



Next Up:
Employment Law

Revue Two-O-Two-
One

Disability Discrimination

- Lee v. Univ. of Pennsylvania School of Dental Medicine
- Stratton v. Jackson State
- Weiss v. Pa. Hosp. of Univ of Pa
- Hudnell v. Thomas Jefferson Univ
- Steckloff v. Wayne State Univ

3

Race Discrimination

- Champion v. Texas Southern University

4

COVID

Where we are on mandating vaccines?

- Bridges v. Houston Methodist
- Kiel

5

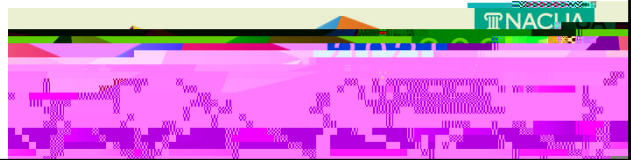
First Amendment

- Meriwether v. Shawnee State Univ
- Klein v. Arizona State Univ

6

Pay Equity/Federal Law

- Pending Legislation to Amend the EPA
- The Paycheck Fairness Act is currently before Congress
- Proposed changes:
 - Significantly narrows the “factor other than sex” defense
 - Requires employers to demonstrate that the wage differential is a matter of business necessity



Pay Equity/State Laws

- Many jurisdictions have their own equal pay protections stronger than federal law and providing greater damages.



Pay Equity/H.E. Contested Issues

- Battle of the Statistical Experts
- Who is the Appropriate Comparator?
- Justification for Removing Outliers
 - Retention Raises
 - Administrative Appointments
 - High Student Evaluations
 - Allegations of Bias in All of the Above

9

Pay Equity/The Future?

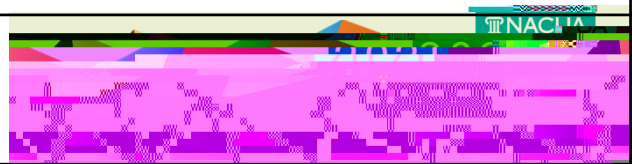
Freyd v. Univ. of Oregon

- About Plaintiff Jennifer Joy Freyd
- Ruling by Ninth Circuit
 - Whether Positions are Comparable is Question of Fact for Jury
 - Retention Raises—Title VII Disparate Impact
 - Statistical Expert Analysis—Question of Fact for Jury
- Impact on colleges/universities in 9th Circuit

10

Sexual Orientation & Gender Identity Discrimination

- Bostock v. Clayton County
- Banford v. Bd. Of Regents of Univ. of Minn
- Philpott v. State University of New York (pre-Bostock)



A Brief Word on Religious/Ministerial Exemption

- Our Lady of Guadalupe v. Morrissey



Wage and Hour

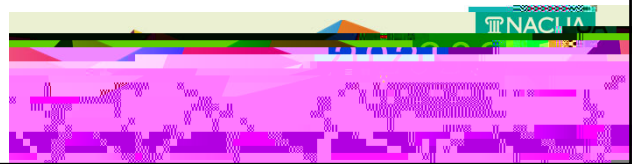
Federal Minimum Wage \$7.25 (has not been change since 2009)

- Raise the Wage Act of 2021

Joint Employer Status Under the FLSA

Independent Contractor Rules

Exempt “White Collar” Salary Minimums



13

Sexual Harassment/Title IX & VII

- The first year under the TIX regulations – we’re still here...
- Courts still looking carefully at the kind of conduct being alleged
- Circuit split – TIX or TVII or both?
- Following policies still paramount – including adhering to requirements of CBAs; equitable application
- Retaliation claims management still an important area of focus



14

Age Discrimination

- Federal case law continues to follow *Gross* – “but for” causation required
- EEOC focus on age cases - systemic litigation; supportive of more expansive causation standard
- State and Federal legislative activity in support of older workers

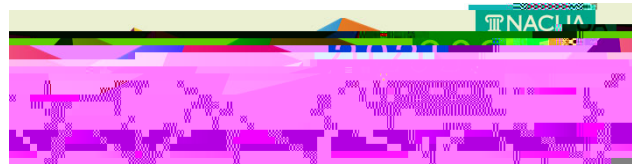
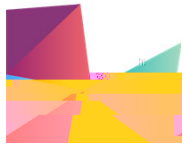
15

OSHA

- New Administration – New Focus
- *“Ensuring the health and safety of workers is a national priority and a moral imperative.”*
- Avoiding retaliation claims is key

16

Labor



NACUA materials, PowerPoint slides and recordings available as part of this program are offered as educational materials for higher education lawyers and administrators. They are prepared by presenters and are not reviewed for legal content by NACUA. They express the legal opinions and interpretations of the authors.

Answers to legal questions often depend on specific facts, and state and local laws, as well as institutional policies and practices. The materials, PowerPoint slides and comments of the presenters should not be used as legal advice. Legal questions should be directed to institutional legal counsel.

Those wishing to re-use the materials, PowerPoint slides or recordings should contact NACUA (nacua@nacua.org) prior to any re-use.

