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Case of the Month

Federal jury awards \$125M in damages against employer for violating the Americans with Disabilities Act.

In January 2017, the U.S. Equal Employment Opportunity Commission (EEOC) filed an [action](#) in federal district court in Wisconsin against Wal-Mart Stores East, LP, (Wal-Mart) alleging that Wal-Mart violated the Americans with Disabilities Act of 1990 (ADA), [42 U.S.C. chapter 126](#), by failing to provide reasonable accommodations to Marlo Spaeth, an employee with Down syndrome, which is considered a disability under the ADA. The EEOC alleged that Spaeth began working for Wal-Mart in 1999 as a sales associate until November 2014 on a regular schedule from noon to 4:00 pm a few days per week and that during that time she received multiple pay raises and satisfactory performance reviews. In November 2014, Wal-Mart adopted a computerized scheduling system that changed Spaeth's working hours and Spaeth requested a return to her prior schedule because her condition required a rigid schedule of daily life activities. Although Wal-Mart operated the store on a 24-hour schedule with more than 300 employees, Wal-Mart refused the request and, after Spaeth was unable to maintain the new schedule, began taking disciplinary actions against Spaeth and terminated her employment in July 2015. Wal-Mart refused a subsequent request by Spaeth's family to rehire her on her previous schedule. In its lawsuit, the EEOC sought reinstatement of Spaeth and other compensation and damages, including punitive damages for intentional, malicious, or reckless conduct.

After a trial in district court, a jury issued a special [verdict](#) finding that Spaeth was a qualified person with a disability under the ADA, that Wal-Mart was aware that Spaeth needed an accommodation due to her disability and failed to provide a reasonable accommodation, that an accommodation would not have been an undue hardship, and that Wal-Mart violated the ADA by terminating and failing to reinstate Spaeth because of her disability. The jury awarded to Spaeth \$125,000,000 in punitive damages and \$150,000 in compensation for emotional pain and mental anguish. The district judge subsequently reduced the amount of damages to \$300,000 due to federal statutory limits. *EEOC v. Walmart Stores East LP*, No. 17-cv-70 (E.D. Wisc. July 15, 2021).

Why Is This Case Significant?

The ADA prohibits a community college from discriminating against an employee with a disability and requires reasonable accommodations for the employee unless the accommodations would create an undue hardship for the college. This case exemplifies the EEOC's significant enforcement measures and the resulting penalties and public attention that may be drawn to noncompliance. A college should consult local counsel when considering a current or potential employee's request for an accommodation under the ADA.

Highlights

Join us at the UNT 2021 Texas Higher Education Law Conference on Nov. 1-3, 2021. Registration opens soon!

HR Services is conducting the [annual salary survey](#).

Resources

- [Texas Higher Education Coordinating Board](#)
- [Texas Legislature](#)
- [Texas Statutes](#)
- [Texas Attorney General](#)
- [U.S. Department of Education](#)



From the Courts and the Attorney General

Governance

The Texas Attorney General concluded that the Texas Governor's Executive Order [GA-38](#) prohibits a political subdivision from conditioning an individual's access to a government facility on receipt of a COVID-19 vaccine administered under an emergency use authorization (EUA) or enforcing a policy requiring an individual to provide documentation regarding vaccination status for any COVID-19 vaccine administered under an EUA to receive services or enter any place. Texas Health and Safety Code section 161.0085, added by Senate Bill 968 during the 87th regular session of the Texas Legislature, contains similar prohibitions regarding any COVID-19 vaccine. Tex. Att'y Gen. Op. No. [KP-379](#) (Aug. 11, 2021).

The Texas Attorney General concluded that the Texas Governor's Executive Order [GA-36](#) prohibits governmental entities, including a community college, from requiring or mandating any person to wear a face covering. Tex. Att'y Gen. Op. No. [KP-380](#) (Aug. 11, 2021).

Business and Finance

The Texas Attorney General concluded that a court could find that an amendment to a contingent fee contract for legal services entered into by a governmental entity, including a community college, must meet certain requirements under Texas Government Code [chapter 2254](#), as amended by the 2021 Texas Legislature, if the contract amendment expands the contract's scope to cover a new legal matter. Tex. Att'y Gen. Op. No. [KP-378](#) (Aug. 2, 2021).

