4 PJI 11 | AMERICANS WITH DISABILITIES ACT - DISPARATE TREATMENT CLAIM - 42 USC §12101-12117

In this case, [Plaintiff] claims that [Defendant] discriminated against [Plaintiff] by [refusing to hire [him/her]/terminating [his/her] employment/failing to promote [him/her]] because [he/she] had a "disability" within the meaning of the Americans with Disabilities Act (the ADA).

[Defendant] denies [Plaintiff]'s claim and asserts that [describe the defendant's defense].

Under the ADA, if a person is qualified to do the job, it is unlawful for an employer to [refuse to employ/discharge/fail to promote] the person because of that person's disability.

To succeed on [his/her] claim, [Plaintiff] must prove all the following facts by a preponderance of the evidence:

> First: [Plaintiff] had a disability;
>
> Second: [Plaintiff] was a qualified individual;
>
> Third: [Defendant] [refused to employ/discharged/failed to promote] [Plaintiff]; and
>
> Fourth: [Defendant] took that action because of [Plaintiff]'s disability.

[In the verdict form that I will explain in a moment, you will be asked to answer questions about these factual issues.]

<u>Definition of "Disability"</u>

> The first element requires that [Plaintiff] prove by a preponderance of the evidence that [he/she] had a disability. A "disability" is a physical or mental impairment that substantially limits one or more major life activities.
>
> A "physical impairment" is a condition that prevents the body from functioning normally. A "mental impairment" is a condition that prevents the mind from functioning normally.
>
> A "major life activity" is an activity that is centrally important to everyday life, including the operation of major bodily functions.
>
> [[Activity at issue] is a major life activity.]
>
> [[Plaintiff] claims that [activity at issue] is a major life activity, and you must decide whether it is. Major life

activities include caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working. Major life activities also include functions of the immune system; normal cell growth; and digestive, bowel, bladder, neurological, brain, respiratory, circulatory, endocrine, and reproductive functions.]

An impairment "substantially limits" a major life activity if it prevents or significantly restricts a person from performing the activity, compared to an average person in the general population. An impairment that substantially limits one major life activity is a disability even if it does not limit any other major life activity.

To decide whether [Plaintiff]'s [describe impairment] substantially limits [his/her] ability to [activity at issue], you should consider, as compared to most people in the general population:

(a) the condition under which [Plaintiff] performs [activity at issue];

(b) the manner in which [Plaintiff] performs [activity at issue]; and

(c) how long [it takes [Plaintiff] to/[Plaintiff] can] perform [activity at issue].

[Mitigating measures: To decide whether [Plaintiff]'s [describe impairment] substantially limits [his/her] ability to [activity at issue], it does not matter that [his/her] [describe impairment] can be corrected by the use of [medication/hearing aids/prosthetics/assistive technology/describe other mitigating measure]. [But you can consider whether [Plaintiff]'s eyesight could be corrected by the use of ordinary eyeglasses or contact lenses.]

[Episodic impairment: If [Plaintiff]'s impairment is not always a problem but flares up from time to time, that can be a disability if it would substantially limit a major life activity when active.]

[When there is a jury question on "record of" disability: [Plaintiff] also can establish that [he/she] had a disability by proving that [he/she] had a record of a disability.

[Plaintiff] had a record of a disability if [he/she] had a history of, or had been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities. Put another way, if [Plaintiff] had a disability but [has now recovered/the disability is in remission], [he/she] is still considered to have a disability within the meaning of the ADA.]

[When there is a jury question on "regarded as": [Plaintiff] can also establish that [he/she] had a disability by proving that [Defendant] regarded [him/her] as having a disability. [Plaintiff] is "regarded as" having a disability if [he/she] proves that [Defendant] [describe adverse employment action] [him/her] because of an actual or perceived impairment – even if the actual or perceived impairment did not limit a major life activity and even if [Defendant] did not think that the actual or perceived impairment limited a major life activity. [But [Plaintiff] cannot be "regarded as" disabled if [his/her] impairment is transitory and minor. A "transitory" impairment is one that's expected to last six months or less.]]

<u>Definition of "Qualified Individual"</u>

The second element requires that [Plaintiff] prove by a preponderance of the evidence that [he/she] was "qualified" for the job at the time of the challenged employment decision. This means that [Plaintiff] must show that [he/she] had the skill, experience, education, and other job-related requirements for [describe job], and could do the essential functions of the job – with or without reasonable accommodation.

In this case, [Plaintiff] claims that [he/she] was able to perform the essential functions of [describe job] [with [describe accommodation provided]]. [Defendant] claims that [Plaintiff] was unable to perform [describe functions] [– even with [describe accommodation provided] –] and that [this function/these functions] [was/were] essential to [describe job]. To the extent that [Plaintiff] claims that a particular function is not essential to the job, [he/she] must prove that the function is not essential.

