



2019 ANNUAL CONFERENCE  
March 13-15, 2019  
Orlando, Florida

The Blame Game – Calculating Employment Verdicts  
Against Religious and Non-Profit Organizations

**INTRODUCTION**

This roundtable will discuss various recent employment-related verdicts against non-profit defendants, including facts relating to liability, and facts relating to damages, as reported in various jury verdict reports. Participants will then be asked to provide input about whether each case ended in a plaintiff or defense verdict, and as to plaintiff verdicts, the amount of the verdict, and any comparative fault. These exercises are instructive for claims professionals, risk management personnel, and lawyers in assessing settlement value and verdict potential in these cases.

Additionally, there is a perception that religious and non-profit organizations may experience a halo effect from their charitable work. In assessing the actual outcome of real cases we can also assess whether a halo effect exists, or conversely, whether juries may treat such organizations more stringently. These exercises are instructive for claims professionals, risk management personnel, and lawyers in assessing settlement value and verdict potential in cases involving religious and non-profit organizations.

Below are summaries of 11 cases, with as much detail as could be obtained from jury verdict and news reports. As each case is reviewed, consider the probable outcomes. A list of outcomes will be provided.

**I. CASE STUDIES - VERDICT NO. 1: Female Employee with Companion Dog v. Self-Help Center, from CALIFORNIA (Sacramento County). DISABILITY DISCRIMINATION.**

Plaintiff Description: Female employee with companion dog for anxiety and depression.

Incident Description: Plaintiff was the fiscal director of the non-profit corporation. She started bringing her small, white Maltese companion dog, to work with approval from the executive director. A few years later, the dog died and Plaintiff became very depressed. The same year, the executive director retired and a longtime center employee was promoted to executive director.

Plaintiff started bringing a new dog to work with the executive director's approval. Ultimately, the new director prohibited Plaintiff from bringing the dog to work anymore. Plaintiff told the director that she needed to bring the dog to work because the dog helped her with her anxiety and depression. The director told Plaintiff she needed to submit a doctor's note confirming her diagnosis to get permission for the dog. The director also told Plaintiff that company policy permits her to file a grievance against the director, but first she had to file a written request for a reasonable accommodation.

Plaintiff filed a request for a reasonable accommodation with the director and the center, seeking permission to bring the dog to work. The director denied the request, stating the Plaintiff still needed a doctor's note.

Plaintiff went to work without the dog. She suffered a panic attack and went to the ER, where she was diagnosed with an occupational illness. Three days later, Plaintiff went on a medical leave of absence for acute stress disorder. That day, she went to the center to drop off her grievance against the director and found out that the locks on her office door were changed.

She saw a psychologist who diagnosed her with anxiety and depression and extended her medical leave. Plaintiff used the psychologist's note to get the dog certified as a qualified service animal under the ADA.

Plaintiff returned to work with the dog who was wearing a certification tag. The director sent Plaintiff home. At a Board meeting that night, the director suggested eliminating the fiscal director position, and the Board agreed.

Party Contentions: Wrongful Termination, Retaliation, Disability Discrimination. Plaintiff argued that she had a mental illness, but reacted badly to psychiatric medication. She said that the dog provided her with companionship and eased her anguish.

Several board members testified that the director did not explain that Plaintiff was on medical leave; that she had a certified animal server; or that she returned to work the morning before the board meeting.

The defense disputed the allegations, contending that Plaintiff did not have a mental disability and that, even if she did, the director was not aware of it. The defense also claimed undue hardship, as several employees testified that the dog was causing health hazards at the center by urinating and defecating. Plaintiff countered that she kept the dog in her office during work hours, claiming that the dog did not disturb the workplace with barking and never urinated or defecated in the center.

Alleged Damages: Plaintiff sought \$400,000 in lost wages. Her annual salary was not disclosed in the verdict report.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
---

If Plaintiff, How Much? _____ Any Punitive Damages? _____
---

**II. VERDICT NO. 2: 70-year-old Female Medical Records Clerk v. Non-Profit Community Hospital, from CALIFORNIA (Los Angeles County). DISABILITY DISCRIMINATION.**

Plaintiff Description: Female records clerk at nonprofit community hospital, in her 70s at trial.

Incident Description: Plaintiff sustained a number of work-related injuries and filed a total of eight workers' compensation claims during the course of her employment. Three of the claims related to back injuries.

From approximately 1991 until her termination, Plaintiff was under relatively constant medical care for degenerative disc disease in her back. Plaintiff's last work-related injury occurred in years before when she fell at work, twisting an ankle and aggravating the pre-existing back condition. After the injury, Plaintiff took off one week of work and then worked without any medical restrictions.

