RECENT COURT CASES WITH IMPLICATIONS FOR HIGHER EDUCATION - 2017

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CAVEATS

- **Motions for Summary Judgment**
  - **No dispute about any material fact.**
  - **Movant is entitled to judgment as a matter of law.**
  - **Court views facts in the light most favorable to non-movant.**

2

CAVEATS

- **12(b) motions**
  - **Use pleaded facts only.**
- **Trials**
  - **Court or jury determines facts.**
- **May be more recent history.**

3

U.S. SUPREME COURT

4

Trinity Lutheran v. Comer 137 S. Ct. 2012 (2017)

- **Missouri scrap tire program offered recycled tire playground surfaces.**
- **Church pre-school applied – Denied because controlled by a church.**

5

Trinity Lutheran v. Comer 137 S. Ct. 2012 (2017)

- **School sued, alleging denial of free exercise of religion.**
- **Held: Denial of church's grant application was denial of church's free exercise rights.**

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Trinity Lutheran v. Comer
137 S. Ct. 2012 (2017)

- Held: Denying a benefit generally available to other non-profits, solely because of religious identity, imposes a penalty on the free exercise of religion.

7

Trinity Lutheran v. Comer
137 S. Ct. 2012 (2017)

- Lesson learned:
  - More funding opportunities for religious schools.

8

Trump v. International Refugee Assistance Project
137 S. Ct. 2080 (2017)

- Executive order suspended, for 90 days, entry from 6 predominantly Muslim countries; suspended for 120 days Refugee Admissions Program; and decreased refugee admissions by half.
- Nationwide TRO, then preliminary injunction.

9

Trump v. International Refugee Assistance Project
137 S. Ct. 2080 (2017)

- Held: Agreed to hear case, except preliminary injunctions stayed to extent prevented enforcement of 90-day suspension of those without any bona fide relationships with U.S. person or entity.

10

Trump v. International Refugee Assistance Project
137 S. Ct. 2080 (2017)

- Preliminary injunctions stayed to extent prevented enforcement of annual limit on refugee admissions without any bona fide relationships with U.S person or entity.

11

Trump v. International Refugee Assistance Project
137 S. Ct. 2080 (2017)

- Court balanced the equities: harms to applicant and U.S. and interests of public at large.
- When executive order expired, court vacated the judgment and remanded to 4th Circuit to dismiss as moot.

12

Trump v. International Refugee Assistance Project 137 S. Ct. 2080 (2017)

- **Lesson learned:**
  - **Immigration issues are still in flux.**
  - **Legal status vs. political sentiment.**

13

Deferred Action for Childhood Arrivals (DACA) Cases

- **DACA**
  - **Trump winding down DACA.**
  - **California and New York judges order Trump administration to let DACA participants renew.**
  - **DC judge ordered DACA participants can renew and government must process new applications.**

14

Deferred Action for Childhood Arrivals (DACA) Cases

- **9th Cir. and 2nd Circuit set to review DACA.**
- **Texas, Louisiana, Alabama, Arkansas, Nebraska, South Carolina, and West Virginia filed lawsuit to end DACA.**

15

Advocate Health Care Network v. Stapleton 137 S. Ct. 1652 (2017)

- **Employee Retirement Income Security Act sets rules for pension plans, but exempts church plans.**
- **"Church plan" now defined as: plan established by a church for its employees, including plan maintained by an organization, the principal purpose of which is administration or funding of the plan, if the organization is controlled by a church.**

16

Advocate Health Care Network v. Stapleton 137 S. Ct. 1652 (2017)

- **Employees of church-affiliated hospital sued pension plans, alleging ERISA rules should apply because plans not established by a church.**
- **Held: Plan maintained by a principal purpose organization controlled by a church is a "church plan" exempt from ERISA.**

17

Advocate Health Care Network v. Stapleton 137 S. Ct. 1652 (2017)

- **Lesson learned:**
  - **Religious university not bound by ERISA.**

18

Matal v. Tam
137 S. Ct. 1744 (21017)

- Lanham Act federal trademark law prohibits trademarks for marks that disparage living or dead persons, institutions, and beliefs.

