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SCOTUS Ruling Suggests that Emotional Distress Damages Are Not Available in Title IX Claims

Client Alert

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On April 28, 2022, the Supreme Court released its opinion in *Cummings v. Premier Rehab Keller*, 596 U.S. ____ (2022). *Cummings* involved claims under the Rehabilitation Act of 1973, as amended, 29 U.S.C. §794(a), and the Patient Protection and Affordable Care Act (ACA), 42 U.S.C. §18116. The plaintiff had asked for an American Sign Language interpreter during physical therapy sessions and the rehab center refused. The plaintiff later brought a claim and sought emotional distress damages. The district court dismissed, finding that “the only compensable injuries the plaintiff alleged were ‘humiliation, frustration, and emotional distress’” and that “damages for emotional harm” are not recoverable. The Fifth Circuit affirmed.

The Supreme Court affirmed the lower court’s rulings that emotional distress damages are not available under the Rehabilitation Act or the ACA. As explained by the Supreme Court, the Rehabilitation Act and the ACA are two of four statutes enacted by Congress prohibiting recipients of federal financial assistance from discriminating based on certain protected grounds. Whether a remedy is appropriate under these laws must be informed by the way “Spending Clause statutes” operate. Spending clause legislation operates based on consent, meaning “in return for federal funds, the [recipients] agree to comply with federally imposed conditions.” Ultimately, “a particular remedy is thus ‘appropriate relief’ in a private Spending Clause action ‘only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature.’” Under the Court’s spending clause decisions, a federal funding recipient may be considered “on notice that it is subject not only to those remedies explicitly provided in the relevant legislation, but also to those remedies traditionally available in suits for breach of contract.” Because emotional distress damages are not a remedy traditionally available in

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suits for breach of contract, recipients of federal funds would not be on notice of this potential liability. As such, the Court held that emotional distress damages are not available under the Rehabilitation Act or ACA.

The *Cummings* decision did not involve a claim under Title IX. However, Title IX is one of the four statutes that prohibits a recipient of federal funds from discriminating based on certain protected grounds.[1] The reasoning on which the Court's ruling regarding emotional distress damages under the Rehabilitation Act and the ACA relies, appears to apply equally to the other two statutes, i.e. Title IX and Title VI. Title IX and Title VI are both spending clause statutes that would require the Court to consider whether a recipient of federal funds under those statutes would be on notice that by accepting funds it exposes itself to emotional distress damages. Presumably the answer under Title IX or Title VI would be the same as it was for the Rehabilitation Act and the ACA. That is, it does not appear that a recipient of funds under Title IX would be on notice that receiving federal funds creates liability for emotional distress damages. Unfortunately, this remains an open question at the moment because the *Cummings* decision did not specifically address Title IX. However, *Cummings* may be persuasive to a lower court if a party is seeking dismissal of emotional distress damages under a Title IX claim.

Navigating Title IX compliance and litigation can be difficult. If you have any questions about Title IX or any other related issue, please contact your Butzel Labor & Employment Attorney.

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[1] The fourth being Title VI of the Civil Rights Act of 1964, which forbids race, color, and national origin discrimination in federally funded programs or activities.