As part of a workers' compensation action relating to the work injury, Plaintiff underwent an examination by an agreed medical examiner. According to his report, Plaintiff was restricted from heavy lifting, repeated bending or stopping, prolonged weight-bearing, and walking over uneven ground. The hospital's HR department determined that, given the restrictions, Plaintiff could not perform the job. Further, the hospital could not think of any accommodations to address the restrictions.

Plaintiff was called into a meeting with two HR employees and her supervisor to discuss the report.

They told her that she could not do the job with the listed restrictions. Plaintiff disagreed and asserted that she could. Plaintiff was terminated at the meeting.

Plaintiff sued the hospital, arguing that the restrictions were not inconsistent with the job's duties or requirements, but that Plaintiff was able to perform the essential functions of the job with or without reasonable accommodations. The primary restriction at issue was "no repeated bending or stooping," which related to retrieval of medical record files from low shelves. Plaintiff's counsel asserted that the amount of bending or stooping required by the job did not exceed the work restrictions and that, even if it did, Plaintiff could kneel instead of bending or stooping to retrieve files from the lower shelves, as she had no restriction on kneeling.

Party Contentions: Disability discrimination, failure to accommodate, retaliation for filing workers' compensation claims.

Alleged Damages: Plaintiff alleged depression with agoraphobia and panic attacks following her termination. Plaintiff sought approximately \$430,000 for 10 years of future lost earnings.

Both parties agreed that Plaintiff had a statistical work-life expectancy of just over one year. Plaintiff said she wanted to continue working as long as possible because she loved her job and needed her paycheck to pay her mortgage.

The hospital contended that it had experienced ongoing financial losses between \$9 million and \$12 million over the last several years, and that any punitive-damage award would severely impact the operation's charitable purpose.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
---

If Plaintiff, How Much? _____      Any Punitive Damages? \$ _____
---

**III. VERDICT NO. 3: Female Teacher v. Non-Profit Organization, from CALIFORNIA (Los Angeles County). PREGNANCY DISCRIMINATION.**

Plaintiff Description: Female teacher pregnant with her fourth child.

Incident Description: Plaintiff claimed that when she attempted to obtain clearance to return to work from maternity leave after having her fourth child, she was told by her health insurance carrier that she was no longer covered, and she therefore could not obtain her release to work from her doctor.

Plaintiff received a letter from employer's COBRA administrator stating that her coverage was cancelled due to termination of her employment.

Plaintiff contended that it was Defendant's policy to continue maintaining health benefits for employees on maternity leave. She claimed that despite that policy, the defendant cut off her benefits. She attempted to contact defendant several times and the HR representative told her that no one could talk to her and that she shouldn't "burn any bridges with the executive director." Plaintiff claimed she continued her efforts to contact Defendant and even tried going to other hospitals to obtain clearance to return to work. Her return was eventually scheduled, and four days prior to that date she received the letter from COBRA stating that her coverage was cancelled due to termination of employment. Plaintiff then filed for unemployment and Defendant told the unemployment department that Plaintiff was fired on November 30, 2008 for not returning to work.

The Defendant contended that Plaintiff abandoned her job, as she was never told directly that her employment was terminated. The employer claimed that the COBRA letter she received was in error and should not have stated that Plaintiff's employment was terminated.

Party Contentions: Pregnancy and sex discrimination, failure to prevent discrimination, retaliation.

Alleged Damages: Plaintiff sought \$50,000 in damages for lost earnings, equaling two years of salary at her former position. She claimed that due to her failure to pay bills, she became homeless after being terminated and was forced to move into a homeless shelter. Her youngest and oldest children had to

move in with their grandmother, as they were either too young or too old for the shelter. Plaintiff claimed the ordeal caused her great emotional distress, for which she sought damages. Plaintiff also sought punitive damages for the defendant's oppressive and malicious conduct in depriving her of her right to take pregnancy leave and depriving her of health benefits during her pregnancy. She also sought punitive damages for fraud, claiming the defendant fabricated and falsified documents regarding her pregnancy leave, cancellation of coverage and termination of employment.

<b>WHAT WAS THE VERDICT??</b>	Plaintiff or Defense: _____
If Plaintiff, How Much? _____	Any Punitive Damages? \$ _____

**IV. VERDICT NO. 4: Female African American Employee v. Employment Agency et al., from NEW YORK. RACE DISCRIMINATION/HOSTILE WORK ENVIRONMENT.**

Plaintiff Description: Female African-American employee of employment agency.