19

Matal v. Tam
137 S. Ct. 1744 (2017)

- Rock group "The Slants," to reclaim the derogatory term to drain its denigrating force, sought trademark.
- Patent and Trademark Office denied trademark.

20

Matal v. Tam
137 S. Ct. 1744 (2017)

- Tam sued, alleging the nondisparagement portion of the law violates First Amendment free speech clause.
- Tam alleged that granting a trademark makes the trademark government speech, and government must be viewpoint neutral.

21

Matal v. Tam
137 S. Ct. 1744 (2017)

- Held: Nondisparagement clause of trademark law is unconstitutional.
- Trademarks are private, not government speech.

22

Matal v. Tam
137 S. Ct. 1744 (2017)

- Best quote:
  - "If trademarks become government speech when they are registered, the Federal Government is babbling prodigiously and incoherently."

23

Matal v. Tam
137 S. Ct. 1744 (2017)

- Lesson learned:
  - Huge expansion of trademarks.

24

Gloucester County School Board v. G.G.
137 S. Ct. 1239 (2017)

- **Dept. of Education's January 2015 guidance allowed restroom access based on gender identity.**
- **Title IX prohibits sex discrimination, but allows equal but separate toilet, locker room, and shower facilities based on sex.**
- **GC School Board – Use restroom consistent with birth sex.**

25

Gloucester County School Board v. G.G.
137 S. Ct. 1239 (2017)

- **Transgender High School student sued school board to allow him to use boys' restroom, which he did for 7 weeks before school board banned it and ordered private facilities.**
- **Sued school board and 75 other defendants in multiple states.**

26

Gloucester County School Board v. G.G.
137 S. Ct. 1239 (2017)

- **District court upheld school's position**
- **Fourth Circuit Court of Appeal reversed the decision because Title IX regulations do not address transgender status.**
- **Therefore, Dept. of Ed's interpretations control.**
- **Appealed to Supreme Court.**

27

Gloucester County School Board v. G.G.
137 S. Ct. 1239 (2017)

- **January 2017 - New president.**
- **February 22, 2017 - Dept. of Education on issues new guidance.**
- **March 6, 2017 - U.S. Supreme Court vacated and remanded for consideration of new Dept. of Education guidance.**

28

Gloucester County School Board v. G.G.
137 S. Ct. 1239 (2017)

- **Lesson learned:**
  - **Law regarding transgendered students still in flux.**
  - **Political climate may influence ultimate court decision.**

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PENDING BEFORE THE U.S. SUPREME COURT

30

FIRST AMENDMENT ISSUES

- Flowers
- Wedding cakes
- Notices about abortion at pregnancy centers

31

FIFTH CIRCUIT COURT OF APPEALS

32

Pham v. Blaylock 2017 WL 4679261 (5th Cir. 2017)

- Pharmacy 2nd year student caught looking at student's computer during test.
- Hearing: Zero on test and probation for cheating.

33

Pham v. Blaylock 2017 WL 4679261 (5th Cir. 2017)

- Pharmacy 3rd year student – did not stop writing at end of test; papers found under test.
- Hearing: Expelled for <u>using</u> unauthorized materials. Procedural errors.

34

Pham v. Blaylock 2017 WL 4679261 (5th Cir. 2017)

- 2nd hearing: Expulsion
- Appeal to Dean – Expulsion for <u>possession</u> <u>of</u> unauthorized materials.

35

Pham v. Blaylock 2017 WL 4679261 (5th Cir. 2017)

- Pham sued – TRO and injunction denied and case dismissed.
- Pham appealed to 5th Circuit.

