeski in her official capacity, jointly and severally. United States District Court, Eastern District of Michigan. (Judge Bernard Freedman) (Served December 14, 2016)

Plaintiff was a Patient Services Assistant in the Women's Birth Center and claimed that, after winning a grievance reversing her discharge, she was subjected to retaliatory conduct, including heightened supervision, improper performance evaluations, and denial of transfer requests. Plaintiff claimed she has suffered emotional distress and has incurred and will continue to incur medical expenses for treatment. She further claimed loss of earnings, benefits, and job opportunities. Plaintiff sought compensatory damages, lost wages and benefits, punitive damages, interest, costs, and attorney's fees. On January 5, 2018, Defendants filed a motion for summary judgment that was granted on March 9, 2018. Plaintiff filed a notice of appeal. On July 27, 2018, the Court dismissed the appeal for failure to file a corrected brief. On July 27, 2018, Plaintiff-Appellant filed a motion to re-open and to file an amended brief that was granted on August 1, 2018.

Speech First, Inc. v Mark Schlissel, et al. United States District Court, Eastern District of Michigan. (Judge Linda V. Parker) (Defendants not yet served)

Speech First Inc. filed an action under the First and Fourteenth Amendments alleging that the Statement of Student Rights and Responsibilities definitions of "harassment" and "bullying" and the University's Bias Response Team's activities are overbroad, chill speech, constitute a prior restraint on speech, and are void for vagueness. Plaintiff seeks a declaratory judgment, injunctive relief, and costs and expenses, including attorney's fees. On August 6, 2018, Plaintiff's motion for preliminary injunction was denied. On August 13, 2018, plaintiff filed a notice of appeal to the Sixth Circuit.

Yusong Gong v The University of Michigan & Richard Simon, Michelle Henderson, and Timothy Lynch (sic). United States District Court, Eastern District of Michigan. (Judge Mark A. Goldsmith) (Served on August 2, 2017)

Plaintiff filed a three-count complaint alleging she was terminated in violation of the Americans with Disabilities Act ("ADA"), and in retaliation for making allegations against Defendants and filing EEOC charges. Plaintiff seeks an Order requiring Defendant to modify its policies, practices, and procedures in compliance with the ADA, eliminate the application of "best qualified" standard when considering reassignments as a reasonable accommodation, and implement ADA training. Plaintiff also seeks back pay, front pay, medical expenses, back benefits, and compensatory damages. On August 23, 2017, Defendants filed a motion to dismiss that was granted and denied in part. Defendants filed a motion for summary judgement.

CASE RESOLUTION

Melissa Beert v. University of Michigan Board of Regents and Lisa Pryzbylski, in her official capacity. United States District Court, Eastern District of Michigan. (Judge Robert H. Cleland) (Served July 2, 2018)

Plaintiff was a patient services assistant at the University's School of Dentistry and claimed she was terminated due to her pregnancy. Her three-count complaint included pregnancy harassment, retaliation and interference with the Family Medical Leave Act. Plaintiff sought reinstatement, removal of the no-rehire designation, along with compensation for economic losses and non-economic harm, punitive damages, costs and attorney's fees. Settlement was reached between the parties. This case is concluded.

Trevor Le Gassick, as Trustee of the James A. Bellamy Trust, under Trust Agreement dated August 6, 1998, as amended, and as Personal Representative of the Estate of **James Bellamy**, Deceased v Regents of the University of Michigan and Andrew D. Martin. Probate Court for the County of Washtenaw. (Judge Julia B. Owdziej) (Filed April 23, 2018)

The Trustee of the Bellamy Trust filed a breach of contract claim alleging that the University is not using funds distributed to it in accordance with the intent of the donor. The University submitted a Petition for Instruction to the Washtenaw County Probate Court, requesting the Court determine that the Trustee does not have legal standing to file a claim against the University and seeking an interpretation of the terms of the Trust. Defendants filed a motion for summary disposition that was granted with prejudice on July 19, 2018.

Lynwellyn H. Gudger v University of Michigan Survey Research Center, Dianne Casey, SRO Program Manager, Luis Suarez, SRO Program Manager, Lydia Harper, SRO Team Leader, Mike Etzel, SRO employee and Ethics Attorney, Michelle Marsciano, SRO employee, Yvonne Illic, SRO employee, Sharon Black, SRO employee, Julie J. Gudger, mother of plaintiff. Cook County Circuit Court, Illinois County Department. (Filed February 26, 2018) (Judge Margaret Brennan)

Plaintiff, a former interviewer for the Institute for Social Research, claimed that defendants conspired to violate her civil rights and caused her physical harm and emotional stress. Plaintiff sought in excess of \$3.5 million dollars plus costs. On May 16, 2018, Defendant Harper filed a motion to dismiss that was granted with prejudice on July 27, 2018.

Jill S. Oviatt v University of Michigan Regents, Lee C. Bollinger, and Rick Brandon. United States District Court, Eastern District of Michigan. (Filed June 7, 2018) (Judge Arthur Tarnow)

Plaintiff is a former employee at the University of Michigan. Her five-count complaint included age, race, sex and religious discrimination counts, as well as alleged violations of the Americans with Disabilities Act. Plaintiff sought \$10,000,000, plus penalties. On August 2, 2018, Judge Tarnow dismissed Plaintiff's case.

Julia Pennington v The University of Michigan. Washtenaw County Circuit Court. (Judge Timothy Connors) (Served February 6, 2018)

Plaintiff was a Senior Administrative Assistant in the Department of Radiology and alleged she was terminated from her position because of her age and alleged disability. Plaintiff sought in excess of \$25,000, compensatory damages for lost wages and benefits, emotional distress damages, exemplary and punitive damages, costs, and attorney's fees. On May 17, 2018, Defendant filed a motion for summary judgment that was denied. On August 1, 2018, Defendant filed a claim of appeal. Settlement was reached between the parties. This case is concluded.

Stephen Brian Perkola. The University of Michigan Board of Regents and Anna Grbic, Kevin Williams, Renee Mainor, Reetha Raveendran, Dr. Debra Hutton and Eddie L. Washington, Jr. United States District Court, Eastern District of Michigan. (Judge Sean F. Cox) (Filed September 7, 2016).

Plaintiff, a Police Sergeant at the University of Michigan-Dearborn, claimed he was denied a promotion to the new position of Deputy Chief of Police because of his race and age. His claims included alleged violations of Title VII and the Elliott-Larsen Civil Rights Act. Plaintiff sought in excess of \$75,000, punitive damages, and interest, costs and attorney's fees. Defendants filed a motion for summary judgement that was granted and denied in part on March 28, 2018. Settlement has been reached between the parties. This case is concluded.

Respectfully submitted,



Timothy G. Lynch
Vice President & General Counsel

September 2018