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Case of the Month

Majority-group plaintiffs are not expected to meet a heightened evidentiary standard to support a Title VII disparate treatment claim.

Marlean Ames, a heterosexual woman and an employee with the Ohio Department of Youth Services, was considered for a new management position that was ultimately awarded to a lesbian woman. Ames was later demoted and replaced by a gay man. Ames sued the department, claiming that she was discriminated against based on her sexual orientation in violation of [Title VII of the Civil Rights Act of 1964](#), 42 U.S.C. § 2000e-2. The department filed a motion for summary judgment that was granted by the district court. Ames appealed.

The Sixth Circuit Court of Appeals applied the framework for analyzing Title VII disparate treatment claims described by the U.S. Supreme Court in [McDonnell Douglas Corporation v. Green](#), 411 U.S. 792 (1973). The first step requires a plaintiff to make a prima facie showing of discriminatory motive on the part of the defendant. In applying that step, the Sixth Circuit applied the background circumstances rule. The court considered whether Ames had shown background circumstances that indicated the department discriminates against the majority group in which she is a member. This was in addition to the evidence Ames was otherwise expected to present at that step, thereby placing a heightened burden on a member of the majority group. The court determined she had not met her burden and upheld the lower court's ruling. Ames again appealed.

The U.S. Supreme Court considered whether Title VII permits the application of the background circumstances rule. Reviewing the plain language of the statute, the Court found Title VII focuses on individuals and makes no distinction between majority-group and minority-group plaintiffs. Similarly, the Court found its precedent did not apply a different standard between the two groups, and in fact instructed that the approach to the first McDonnell Douglas step must be flexible, which the rigid background circumstances rule directly contradicted. The Court vacated the Sixth Circuit's decision and remanded the case for the courts to apply the proper standard. [Ames v. Ohio Dep't of Youth Svs.](#), 145 S.Ct. 1540 (Jun. 5, 2025).

Why is This Case Significant?

In finding the background circumstances rule invalid, the U.S. Supreme Court settled a circuit court split.

Highlights

[TASB/TACCA Post-Legislative Seminar](#)

August 4, 2023

TASB offices

Updated on eLaw:
[Budget and Tax Documents](#)

Resources

[Texas Higher Education](#)

[Coordinating Board](#)

[Texas Legislature](#)

[Texas Statutes](#)

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[U.S. Department of](#)

[Education](#)



From the Courts and the Attorney General

Personnel

The [Texas Commission on Human Rights Act](#) (TCHRA) does not foreclose common law torts claims, including defamation and fraud, brought by an employee against another employee because the act addresses claims against an employer. [Butler v. Collins](#), 68 Tex. Sup. Ct. J. 999 (Tex. May 23, 2025).

The Texas Department of Insurance Division of Workers' Compensation does not have exclusive jurisdiction over the determination of whether an employee's injury was work-related when the employer raises the issue as an affirmative defense outside of the context of compensability and the relief requested by the employee does not depend on the entitlement to benefits. [Univ. of Tex. Rio Grande Valley v. Oteka](#), No. 23-0167, 2025 WL 1668315 (Tex. Jun. 13, 2025).

Dean was entitled to qualified immunity from a professor's claim that the dean retaliated against the professor based on his speech in violation of the U.S. Constitution [First Amendment](#) because at the time of the dean's acts, August 2013 to March 2015, it was not clearly established that the professor's comments criticizing tenure constituted protected speech on a matter of public concern. [Wetherbe v. Texas Tech Univ. Sys.](#), 138 F.4th 296 (5th Cir. May 20, 2025).

Professors, whose tenure was revoked by a community college, failed to provide sufficient evidence to overcome dismissal of their claims that the college retaliated against them for their advocacy for a faculty senate and their participation in the American Association of University Professors in violation of the [First Amendment](#) and did not provide adequate due process in violation of the U.S. Constitution

[Fourteenth Amendment](#). [Frisella v. Dallas Coll.](#), No. 3:24-CV-0469-D, 2025 WL 1531577 (N.D. Tex. May 29, 2025) (mem. op.).¹

Former employee, who was terminated by a university after returning from [Family Medical Leave Act](#) (FMLA) leave and subsequent [Americans with Disabilities Act](#) (ADA) leave for misconduct prior to taking leave, failed to provide sufficient evidence to overcome summary judgment on his claims of disability discrimination in violation of the [TCHRA](#) and disability discrimination and retaliation in violation of the federal [Rehabilitation Act Section 504](#) against the university as well as claims of FMLA retaliation against his former supervisor. [Vasquez v. Univ. of Tex. Health Sci. Ctr.](#), No. 4:23cv2418, 2025 WL 1557326 (S.D. Tex. Jun. 2, 2025) (adopting the report and recommendation in [Vasquez v. Univ. of Tex. Health Sci. Ctr.](#), No. 4:23cv2418, 2025 WL 1558352 (S.D. Tex. May 13, 2025)).

Former employee, who was terminated by a university for taking unpaid leave after being denied [FMLA](#) leave to care for his common law wife following her surgery, provided sufficient evidence to overcome dismissal of his claims of discrimination and interference by the university in violation of the FMLA, by showing that, when he timely requested the leave, his supervisor incorrectly told him he was not legally married and therefore not eligible for the leave. [Roncone v. Univ. of Tex. Southwestern Med. Ctr.](#), No. 3:23-CV-2526-L, 2025 WL 1678154 (N.D. Tex. Jun. 13, 2025) (adopting the report and recommendation in [Roncone v. Univ. of Tex. Southwestern Med. Ctr.](#), No. 3:23-cv-2526-L-BN, 2025 WL 1678511 (N.D. Tex. May 28, 2025)).²

¹ Prior opinions in this case were summarized in the [October 2024](#) and [March 2025](#) Community College Legal Update.