36

Pham v. Blaylock
2017 WL 4679261 (5th Cir. 2017)

- Held: Due process required = notice and hearing.
- Rule banned "use" and "possession" of unauthorized materials, so process OK.

37

Pham v. Blaylock
2017 WL 4679261 (5th Cir. 2017)

- Writ of Certiorari filed with U. S. Supreme Court.
- Cert. denied.

38

Pham v. Blaylock
2017 WL 4679261 (5th Cir. 2017)

- Lesson learned:
  - Notice of allegations in discipline proceedings should be as broad as possible.

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Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- "Strong liberal female" Greek Orthodox math professor complains of hostile environment created by Muslim department chair.
- Allegations: Interferences in classes, denied sabbatical request because she is "incapable of writing a book," told her to "stop misbehaving," excluded from meetings because "she talked too much for a woman."

40

Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Filed state court case, but did not pursue.
- Health sabbatical in 2011.
- After return, allegations: Banned from committees, online courses, tutoring lab, grant-writing, advanced classes, and meetings; ignored her or cut her off in meetings.

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Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Students and professors corroborated treatment.
- 200 students signed petition.
- Filed EEOC charge for sex discrimination.

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Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Sued – Sex, race, national origin, and religion discrimination in 2013.
- Alleged Department Chair self-described as "radical Muslim" and said "Muslins will rise to kill all Christians."

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Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Trial court dismissed all claims.
  - Did not exhaust race, religion, and national origin claims with EEOC.
  - Excluded all actions over one year old.
  - Insufficient evidence of hostile environment.
  - Could not prove retaliation for state case.

44

Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Appealed to Fifth Circuit.
- EEOC filed brief in support of continuing violation doctrine – As long as filed while one act is timely, entire period of hostile environment may be considered.
- Prior Fifth Circuit standard – When Plaintiff put on notice of violation.

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Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Held: Professor can use conduct more than one year old to support hostile environment claim under continuing violation doctrine.

46

Heath v. Southern University
850 F.3d 731 (5th Cir. 2017)

- Lesson learned:
  - Seek to resolve ongoing issues.
  - Old issues will now come in; statute of limitations will not protect institution for ongoing violations.

47

Edionwe v. Bailey
860 F.3d 287 (2017)

- Dietetics tenured professor hired in 1994 by UT-Pan American
- 2015 – UTPA and UTB abolished to create UT-Rio Grande Valley.
- Legislature directed hires of as many employees of UTPA and UTB "as is prudent and practical."

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Edionwe v. Bailey
860 F.3d 287 (2017)

- Tenured faculty terminated and reapplied.
- Offered jobs to tenured faculty who timely completed all forms; open for four weeks.

49

Edionwe v. Bailey
860 F.3d 287 (2017)

- Edionwe visited Nigeria for one month – returned when hiring window about to open.
- Did not submit application on time, so applied during open enrollment – not hired.

50

Edionwe v. Bailey
860 F.3d 287 (2017)

- Sued, alleging violations of procedural and substantive due process.
- District court dismissed his case.
  - He received all process due.
  - University plan rationally related to legitimate state interest.
  - Defendants immune.

51

Edionwe v. Bailey
860 F.3d 287 (2017)

- Appealed to 5th Circuit.
- Held: While right to employment at UTPA, no right at UT Rio Grand Valley.
  - Legislature did not act arbitrarily and capriciously.
  - Defendants immune.

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Edionwe v. Bailey
860 F.3d 287 (2017)

- Lesson learned:
  - Do not miss deadlines.

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Wetherbe v. Texas Tech
699 Fed. Appx. 297 (5th Cir. 2017)

- 2012 Lawsuit by outspoken information technology professor – Critic of tenure who rejected his own tenure – rejected for deanship and professorship.
- Court ruled for university – Not aware of public speech – employment interview comments not protected speech.