The essential functions of a position are the fundamental duties of that position. The term "essential functions" does not include the position's marginal functions. To decide whether a function is essential to a particular position, you may consider the following factors:

(a) whether the function's performance is the reason the position exists;

(b) whether there are a limited number of employees available to perform the function;

(c) whether the function is highly specialized so that an employee in the position is hired for the ability to perform the function;

(d) [Defendant]'s judgment about which functions are essential to the position;

(e) written job descriptions for the position;[6]

(f) the amount of time an employee in the position spends performing the function;

(g) the consequences of not requiring an employee in the position to perform the function;

(h) [the terms of a collective-bargaining agreement]; or

(i) whether others who held the position were required to perform the function.

No single factor controls your decision. You should consider all the evidence to decide whether a function is essential to the job. [To decide whether [Plaintiff] was qualified to perform the essential job functions, you should consider [his/her] abilities as they existed when [Defendant] [describe adverse employment action].

Direct Threat: [Defendant] contends that [Plaintiff] is not a "qualified individual" because [Plaintiff]'s [employment/continued employment] [posed/would have posed] a direct threat to [Plaintiff] [and/or] to [Defendant]'s other employees. A "direct threat" is a significant risk to the health or safety of [Plaintiff] or others that cannot be eliminated by a reasonable accommodation. Therefore, you must decide whether [Plaintiff] could safely perform the essential functions of [his/her] job with or without a reasonable accommodation. In determining whether [Plaintiff] [posed/would have posed] a direct threat, you may consider:

(a) the nature of the risk of [plaintiff's condition];[7]

(b) the severity of the risk of [plaintiff's condition];

(c) the duration of the risk of [plaintiff's condition];

(d) how likely it is that harm will occur due to [plaintiff's condition]; and

(e) whether the potential harm due to [plaintiff's condition] is likely to occur in the near future.

[Plaintiff] has the burden to prove that [he/she] [did not pose/would not have posed] a direct threat to [himself/herself] [and/or] to [Defendant]'s other employees. If you find that [Plaintiff] could not safely perform the essential functions of [his/her] job with or without a reasonable accommodation, then [Plaintiff] is not a "qualified individual."]

Definition of "Because of Plaintiff's Disability"

Finally, if you find that [Plaintiff] had a "disability," was a "qualified individual," and that [Defendant] [describe adverse employment action], you must decide whether [Defendant] took that action "because of" [Plaintiff]'s disability. Put another way, you must decide whether [Plaintiff]'s disability was the main reason for [Defendant]'s decision.

To determine that [Defendant] [describe adverse employment action] because of [Plaintiff]'s disability, you must decide that [Defendant] would not have [describe adverse employment action] if [Plaintiff] had not had a disability but everything else had been the same.

[Defendant] denies that [he/she/it] [describe adverse employment action] because of [Plaintiff]'s disability and claims that [he/she/it] made the decision for [another reason, other reasons].

An employer may not discriminate against an employee because of the employee's disability, but an employer may [describe adverse employment action] an employee for any other reason, good or bad, fair or unfair. If you believe [Defendant]'s reason[s] for [his/her/its] decision and find that [his/her/its] decision was not because of [Plaintiff]'s disability, you must not second guess that decision, and you must not substitute your own judgment for [Defendant]'s judgment – even if you do not agree with it.

[Pretext (optional, see annotations): As I have explained [Plaintiff] has the burden to prove that [Defendant]'s decision to [describe adverse employment action] was because of [Plaintiff]'s disability. I have explained to you that evidence can be direct or circumstantial. To decide whether [Defendant]'s decision [describe adverse employment action] was because of [Plaintiff]'s disability, you may consider the circumstances of [Defendant]'s decision. For example, you may consider whether you believe the reason[s] [Defendant] gave for the decision. If you do not believe the reason[s] [he/she/it] gave for the decision, you may consider whether the reason[s] [was/were] so unbelievable that [it was/they were] a cover-up to hide the true discriminatory reason for the decision.]

If you find that [Plaintiff] has proved each of the elements [he/she] must prove, you must decide the issue of [his/her] compensatory damages.

When considering the issue of [Plaintiff]'s compensatory damages, you should determine what amount, if any, has been proven by [Plaintiff] by a preponderance of the evidence as full, just and reasonable compensation for all of [Plaintiff]'s damages as a result of [describe adverse employment action], no more and no less. Compensatory damages are not allowed as a punishment and must not be imposed or increased to penalize [Defendant]. Also, compensatory damages must not be based on speculation or guesswork.

You should consider the following elements of damage, to the extent you find that [Plaintiff] has proved them by a preponderance of the evidence, and no others:

(a) net lost wages and benefits from the date of the [describe adverse employment action] to the date of your verdict; and

(b) emotional pain and mental anguish.

To determine the amount of [Plaintiff]'s net lost wages and benefits, you should consider evidence of the actual wages [he/she] lost and the monetary value of any benefits [he/she] lost.

To determine whether and how much [Plaintiff] should recover for emotional pain and mental anguish, you may consider both the mental and physical aspects of injury – tangible and intangible. [Plaintiff] does not have to introduce evidence of a monetary value for intangible things like mental anguish. You must determine what amount will fairly compensate [him/her] for those claims. There is no exact standard to apply, but the award should be fair in light of the evidence.