Incident Description: The Defendant employment agency is a non-profit that provides job training and career development services across the United States. The agency is an international leader in helping individuals from underserved communities receive training and support to obtain meaningful employment and achieve economic self-sufficiency. Plaintiff alleged that the founder of the non-profit repeatedly used the "N-word" at work. The defendant founder is of African-American and Puerto Rican descent. Plaintiff complained to the CEO who later fired her.

The defendant denied the accusation. At trial, the defense argued that their client's use of the "N-word" in the workplace was used as part of the agency's tough love methods, without negative connotations. He asserted that the term was used under the assumption that it could have a number of various interpretations, that he used it to emphasize "the negative aspects of human nature," and that he even used it at times as a term of affection.

Party Contentions: Racial harassment and the creation and maintenance of a racially-hostile work environment.

Alleged Damages: Compensatory and punitive damages.

<b>WHAT WAS THE VERDICT??</b>	Plaintiff or Defense: _____
If Plaintiff, How Much? _____	Any Punitive Damages? _____

**V. VERDICT NO. 5: Female v. Community Resource Center, from PENNSYLVANIA (Philadelphia County). RETALIATION.**

Plaintiff Description: 55-year-old female employee.

Incident Description: Plaintiff began working at the community resource center for a non-profit group. The facility provided educational and training services to recently released convicts. A few months later, her supervisor made a drug-related comment to her, saying that he needed his pinky fingernail to be long and well-manicured for the purposes of "bagging," which Plaintiff interpreted as selling cocaine. Plaintiff reported the comment to a site administrator. Subsequently, the supervisor became increasingly hostile toward her.

The supervisor brought his 6-year-old daughter to the facility, which she believed was a violation of company policy since the former prisoners the center trained included individuals convicted of crimes against children.

Plaintiff wrote a letter to the group's upper management about the supervisor's apparent drug activity and his bringing his daughter to work. Plaintiff informed management that the supervisor exhibited hostile behavior toward her and engaged in "professional sabotage." In her letter, Plaintiff conveyed

that she considered the supervisor a direct threat to her ability to advance in the company. Plaintiff was then passed over for the director position at the facility.

About a year later, a termination letter was issued to Plaintiff, informing her that she was being fired for “gross misconduct (false allegations).”

The defense maintained that Plaintiff’s termination was based on false allegations she had made against another facility higher-up (who, according to Plaintiff, was engaging in an inappropriate relationship with a subordinate employee). The defense asserted that an internal investigation concluded with a determination that Plaintiff’s allegations were unfounded.

Party Contentions: Retaliation

Alleged Damages: At the time of trial, Plaintiff had not worked since her termination from the group. She claimed that she was unable to secure another job (having applied to jobs in education and human resources) due to her age and over-qualification. She initially relied upon financial assistance from unemployment benefits, but, once the benefits discontinued, she was evicted from her apartment and forced to move in with family members.

In addition, Plaintiff claimed she could no longer provide financial aid to her Alzheimer’s-inflicted mother, who relied on nursing care. All of this caused much stress and anxiety. Her suit sought \$77,988.75 in back pay and unspecified amounts of non-economic damages for emotional distress. At the time of trial, Plaintiff was continuing to apply for jobs. She sought to recover an unspecified amount of damages for front pay, noting that her former position paid an annual salary of \$44,000. Plaintiff also sought punitive damages.

<b>WHAT WAS THE VERDICT??</b>	Plaintiff or Defense: _____
If Plaintiff, How Much? _____	Any Punitive Damages? _____

**VI. VERDICT NO. 6: Data Input Administrator v. Educational Youth Organization, from SOUTH CAROLINA (Spartanburg County). BREACH OF EMPLOYMENT CONTRACT.**

Plaintiff Description: 60-year-old female data input administrator.

Incident Description: The organization hired a new CEO. The new CEO told Plaintiff that she was being unprofessional, and reportedly implied that he could easily find a replacement for her. Plaintiff was on a peer-selected, three-person committee responsible for communicating employee grievances to the Board of Directors. The committee met with the board. At the meeting, one of Plaintiff’s fellow committee members encouraged her to tell the board about the CEO having reprimanded her. The board asked Plaintiff about the reprimand, but she told the board she was reluctant to discuss it, for fear of being fired. A board member then told her that she could not be fired for answering the board’s questions. Thus reassured, Plaintiff told the board about her interactions with the CEO. Later that day, the board met with the CEO. He was out of town the following week, but when he returned, he fired Plaintiff. According to Plaintiff, when the CEO fired her, he said he had heard she was “negative” with the board.

Party Contentions: Breach of contract and breach of contract accompanied by a fraudulent act.