54

Wetherbe v. Texas Tech
699 Fed. Appx. 297 (5th Cir. 2017)

- 2015 – Lawsuit alleged denial of scholarship funds; removal from associate dean position, roundtable and leadership council; removal from MBA course due to first lawsuit and anti-tenure publications.
- District court granted motion to dismiss.
  - Speech on tenure is not a matter of public concern, because tenure is only related to government employment.

55

Wetherbe v. Texas Tech
699 Fed. Appx. 297 (5th Cir. 2017)

- Appealed to Fifth Circuit.
- Held: Articles authored by Wetherbe and others discussing Wetherbee's refusals of tenure or lawsuit on tenure related to matters of public concern.
  - Therefore, speech is protected.

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Wetherbe v. Texas Tech
699 Fed. App. 297 (5th Cir. 2017)

- University and dean immune – 11th Amendment sovereign immunity.
- Reversed and remanded to trial court as to 2 individual defendants.

57

Wetherbe v. Texas Tech
699 Fed. App. 297 (5th Cir. 2017)

- Lesson learned:
  - Speeches related to work not protected, unless on matter of public concern.

58

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- McConnell and Plummer dating.
- McConnell met female student at bar; both got drunk and ejected from bar. Walked to McConnell's dorm and had sex.
- Plummer came to dorm room and found them naked and unconscious on floor. Cursed and posted photo to Facebook.

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Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Dorm room video – Fondling and slapping unconscious female student, profanity and violence directed at her.
- Elevator video – Naked female student lying in hallway, walks with Plummer to elevator and sends to lobby.

60

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Others assisted student in elevator; nurse found injuries = sexual assault.
- Three months later, female student submitted sexual assault complaint.
- Two students met with administration; showed photo and elevator video only.
- University did not discipline.

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Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- 1 ½ years later, university learned of dorm room video.
- University gave notice of allegations.
- Students retained counsel and responded at meetings.
- McConnell remembered nothing but denied sexual assault.
- Plummer said motivated by anger at boyfriend, not attempt to encourage him to assault female.

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Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Equal Opportunity Services and Vice President found:
  - McConnell guilty of sexual assault without consent.
  - Plummer guilty of encouraging sexual assault; electronically recording sexual activity and sharing with others; lewd, lecherous and humiliating comments of sexual nature.

63

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Appealed to four person panel
  - Preponderance of evidence hearings held.
  - Attorneys participated.
  - Videos shown; female student did not appear or testify – she did not remember anything after bar arrival.

64

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Both expelled; disciplinary notations removed from transcripts.
- Both sued, alleging 2013 policy applied to 2011 conduct, due process violations, EOS/Vice President conflicted.
- Southern District of Texas held: process sufficient.

65

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Appealed to Fifth Circuit.
- Fifth Circuit Held:
  - Sexual assault was banned in 2011
  - No cross-examination of victim necessary because she did not remember and videos.
  - Sufficient notice of evidence.
  - Vice President's multiple roles – OK.

66

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Held:
  - Title IX claims of plaintiffs dismissed.
  - No selective enforcement.
  - No deliberate indifference to plaintiffs' rights.

67

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Dissent by Edith Jones:
  University procedures tracked 2011 U.S. Dept. of Ed. guidance, which are not regulations. "These policies were developed by bureaucrats of the U.S. Dept. of Education and thrust upon educators with a transparent threat of withholding federal funding."
- EOS/Vice President held multiple conflicting roles: investigator, testifier, prosecutor, trainer, and advisor.

68

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Objected to process:
  - Female student did not testify.
  - Vice President played multiple roles.
  - Preponderance standard too low – move to clear and convincing standard.
  - Counsel not allowed to fully engage.

69

Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- "Even though these students deserved punishment, they also deserved more protective measures given the seriousness of the charges."

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Plummer v. University of Houston
860 F.3d 767 (5th Cir. 2017)

- Lesson learned:
  - OK to discipline after the fact, when evidence surfaces.
  - Provide full due process, even when you have video.

