

## 4 Huge Discrimination Litigation Developments From 2022

By **Amanda Ottaway**

*Law360 (December 16, 2022, 12:35 PM EST)* -- The U.S. Supreme Court said a public high school football coach could pray on the field after games, the U.S. Soccer Federation agreed to a \$24 million settlement with female players, and Google said it would pay \$118 million to wrap up a pay equity battle of its own.

Pay and gender equity, religious rights and workplace harassment were some of the biggest drivers in high-profile discrimination cases this year, and attorneys expect that to continue in 2023.

The women's soccer settlement and the proceedings that led up to it, as well as individual states stepping up with laws regulating pay disparities, illustrate the spotlight that's on pay equity and the ripple effects a closely followed case can have, said Morrison Foerster LLP partner Michael Schulman.

"It underscores how important pay equity has become," he said. "Pay equity is one of the hottest issues out there on the anti-discrimination front, both because plaintiffs' lawyers are bringing more and more lawsuits alleging violations of pay equity laws, and also because states in particular are passing more and more laws."

Here are four blockbuster developments from discrimination cases in 2022.

### High Court Sides with Praying Coach

The U.S. Supreme Court ruled in June that a public school district violated the First Amendment by suspending a Christian football coach who insisted on praying at midfield right after games.

Led by Justice Neil Gorsuch, the high court conservative majority sided with Joe Kennedy in his effort to undo a Ninth Circuit ruling that said the Bremerton School District in Washington was within its rights to place him on paid leave amid a contentious dispute over whether he could continue kneeling on the 50-yard line to pray immediately after games.

"You kind of have an irony there, because you've had this string of cases where the court has decided that public employees have really narrow, limited free speech rights, and then you have this case that seems like it really detracts from that prior precedent," said Bethel Habte, a Tom Henderson Civil Rights Fellow at Sanford Heisler Sharp.

While the Kennedy case applies specifically to public employees, who are a minority in the U.S., Title VII

of the Civil Rights Act also requires employers to accommodate employees' religious observances and practices as long as it doesn't create an undue hardship, and it bars discrimination based on religion.

The case is Joseph Kennedy v. Bremerton School District, case number 21-418, in the Supreme Court of the United States.

### **US Women's Soccer Team Nets \$24M Pay Pact**

In likely the highest-profile equal pay settlement of the year, the U.S. Women's National Team reached a \$24 million deal with U.S. Soccer, ending the Title VII and Equal Pay Act suit the athletes brought in 2019.

The parties announced the settlement in February, and the deal was sealed when the players' union ratified a new collective bargaining agreement in May.

Though the settlement fell short of the \$67 million the players had asked for in their lawsuit, Schulman said the attention they brought to the issue of equal pay will have far-reaching impact.

"I think one of the biggest aspects of that case for private employers is the level of publicity that it got," he said. "I think it puts the issue on the forefront of the minds of a lot of people, including would-be plaintiffs, who might not have otherwise thought about it, right? ... 'People I watch on TV or I watched play in the World Cup did something about it. Now I can, too.'"

Under the new labor agreements, the men's and women's U.S. soccer teams will share FIFA World Cup prize money and collect equal appearance fees, game bonuses and shares of commercial revenue, even though the international governing body, FIFA, hands out much larger prizes on the men's side.

The case demonstrates that employers with a unionized workforce shouldn't assume all their wages are equitable just because they were collectively bargained, Schulman pointed out.

"In this case, the women alleged that's not the case, right? 'Our wages were collectively bargained, but they're still significantly lower than our male counterparts'," he said.

The case is Morgan et al. v. U.S. Soccer Federation Inc., case number 21-55356, in the U.S. Court of Appeals for the Ninth Circuit.

### **Google Settles Equal Pay Case for \$118M**

In another massive equal pay agreement, a California state judge in October granted final approval to a whopping \$118 million settlement between Google and a class of women who sued the company for pay bias. The deal resolves about five years of litigation over Google's alleged treatment of female employees.

"There's lots of talk about the viability of class actions, and this was a very viable class action," said Saba Bireda, a partner at worker-side firm Sanford Heisler Sharp. "So just showing that that class action and the state-level pay equity laws are really an important tool for plaintiffs, especially as related to equal pay, I think that's an important case."

The parties first announced they'd reached a deal in June. In addition to the fund, which covers about 15,500 California-based Google employees spanning hundreds of job titles, the tech giant agreed to have independent experts analyze its hiring and pay equity practices.

The class overall includes women who worked as engineers, product and program managers, systems administrators, and sales and child care employees, according to orders from San Francisco Superior Court Judge Andrew Y.S. Cheng.

"I hope that that is setting an example for other tech companies to really kind of proactively examine their pay practices, which Google is now doing as a condition of the settlement agreement," Bireda said of the case.

The case is Kelly Ellis et al. v. Google LLC, case number CGC-17-561299, in the Superior Court of the State of California, County of San Francisco.

### **Calif. Jury Hits SoCal Edison with \$460M Harassment Verdict**

It was a busy year in California: In June, a Golden State jury slammed electricity supplier Southern California Edison with a \$460 million verdict, siding with two former workers — employee Justin Page and supervisor Alfredo Martinez — who said they were forced out of their jobs for reporting sexual and race-based harassment.

For example, the suit said one co-worker called Page a gay slur and urged him to help hold down a female co-worker so he could rape her. Co-workers also used racist slurs to refer to Black and Hispanic employees, according to the complaint, which is dated July 2017. Martinez, a supervisor, said he collected complaints and brought them up the food chain, but was accused of ratting out his colleagues.

"Sometimes I think the reaction from employers who get these complaints is, 'This would not happen here,' right? 'This doesn't happen in our workplace.' And many times they're right — we do the investigation, and it turns out that the allegations are overblown. But in other instances, it's not that," Schulman said.

In March 2017, Martinez was approached by two female colleagues who told him they'd experienced sexual harassment. According to the complaint, they viewed Martinez as "just about the only supervisor" who could be trusted and who hadn't engaged in the harassment.

Schulman noted that the whopping jury award came in a two-plaintiff case; it wasn't a class or collective action.

Another unique aspect of the case was that the plaintiffs were an employee who'd complained and a supervisor who also raised concerns about alleged misconduct by his fellow supervisors, Schulman added. Often, employers focus on the victims of the alleged misconduct, when they should also pay attention to who else might be involved, for example, in an internal investigation.

"This jury verdict, I think, is a cautionary tale to those employers — that it's important to think about the involved parties on a holistic basis," Schulman said.

The case is Alfredo Martinez et al. v. Southern Ca Edison Co. et al., case number BC670461, in the Superior Court of the State of California, County of Los Angeles.

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