College's insurance policy covering business income losses resulting from "direct physical loss or damage" did not include the college's monetary losses resulting from closing its facilities and moving to online classes in response to governmental stay-at-home orders

issued during the COVID-19 pandemic because the SARS-CoV-2 virus did not damage structures. [Univ. of St. Thomas v. Am. Home Assurance Co.](#), No. CV H-20-2809, 2021 WL 3129330 (S.D. Tex. July 23, 2021).

Personnel

University medical school professor failed to show that the university discriminated against her because of her heritage by nonrenewing her professor position in violation of [Title VII of the Civil Rights Act of 1964](#) based on stray remarks by her supervisor or that similarly situated university employees were treated more favorably. [Cicalese v. Univ. of Tex. Medical Branch](#), No. 3:17-CV-67, 2021 WL 3686614 (S.D. Tex. July 16, 2021).

Former university employee failed to show that the university discriminated against him in violation of [Title VII](#) by harassing and terminating him based on his race or sexual orientation because he was not treated less favorably than similarly situated employees and did not experience harassment related to his race or sexual orientation and the termination was based on insubordination rather than discrimination. [Boney v. Tex. A&M Univ.](#), No. 4:19-CV-2594, 2021 WL 3640714 (S.D. Tex. July 16, 2021).

Former university professor provided sufficient evidence for a jury to find that the university violated the [Equal Pay Act of 1963](#) (EPA) and [Title VII](#) by paying the professor a salary less than another professor because of her sex while choosing not to fix a known pay disparity and that the university issued her a terminal contract that was discriminatory based on her sex in violation of Title VII and in retaliation for filing a discrimination complaint with the university in violation of the EPA and Title VII. [Wilder v. Stephen F. Austin State Univ.](#), No.

9:20-CV-00040-ZJH, 2021 WL 3288303 (E.D. Tex. Aug. 2, 2021).

University professor failed to show that the university's decisions regarding faculty class schedules, resource allocation, and participation in programs was retaliation in violation of [42 U.S.C. § 1981](#) for filing an internal discrimination complaint and a lawsuit at least three years prior. [Onyiah v. St. Cloud State Univ.](#), 5 F.4th 926 (8th Cir. July 22, 2021).

Students and Instruction

The U.S. Department of Homeland Security's (DHS) Deferred Action for Childhood Arrivals (DACA) program that allowed certain immigrants to remain in the United States violated the federal [Administrative Procedure Act](#) because it exceeded the agency's authority and was adopted without following notice and comment procedures. The deferred action remains in effect for current recipients under DACA but DHS may not approve any new applications or grant new deferred status. [Texas v. United States](#), No. 1:18-CV-68, 2021 WL 3025857 (S.D. Tex. July 16, 2021).

University deregistered a religious student organization after finding that it violated the university's human rights policy by requiring its members in leadership roles to affirm a statement of faith. Although the policy was reasonable and viewpoint neutral, the university violated the organization's right to free speech under the U.S. Constitution [First Amendment](#) by enforcing the policy against it and other religious organizations while exempting certain other organizations. [InterVarsity Christian Fellowship/USA v. Univ. of Iowa](#), 5 F.4th 855 (8th Cir. July 16, 2021).

University policies requiring all students to be vaccinated against COVID-19 unless they are exempt for religious or medical reasons and requiring exempt students to wear masks and be tested for COVID-19 twice weekly did not violate the Due Process Clause of the U.S. Constitution [Fourteenth Amendment](#) because students could seek exemptions, the mask and testing requirements were not constitutionally problematic, and students had educational opportunities elsewhere. [Klaassen v. Trustees of Indiana Univ.](#), 7 F.4th 592 (7th Cir. Aug. 2, 2021).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings¹ based on requests from Texas community colleges related to:

- Five categories of information pertaining to a specified request for proposals. Tex. Att'y Gen. [OR2021-18791](#) (July 16, 2021);
- A specified request for proposals. Tex. Att'y Gen. [OR2021-18885](#) (July 19, 2021);
- Two finalists for a specified position. Tex. Att'y Gen. [OR2021-19730](#) (July 27, 2021);
- A specified complaint and any responses to the complaint. Tex. Att'y Gen. [OR2021-19732](#) (July 27, 2021);
- A specified contract. Tex. Att'y Gen. [OR2021-20119](#) (July 30, 2021); and
- Communications sent or received by members of the college's board of trustees or employees pertaining to a specified project. Tex. Att'y Gen. [OR2021-20381](#) (Aug. 2, 2021).



