



Federal Appeals Court Revives University Worker's Equal Pay Claim: How Your School Can Ensure Compliance

Insights

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In a decision that will have implications for how colleges and universities across the country pay their administrators, faculty, and staff, the 11th Circuit Court of Appeals in Atlanta this month revived a former athletic department worker's gender discrimination and equal pay claims. The appellate court reversed an Alabama court after that lower court ruled for Alabama State University (ASU) and its Board of Trustees on claims brought under the federal Equal Pay Act (EPA) and Alabama's comparable statute, the Clarke-Figures Equal Pay Act (CFEPA). What can your organization learn from the December 3 ruling in *Terrell v. Alabama State University*?

Facts of the Case

Sha'Ola Terrell was employed from October 2018 to September 2021 as the Senior Associate Athletic Director for Internal Operations at ASU. Her male comparator, Terrance Jones, was paid at a higher salary in his position as Deputy Athletic Director. Ms. Terrell alleged their position and duties were highly similar, and that her lower pay was discriminatory based on her gender. Ms. Terrell alleged she also complained repeatedly to newly appointed Athletic Director Dr. Jason Cable about the failure to pay her salary enhancements budgeted for her position and that her male counterpart was paid at a higher rate to perform a comparable job.

In September 2021, as part of a restructuring plan, Dr. Cable did not re-appoint either Ms. Terrell or Mr. Jones to their positions. Ms. Terrell filed suit thereafter.

The Lawsuit

Ms. Terrell's asserted that she was repeatedly denied payment of salary enhancements designated for her role despite being identified as the athletic department's Senior Woman Administrator. She said these losses amounted to \$15,000 in 2019 and \$10,000 in both 2020 and 2021.

She claimed under the EPA and the CF-EPA that she was being paid less than a male athletic department administrator performing a comparable job as a Deputy Athletic Director, and that she was terminated in retaliation for her complaints.

The lower court ruled in the university's favor and granted summary judgment to ASU. Ms. Terrell filed an appeal, which was decided on December 3.

11th Circuit's Decision

The 11th Circuit upheld the trial court's decision to rule in favor of ASU on the retaliation claim on the basis that both Ms. Terrell and her comparator were not reappointed to their positions. Thus, the court concluded, there was no disparate treatment in the university's downsizing decision.

Further, the appellate court affirmed the trial court's ruling in favor of ASU on her Title IX claim, finding that Title IX addresses **student's** claims for discrimination – not faculty, staff or administrators. (Note that courts around the country have ruled in different ways on this question, so the result might be different in the state in which your campus is located.)

But the 11th Circuit ruled in her favor on the key claims in her case – the state and federal equal pay claims. It held that the trial court improperly applied the three-step burden shifting mechanism for testing Title VII claims established in the landmark decision in McDonnell Douglas Corp. v. Green.

- Under that standard, the plaintiff must first assert a *prima facie* claim of discrimination, after which the burden shifts to the employer to assert legitimate, non-discriminatory reasons for the adverse employment action. The burden then shifts back to the employee to demonstrate the employer's stated reasons for termination were "pretext," meaning they were false.
- But the 11th circuit held that the EPA employs only a **two-step** burden-shifting mechanism. Under that standard, the employee need only establish they were paid less than a male counterpart performing the same role, after which the employer must establish reasons other than gender for the pay disparity, such as higher education, greater experience in the role, or longevity.

The 11th Circuit reversed summary judgment on the equal pay claims and remanded the case back to the trial court for further proceedings.

What Should You Do?

This decision should be heeded by colleges and universities, especially public colleges and universities.

- Take the time to conduct a pay audit of salaries paid to all administrators, professors, and staff. Consider involving your legal counsel to shield the audit under the attorney-client privilege.
- If there are comparable positions held by men and women, take care to ensure you can establish that higher pay for one gender over the other is based on factors other than gender, such as a higher education level, greater experience in the role, or length of service to the institution. Decisions to pay differently based on gender-neutral factors will help if you need defend yourself against claims like the one rendered in this case.

Conclusion

Fisher Phillips will continue to monitor further developments in this area, so you should ensure you are subscribed to [Fisher Phillips' Insight System](#) to gather the most up-to-date information. If you have any questions, please consult your Fisher Phillips attorney, the author of this Insight, or a member of Fisher Phillips' [Pay Equity Practice Group](#) or [Higher Education Team](#).

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