71

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- Computer lab assistant leaves of absence
  - 2008 – Mother's illness and death – 1 month
  - 2009 – Husband's illness and death – 5 months
  - 2010 – Consistently late to work

72

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **Vincent said "personal issues" and under doctor's care.**
- **Persisted - Required clock-ins, e-mails when late, and office share.**
- **2012 – Late without notice – Confronted in hallway – accused of being late, told her not to lie, and said she's "stealing time."**

73

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **Grieved supervisor's behavior as racist.**
- **EO investigator found no merit but apology ordered.**
- **Vincent then revealed medical care for depression and requested accommodation.**

74

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **ADA accommodation meeting held.**
- **Requested: Later start time, leave time for tardies, fewer distractions.**
- **Received: later start time, different lab assignment, use of available leave OK, report when late arrival.**

75

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **Still tardy 10 times – Disciplined.**
- **Co-worker monitored her behavior.**
- **Grieved, alleging race, sex and disability discrimination, and filed with EEOC.**

76

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **Continued progressive discipline until fired due to late arrivals, failure to communicate, failure to attend department meetings.**

77

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- **Sued, alleging race, sex, disability discrimination and FMLA retaliation.**

78

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- McConnell-Douglas discrimination.
- *Prima facia* showing of discrimination – Yes
- Employer articulates legitimate non-discriminatory reason for adverse employment action – Yes
- Plaintiff proves employer's reason is pretext – No.

79

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- Evidence of pretext
  - Did not fire white male with depression (but he was not late and did not ignore directives.)
  - Held: Discrimination claims dismissed.

80

Vincent v. College of the Mainland
703 Fed. Appx. 233 (5th Cir. 2017)

- Lesson learned:
  - To get ADA protection, employee must tell employer about specific disability.
  - Employer must accommodate disabilities and document performance issues.

81

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- African-American female neurology researcher became certified tobacco treatment specialist. When clinical director left, did not replace - assigned duties to tobacco treatment specialist.

82

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- Interviewed those who served as specialist for more than five years.
- Roy served for three years and was not interviewed.
- Two African-American males were elevated.
- Roy filed with EEOC.

83

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- Then, $400,000 funding cut.
- Two specialists cut, including Roy.
- Not hired for patient advocate position – Hired White male.
- Sued, alleging race and gender discrimination.

84

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- ***Prima facia* discrimination for RIF:**
  - **In protected class.**
  - **Qualified for position.**
  - **Not promoted.**
  - **Continued to seek applicants with her qualifications.**
- **Held:**
  - **Did not meet qualification criteria.**

85

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- ***Prima facie* retaliation for patient advocate hire:**
  - **Engaged in protected activity.**
  - **Adverse personnel actions.**
  - **Causal connection between protected activity and adverse personnel action.**
  - **Legitimate nondiscrimination reasons for decision?**
  - **Pretext**

86

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- **Held: No retaliation**
  - **Race – blind applications.**
  - **Unaware of priority-to-RIF'd employees policy.**
  - **Policy not selectively enforced.**

87

Roy v. University of Mississippi Medical Center
2017 WL 4769724 (5th Cir. 2017)

- **Lesson learned:**
  - **Be able to support reasons for employment decisions.**

88

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- **Untenured religion studies lecturer's one-year contract with five year renewal - not renewed.**
- **Contracts extended twice.**
- **At student recruitment party, plaintiff met 26-year-old grad student and had brief relationship.**

89

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- **Grad student filed sex harassment complaint after graduation.**
- **Complaint investigated and found no violation of consensual relationship policy and insufficient evidence of sexual harassment.**

90

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Dept. chair decided to non-renew lecturer without consulting department's Personnel Affairs Committee.
- Wilkerson grieved and had hearing.
- Committee urged dean to reverse nonrenewal due to insufficient evidence.

91

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Dean upheld dept. chair's nonrenewal due to dept. chair's incorrect assertion Wilkerson was already in supervisory level position in dept. when he began the relationship, poor judgment, and compromising position.