Recent Regulations and Guidance

The Texas Higher Education Coordinating Board (THECB) amended [regulations](#) concerning several

advisory committees and adopted new [regulations](#) concerning course sequencing and reporting.

¹ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

THECB amended a [regulation](#) concerning the Hinson-Hazlewood College Student Loan Program and repealed [redundant](#) and [obsolete](#) regulations concerning student aid programs.

The Department of Information Resources adopted or amended [regulations](#) concerning statewide technology centers, including regulations specifically pertaining to the participation of institutions of higher education in the Data Center Services and Application Services Center programs.

The Texas Comptroller replaced [regulations](#) concerning procedures to protest the comptroller's property value study and audit findings.

The Texas Workforce Commission adopted and amended [regulations](#) concerning extended unemployment benefits in response to federal statutory changes, including the Families First Coronavirus Response Act, CARES Act, Continued Assistance Act, and American Rescue Plan Act of 2021.

The Texas Department of State Health Services (DSHS) adopted and repealed [regulations](#) concerning retail food establishments, including regulations pertaining to dogs in dining areas, food handling, and signage.

DSHS adopted new [regulations](#) concerning asbestos-related activities in public buildings and other facilities, including asbestos training requirements.

The Texas Commission on Fire Protection amended [regulations](#) concerning the renewal of a certification for fire protection personnel and enforcement.

The U.S. Department of Education (DOE) amended [regulations](#) concerning the subsidized usage loan limit restriction in response to the Consolidated Appropriations Act, 2021.

The DOE amended [regulations](#) concerning the discharge of student loans for permanently disabled veterans, effective July 1, 2022.

The U.S. Department of Labor [rescinded](#) its final rule concerning joint employer status under the Fair Labor Standards Act.

The National Telecommunications and Information Administration adopted [regulations](#) concerning guidelines for grants awarded to minority-serving institutions and other institutions of higher education under the Connecting Minority Communities Pilot Program, directed by the Coronavirus Aid, Relief, and Economic Security Act.

The Rural Business-Cooperative Service within the U.S. Department of Agriculture amended [regulations](#) concerning the Rural Innovation Stronger Economy Program, through which grants may be awarded to accelerator partnerships consisting of institutions of higher education and other entities to deliver economic and job training programs.

U.S. Congress passed the [Thrive Act](#) addressing the COVID-19 Veteran Rapid Retraining Assistance program, including amendments related to information provided by DOE regarding minority serving institutions.



In the News

The Texas Governor [renewed](#) the disaster proclamation issued for all counties in Texas due to the COVID-19 pandemic.

The Texas Governor [issued](#) Executive Order No. GA-39 prohibiting a governmental entity, including a community college, from compelling an individual to

receive a COVID-19 vaccine or requiring documentation of COVID-19 vaccination status to receive any service or enter any place, in addition to other measures.

The Texas Governor [issued](#) Executive Order No. GA-38 containing prohibitions similar to Executive

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Order No. GA-39 in relation to a COVID-19 vaccine administered under an emergency use authorization and prohibiting a governmental entity, including a community college, from requiring any person to wear a face covering.

The Texas Governor [issued](#) a proclamation ordering a special election to be held on November 2, 2021, to consider eight constitutional propositions, including propositions pursuant to [Senate Joint Resolution 35](#) regarding a homestead exemption for a surviving spouse of a member of the U.S. armed forces and [Senate Joint Resolution 27](#) regarding a prohibition of limits on religious services.

The Texas Governor [called](#) a second special session of the Texas Legislature beginning on August 7, 2021.

The U.S. Department of Education (DOE) [announced](#) it will establish a new negotiated rulemaking committee to address regulations for Public Service Loan forgiveness and related issues.

The DOE [announced](#) the availability of \$3.2 billion in emergency grants under the Higher Education Emergency Relief Fund (HEERF).

The DOE [published](#) an update on the use of professional judgment by financial aid administrators when determining eligibility of students for federal student aid.