

## SCOTUS Rules Emotional Distress Damages Unavailable for Suits Under Certain Federal Anti-Discrimination Laws

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In a **recent April 28, 2022 decision**, the Supreme Court of the United States (SCOTUS) ruled in favor of a Texas physical therapy provider, Premier Rehab Keller, PLLC (Premier Rehab), in a suit where petitioner Jane Cummings alleged that she was entitled to relief under the Rehabilitation Act of 1973 and the Affordable Care Act due to discrimination she suffered based on her disability. By way of background, Cummings, who is deaf and legally blind, was denied an American Sign Language (ASL) interpreter during her physical therapy appointment at Premier Rehab.

Affirming the Fifth District Court of Appeals' decision that the only damages pled by Cummings were "emotional in nature," SCOTUS agreed that she could not recover such damages under legislation authorized by the Spending Clause of the United States Constitution, such as the Rehabilitation Act and the Affordable Care Act. Using a contract-law based analysis, the Court reasoned that entities which receive and accept federal funding pursuant to the Spending Clause, in return promise not to discriminate, essentially creating "a contract between the Government and the recipient of funds." By accepting such funding, entities signal they are knowingly and voluntarily accepting the terms of the relationship, which include the liability of traditionally available remedies in breach of contract actions, like compensatory damages and injunctions. Emotional distress damages are not considered a traditionally available remedy in contract disputes. Because Premier Rehab could not have reasonably been "on

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notice” of the potential for incurring liability for these damages, Cummings could not recover.

In dissent, Justice Breyer, joined by Justices Kagan and Sotomayor, disagreed with the majority’s conclusion that emotional distress damages would not be available in such a case falling within the exception to the general rule of recovery in breach of contract actions. For instance, emotional damages can be recovered in contract cases where “the breach is of such a kind that serious emotional disturbance was a particularly likely result.” In Justice Breyer’s opinion, emotional distress is an anticipated harm for which discrimination would warrant such a remedy.

### Why this Ruling Matters for Employers

SCOTUS’s ruling on this issue is significant for employers receiving federal funding, which mandates their compliance with statutes such as: (1) the Rehabilitation Act of 1973, which prohibits discrimination based on disability; (2) Title VI of the Civil Rights Act of 1964, which prohibits race discrimination at educational institutions; (3) Title IX of the Educations Amendments Act of 1972, which prohibits sex discrimination and harassment at educational institutions; and (4) the Patient Protection and Affordable Care Act, which prohibits discrimination based on race, sex, disability, and/or age at healthcare institutions.

Specifically, this decision bars plaintiffs from recovering emotional distress damages under any of the above statutes. This employer-friendly ruling protects funding recipients from the unpredictable and substantial damages that come along with allegations of emotional harm, thus limiting liability to the “traditionally available remedies.” As noted in the majority’s opinion, until Congress makes the implied right of action at issue in this case, an explicit right of action, its silence as to available remedies cannot be interpreted as opening the door to every possible remedy.

Please contact your servicing Laner Muchin attorney for more information.