

KD Alert: Supreme Court Affirms Denial of Emotional Distress Damages in Claim of Discrimination under the Rehabilitation Act and Affordable Care Act, May 10, 2022

The United States Supreme Court recently issued its opinion in the case *Cummings v. Premier Rehab Keller, P.L.L.C.*, a discrimination lawsuit asserting violations of the Rehabilitation Act of 1973 (29 U.S.C. § 701 et seq.) and the Patient Protection and Affordable Care Act (42 U.S.C. § 18001 et seq.). Writing for a 6-3 majority, on April 28, 2022, Chief Justice Roberts, joined by Justices Thomas, Alito, Gorsuch, Kavanaugh and Barrett, delivered the holding that emotional distress damages are not recoverable in a private action to enforce either of these Acts.

The petitioner, Jane Cummings, is deaf and legally blind. She sought physical therapy services from the respondent, Premier Rehab, requesting that it provide her with an ASL interpreter at her appointments. Premier Rehab declined to do so, advising her that she could communicate with the therapist using written notes, lip reading, or gesturing. Cummings thereafter filed a lawsuit against Premier Rehab, asserting that its failure to provide an ASL interpreter constituted discrimination on the basis of disability, in violation of the Rehabilitation Act and the Affordable Care Act. In her complaint, Cummings sought declaratory relief, an injunction and damages. The District Court for the Northern District of Texas dismissed the complaint, observing that the compensable injuries that Cummings alleged were for emotional harm, which are not recoverable in private actions brought to enforce these Acts. The Court of Appeals for the Fifth Circuit affirmed the decision, which was in direct contradiction to the 11th Circuit which previously ruled emotional distress damages were available under the Rehabilitation Act.

The Supreme Court premised its analysis on the contractual nature of Spending Clause legislation – including the Rehabilitation Act and the Affordable Care Act – noting that, “in return for federal funds, [its recipients] agree to comply with federally imposed conditions.” However, “[r]ecipients cannot ‘knowingly accept’ the deal with the Federal Government unless they ‘would clearly understand...the obligations’ that would come along with doing so.” Applying the same analogy to the “scope of available remedies” in actions brought to enforce Spending Clause statutes, a particular remedy is considered “appropriate relief” in a Spending Clause action “only if the funding recipient is on notice that, by accepting federal funding, it exposes itself to liability of that nature.” The Court proceeded to conclude that recipients are on notice as to remedies both explicitly set out in the relevant legislation, but also to those traditionally available in suits for breach of contract; however, in accordance with hornbook law, “emotional distress is generally not compensable in contract.” Thus, given that the legislation at issue did not set out particular remedies, and that recipients of federal funding are not on notice that they could face liability for emotional harm, emotional distress damages are not recoverable under the statutes at issue in this case.

Justice Breyer, joined by Justices Sotomayor and Kagan, issued a dissenting opinion.

The Supreme Court’s decision, affirming the Fifth Circuit ruling, illustrates the Court’s application of strict interpretation of federal legislation, including the remedies available in private actions alleging discrimination pursuant to legislation sounding in breach of contract law.

KD IS HERE TO HELP

The experienced labor and employment law attorneys at Kaufman Dolowich & Voluck, LLP are available to assist you in understanding the impact of this decision on your organization. For more information, contact any experienced member of KD’s Labor and Employment Law Practice Group.

AUTHORS: Iram P. Valentin, Partner, and, Allison R. Levinson, Attorney