² A prior opinion in this case was summarized in the [December 2024/January 2025](#) Community College Legal Update.

Former employee, who was terminated by a university following an investigation of a complaint that he sexually harassed a colleague, failed to provide sufficient evidence to overcome dismissal of his claims that he was subjected to a hostile environment in violation of [Title VII of the Civil Rights Act of 1964](#) and discriminated against based on a disability in violation of the [ADA](#). [Brauckmiller v. Univ. of Tex. San Antonio](#), No. SA-23-CV-01182-XR, 2025 WL 1467443 (W.D. Tex. May 22, 2025) (adopting the report and recommendation in [Brauckmiller v. Univ. of Tex. San Antonio](#), No. SA-23-CV-01182-XR, 2025 WL 1617834 (W.D. Tex. May 1, 2025)).³

University police officer, who participated in a [Title IX of the Education Amendments of 1972](#) investigation and allegedly then was ostracized, subjected to implied threats of termination, and overlooked for a promotion, failed to provide sufficient evidence to overcome summary judgment on her claim of retaliation against the university in violation of [Title VII](#). [Ferrara-Faltinek v. W. Tex. A&M Univ.](#), No. 2:23-CV-153-Z-BR, 2025 WL 1678155 (N.D. Tex. Jun. 13, 2025) (mem.).

Students and Instruction

Former student, who claimed a university violated her state and federal rights by exposing her to mold, mishandling her [Title IX](#) complaint, and retaliating against her for her complaint and who was expelled and not subject to future disciplinary hearings, failed to provide sufficient evidence to support her motion to strike future disciplinary hearings as moot and outside of the defendant's jurisdiction. [Abbruzzese v. Stephen F. Austin State Univ.](#), No. 9:25-CV-00018-MJT, 2025 WL 1519741 (E.D. Tex. May 28, 2025) (adopting the report and recommendation in [Abbruzzese v. Stephen F. Austin State Univ.](#),

No. 9:25-CV-00018-MJT-CLS, 2025 WL 1524485 (E.D. Tex. May 13, 2025)).

Former medical student, who was dismissed by a university for poor academic performance, was not entitled to a preliminary injunction allowing her to return to school based on her claims of disability discrimination by the university in violation and the [ADA](#) and [Section 504](#) and the denial of equal protection and due process in violation of the [Fourteenth Amendment](#), among other claims. [Price v. Tex. Tech Univ. Health and Scis. Ctr. El Paso](#), No. EP-25-CV-00128-DB, 2025 WL 1479671 (W.D. Tex. May 22, 2025) (mem.).

Open Records Letter Rulings

This month, the attorney general issued Open Records Letter Rulings⁴ based on requests from Texas community colleges related to:

- Information regarding current trustees. Tex. Att'y Gen. Op. [OR2025-17225](#) (May 20, 2025);
- Information regarding an individual. Tex. Att'y Gen. Op. [OR2025-17593](#) (May 22, 2025), [OR 2025-18018](#) (May 27, 2025);
- Information regarding a criminal investigation. Tex. Att'y Gen. Op. [OR2025-17732](#) (May 22, 2025), [OR2025-18105](#) (May 27, 2025);
- Information regarding a contract. Tex. Att'y Gen. Op. [OR2025-17761](#) (May 22, 2025), [OR2025-19580](#) (Jun. 9, 2025);
- Employment records pertaining to the requestor. Tex. Att'y Gen. Op. [OR2025-17773](#) (May 22, 2025);
- Information regarding certain renovations. Tex. Att'y Gen. Op. [OR2025-18253](#) (May 28, 2025);

³ A prior opinion in this case was summarized in the [December 2024/January 2025](#) Community College Legal Update.

⁴ Open record letter rulings are limited to the particular records at issue and the facts as presented to the attorney general. These rulings must not be relied upon as a previous determination regarding any other records or any other circumstances.

- Bid tabulations and winning responses regarding a request for proposals. Tex. Att'y Gen. Op. [OR2025-18546](#) (May 30, 2025);
- Personnel information regarding named individuals. Tex. Att'y Gen. Op. [OR2025-18827](#) (Jun. 3, 2025);
- Video recordings. Tex. Att'y Gen. Op. [OR2025-18834](#) (Jun. 3, 2025);
- Evaluative materials and the awarded proposal pertaining to a request for proposals. Tex. Att'y Gen. Op. [OR2025-19629](#) (Jun. 9, 2025); and
- Information regarding a request for proposals. Tex. Att'y Gen. Op. [OR2025-19712](#) (Jun. 9, 2025).



Recent Regulations and Guidance

Texas Department of State Health Services amended a [regulation](#) addressing the education of medical radiologic technicians.

The U.S. Department of Energy (DOE) rescinded and amended [regulations](#) addressing nondiscrimination in federally assisted programs and activities.

DOE rescinded [regulations](#) that described outdated federal assistance program procedures.



In the News

The U.S. Department of Education (ED) announced efforts to address [student aid fraud](#), including [guidance for the summer and fall terms](#).

ED recognized June as [Title IX month](#).