Alleged Damages: Lost earnings and benefits of \$115,814 in the past and \$402,192 in the future, for a total of \$518,006. She also sought unspecified punitive damages.

Of Note: Plaintiff and her co-worker witnesses testified that the CEO had a harsh management style and was hurting morale and causing employees to fear for their jobs. When he fired her, the CEO also allegedly said Plaintiff had not responded promptly to emails. At trial, Plaintiff maintained that the only emails she did not respond to were “spam,” and that she responded to all other emails in a prompt

manner. Plaintiff also alleged that she had never been disciplined in her 38 years with the organization and her performance reviews were consistently positive.

The organization denied the allegations and called employees who testified that Plaintiff was fired for being disruptive and not getting along with co-workers. The CEO denied telling Plaintiff that he had heard she was being negative at the committee's meeting with the board.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
If Plaintiff, How Much? _____ Any Punitive Damages? _____

**VII. VERDICT NO. 7: Billing Manager v. Non-profit Medical Center, from WASHINGTON (Tacoma). RETALIATION.**

Plaintiff Description: 55-year-old female billing manager.

Incident Description: After working for the company for several months, Plaintiff began investigating irregularities in the company's billing. The company contracted with a software company to prepare its Medicare billings. Plaintiff claimed that the irregularities could have had Medicare fraud implications. One of the irregularities involved two overpayment reports.

After having reported her findings to the director, Plaintiff met with the director and an HR representative. The director informed her that the two overpayment reports were supposed to match. However, one report stated an \$80,000 balance while the other report stated a \$48,000 balance. The director accused her of committing Medicare fraud and placed her on immediate suspension. The director completed his investigation and terminated Plaintiff without pay for the period of suspension of over five months.

Plaintiff sent a written request for information regarding the reason for her termination. The director stated that an external audit was conducted on the company's billing practices that revealed that "the billing manager lacked the analytical and cross functional expertise needed by a skilled and experienced billing manager."

Party Contentions: Wrongful retaliatory termination, violations under the U.S. False Claims Act, and a claim for unpaid and willfully withheld wages.

Alleged Damages: Plaintiff, who remained unemployed at trial, claimed that she sent more than 450 resumes to potential employers, following her termination. She claimed that since the company's owner primarily owned all medical facilities in the state, she felt she was being blacklisted. Plaintiff sought to recover \$820,999 to \$1,043,422 in past and future lost earnings. Plaintiff also alleged that she developed depression and anxiety over time that resulted in her treating with medication. She sought damages for past and future pain and suffering.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
If Plaintiff, How Much? _____ Any Punitive Damages? _____

**VIII. VERDICT NO. 8: Social Worker v. Non-profit Foundation, from TEXAS (Harris County). SEXUAL HARASSMENT/CONSTRUCTIVE DISCHARGE**

Plaintiff Description: 23-year-old female social worker.

Incident Description: The non-profit is a community healthcare organization designed to provide quality services to reduce health disparities within Houston and rural communities. Plaintiff in this case claimed she was sexually harassed by an older male co-worker. She claimed that male co-worker repeatedly made lewd comments to her at work; that she complained to her supervisor without result; and that the harassment increased to offensive touching and repeated attempts to kiss her on the mouth. At an

annual client appreciation party at a Houston hotel, the male co-worker repeatedly pulled Plaintiff toward him, made lewd comments, tried to kiss her, bit her neck and nibbled her ear. Several people, including his supervisor, saw him block Plaintiff from leaving a room at the party, and Plaintiff said she had to knee him in the groin to escape. That night, she complained about the incident to the director of HR. After an investigation led by the chairperson of the Board of Directors, the male co-worker was suspended for a number of days without pay. He was also placed on probation for six months and prohibited from having any contact with Plaintiff and going to the facility where she worked. The chairperson also suspended Plaintiff without pay for a number of days and deducted points from her annual performance review for having kneed the male co-worker.

Plaintiff still had to attend training seminars and meetings at which male co-worker was present. After all of this, the male co-worker went to the facility where Plaintiff worked to meet with a new client. Plaintiff alleged her complaints about this incident were dismissed and not taken seriously. Later, a patient claimed the male co-worker physically assaulted her. Plaintiff resigned after forwarding the complaint to management.

Party Contentions: Constructive Discharge.

Alleged Damages: Plaintiff sought \$21,975 for back pay, as well as unspecified damages for past and future mental anguish, and past and future loss of enjoyment of life. She sought unspecified punitive damages and \$120,000 in attorney's fees.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, How Much? _____ Any Punitive Damages? _____
--

**IX. VERDICT NO. 9: Former Clinic Manager v. Non-Profit Health Care Clinic, from CALIFORNIA (San Bernadino County). CONSTRUCTIVE DISCHARGE.**

Plaintiff Description: Female former clinic manager for non-profit health care clinic.