92

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Wilkerson appealed and committee investigated.
- Ruled that dept. chair did not follow due process, but Wilkerson exercised poor judgment.
- Provost upheld dismissal.

93

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Sued, alleging due process violation, tortious interference with employment.
- Court allowed all allegations to proceed to trial.
- Appeal on qualified immunity on due process, governmental immunity on interference.

94

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Held:
  - Wilkerson had no clearly-established right to continued employment, so qualified immunity for administrators.
  - Interference claim is a tort and employees are immune from torts.

95

Wilkerson v. UNT
878 F.3d 147 (5th Cir. 2017)

- Lesson learned:
  - Sometimes you get lucky.

96

Pequeño v. Univ. of Tex. at Brownsville
718 Fed. App'x 237 (5th Cir. 2018)

- Academic advisor RIF'd after program dissolution.
- RIF based on 3-year performance evaluation scores.
- Pequeño below cut-off – Younger advisors retained.

97

Pequeño v. Univ. of Tex. at Brownsville
718 Fed. App'x 237 (5th Cir. 2018)

- Pequeño filed discrimination with EEOC based on age at time; filed retaliation claim late.
- Filed suit – age discrimination/retaliation.

98

Pequeño v. Univ. of Tex. at Brownsville
718 Fed. App'x 237 (5th Cir. 2018)

- Held:
  - Sovereign immunity from ADEA suit in federal court.
  - Statute of limitations missed by employee.

99

Pequeño v. Univ. of Tex. at Brownsville
718 Fed. App'x 237 (5th Cir. 2018)

- Lesson learned:
  - File with EEOC within 180 days from occurrence.

100

Mengistu v. Miss. Valley State Univ.
716 Fed. App'x 331 (5th Cir. 2018) (per curiam)

- Ethiopian-born U.S. citizen associate professor with 27 years experience.
- South Korea assistant professor hired at higher salary due to private sector experience and available money.
- Decision-maker department chair - Korean.

101

Mengistu v. Miss. Valley State Univ.
716 Fed. App'x 331 (5th Cir. 2018) (per curiam)

- Sued:
  - Race and national origin discrimination, hostile work environment.

102

Mengistu v. Miss. Valley State Univ.
716 Fed. App'x 331 (5th Cir. 2018) (per curiam)

- Held:
  - Mengistu not similarly-situated because long lapse in dates of hire and different backgrounds.
  - Pay disparity explanation not pretext.

103

Mengistu v. Miss. Valley State Univ.
716 Fed. App'x 331 (5th Cir. 2018) (per curiam)

- Lesson learned:
  - Sometimes you get lucky.

104

Moore v. Univ. Miss. Med. Ctr.
719 Fed. App'x 381 (5th Cir. 2018)

- Erica Moore, African-American, billing specialist in charge of deposits from clients.
- Left money unsecured on desk - $100 missing
- Employment terminated.

105

Moore v. Univ. Miss. Med. Ctr.
719 Fed. App'x 381 (5th Cir. 2018)

- Stacy Moore, Caucasian patient services coordinator with petty cash.
- Left desk unsecured - $95 missing.
- No personnel action at all.

106

Moore v. Univ. Miss. Med. Ctr.
719 Fed. App'x 381 (5th Cir. 2018)

- Erica Moore sued for race discrimination, after EEOC filing.
- District court dismissed case; 5th Circuit upheld.

107

Moore v. Univ. Miss. Med. Ctr.
719 Fed. App'x 381 (5th Cir. 2018)

- Held:
  - Not similarly-situated because not "nearly identical" circumstances.
  - Different jobs and responsibilities.
  - Different supervisor.
  - Different funds.

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Moore v. Univ. Miss. Med. Ctr.
719 Fed. App'x 381 (5th Cir. 2018)

- **Lesson learned:**
  - **Extremely difficult to prove similarly-situated discrepancies.**

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