Incident Description: Plaintiff observed billing irregularities and potential fraud in the billing practice approximately five months after she began working for the defendant. She brought her concerns to the defendant. Plaintiff alleged that Defendant retaliated by stripping her of many of her duties. She also alleged that she was ostracized to a great extent. Plaintiff claimed that the emotional toll was great, that after approximately four months, she could not continue, and made a claim for constructive discharge.

Party Contentions: Constructive Discharge. Claim for punitive damages.

Of Note: Defense witness contended that Plaintiff appeared to be overworked and that it attempted to ease her burden by reducing her responsibilities.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____ If Plaintiff, How Much? _____ Any Punitive Damages? _____
--

**X. VERDICT NO. 10: Female CEO v. Safety Council Non-Profit, from LOUISIANA (Lake Charles). EQUAL PAY ACT CLAIM.**

Plaintiff Description: Female Chief Operating Officer of non-profit organization that helps provide services to industrial contractors.

Incident Description: The defendant non-profit is dedicated to cost-effective services for local industrial and contractor businesses. Plaintiff's salary was \$89,000 a year. The non-profit had just let go of its prior chief executive, in part because the CEO had overpaid himself. The CEO earned \$165,000 in his last

year with the organization. Plaintiff learned that her male predecessor earned a higher salary than she did for essentially the same work. She made a demand for the difference in her salary.

Party Contentions: Plaintiff contended that (1) she was paid less than her predecessor, and (2) in response to her demand for equal pay, the organization retaliated and withheld an earned bonus.

Of Note: The male predecessor allegedly artificially inflated his income with unauthorized extras—when those extras were excluded, the salaries were comparable.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
If Plaintiff, How Much? _____ Any Punitive Damages? _____

**XI. VERDICT NO. 11: Doctor-founders v. Non-profit Medical Clinic et al., from CALIFORNIA (Los Angeles County). WRONGFUL TERMINATION/RETALIATION.**

Plaintiff Description: Two doctors (Doctor #1 and Doctor #2) who, along with Defendant CEO, opened a nonprofit medical clinic.

Incident Description: Plaintiffs, along with Defendant, opened medical clinic several years ago.

Doctor #1 brought suit against Defendant CEO and the clinic for fraud, interference with prospective relations, and declaratory relief because Defendant CEO had taken total control over the clinic and was preventing Doctor #1 from interviewing or hiring medical personnel, excluding him from Board of Directors meetings, and wrongfully barring him from having any financial oversight or control of the clinic. The suit settled on the condition that the Defendants correct the problems that were the basis for the complaint. Defendants breached the agreement and Doctor #1 filed a second lawsuit for breach of the settlement agreement.

Around the same time, Doctor #1 reported a number of violations to the California Medical Board, Department of Health Services. After reporting these issues, the clinic and Defendant CEO cut his salary, and then he was terminated.

Doctor #2 filed a related lawsuit against Defendant CEO and the clinic and reported to the California Medical board that the clinic was repeatedly overcharging patients by ordering medically unnecessary tests, charging extra for certain necessary services such as blood tests, and adding administrative fees. In response to these contentions, in early 2013 Defendant CEO cut Doctor #2's hours in half and began paying him only half his prior salary. Doctor #2 was also fired.

Party Contentions: Cases were consolidated for trial on wrongful termination and retaliation.

<b>WHAT WAS THE VERDICT??</b> Plaintiff or Defense: _____
If Plaintiff, How Much? _____ Any Punitive Damages? _____

**CONCLUSION**

Many of these outcomes support the conclusion that the religious and charitable organizations were held to a higher standard than businesses. There does not seem to be a particular type of plaintiff who was most sympathetic, but the jury clearly liked the two California doctors.

The California cases resulted in larger verdicts, as expected, but what would be considered fairly normal for the litigious state. Several of the remaining verdicts were fairly run of the mill with a variety of lower recoveries. Some of these results could be explained by geography and the type of claim.

All of the outcomes raise the question of whether opportunities for resolution were fully explored. Even defense verdicts and low verdicts come at a large cost, and winners may not feel so victorious when they factor in the attorney fees and costs expended in achieving a defense verdict. Moreover, the cost-shifting risks associated with the potential of owing a plaintiff's fees and costs, can significantly increase



exposure. These outcomes serve as reminders that accurately assessing verdict potential can lay a good groundwork for effective resolution efforts.