[Mitigation of Damages: You are instructed that any person who claims damages as a result of an alleged wrongful act on the part of another has a duty under the law to "mitigate" those damages. For purposes of this case, the duty to mitigate damages requires [Plaintiff] to be reasonably diligent in seeking substantially equivalent employment to the position [he] [she] held with [Defendant]. To prove that [Plaintiff] failed to mitigate damages, [Defendant] must prove by a preponderance of the evidence that:

(1) work comparable to the position [Plaintiff] held with [Defendant] was available, and

(2) [Plaintiff] did not make reasonably diligent efforts to obtain it.

If, however, [Defendant] shows that [Plaintiff] did not make reasonable efforts to obtain any work, then [Defendant] does not have to prove that comparable work was available.

If you find that [Defendant] proved by a preponderance of the evidence that [Plaintiff] failed to mitigate damages, then you should reduce the amount of [Plaintiff]'s damages by the amount that could have been reasonably realized if [Plaintiff] had taken advantage of an opportunity for substantially equivalent employment.]

[Punitive Damages: [Plaintiff] also asks you to award punitive damages. The purpose of punitive damages is not to compensate [Plaintiff] but, instead, to punish [Defendant] for wrongful conduct and to deter similar wrongful conduct. You will only reach the issue of punitive damages if you find for [Plaintiff] and award [him] [her] compensatory damages.

To be entitled to an award of punitive damages [Plaintiff] must prove by a preponderance of the evidence that [Defendant] acted with either malice or with reckless indifference toward [Plaintiff]'s federally protected rights. Specifically, [Plaintiff] must show that an employee of [Defendant], acting in a managerial capacity, either acted with malice or with reckless indifference to [Plaintiff]'s federally protected rights.

There is no bright-line rule about which employees act in a managerial capacity. You must determine whether an employee acted in a "managerial capacity" based upon the type of authority [Defendant] gave the employee and the amount of discretion that the employee has in what is done and how it is accomplished.

To show that [Defendant] acted with malice, [Plaintiff] must show that an employee acting in a managerial capacity knew that federal law prohibits discrimination and discriminated against [Plaintiff] anyway. To show that [Defendant] acted with reckless indifference to [Plaintiff]'s federally protected rights, [Plaintiff] must show that an employee acting in a managerial capacity acted with serious disregard for whether the conduct violated federal law. Either malice or reckless indifference is sufficient to entitle [Plaintiff] to an award of punitive damages; [Plaintiff] need not prove both.

An employer may not be held liable for punitive damages because of discriminatory acts on the part of its managerial employees where the managerial employees' acts are contrary to the employer's good faith efforts to comply with the law by implementing policies and programs designed to prevent unlawful discrimination in the workplace. However, the mere existence of policies prohibiting discrimination does not preclude punitive damages if the policies are ineffective.

There is no single factor that determines whether [Defendant] acted with malice or with reckless indifference to [Plaintiff]'s federally protected rights. In determining whether to award punitive damages, you may consider factors such as:

[(1) whether [Defendant] engaged in a pattern of discrimination toward its employees];

[(2) whether [Defendant] acted spitefully or malevolently];

[(3) whether [Defendant] showed a blatant disregard for civil legal obligations];

[(4) whether [Defendant] failed to investigate reports of discrimination];

[(5) whether [Defendant] failed to take corrective action concerning discriminatory acts or comments by its employees]; and

[(6) whether the person accused of discrimination was included in the employer's decision making process concerning [Plaintiff]'s [discharge] [denied promotion].]

If you find that punitive damages should be assessed against [Defendant], you may consider the evidence regarding [Defendant]'s financial resources in fixing the amount of such damages.]

SPECIAL INTERROGATORIES TO THE JURY

Do you find from a preponderance of the evidence:

1. That [Plaintiff] had a "disability?"

   Answer Yes or No _____________

   If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.14

2. That [Plaintiff] was a "qualified individual?"

   Answer Yes or No _____________

   If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

3. That [Defendant] [describe adverse employment action]?

   Answer Yes or No _____________

   If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

4. That [Defendant] took that action because of [Plaintiff]'s disability?

   Answer Yes or No _____________

   If your answer is "No," this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If your answer is "Yes," go to the next question.

5. That [Plaintiff] should be awarded damages to compensate for a net loss of wages and benefits to the date of your verdict?

Answer Yes or No ______________

If your answer is "Yes," in what amount? $______________

6. That [Plaintiff] should be awarded damages to compensate for emotional pain and mental anguish?

Answer Yes or No ______________

If your answer is "Yes," in what amount? $______________

[If you did not award damages in response to either Question Nos. 5 or 6, this ends your deliberations, and your foreperson should sign and date the last page of this verdict form. If you awarded damages in response to Question Nos. 5 or 6 (or both), go to the next question.]

[7. That punitive damages should be assessed against [Defendant]?

Answer Yes or No ______________

If your answer is "Yes," in what amount? $______________]

SO SAY WE ALL.

DATE: ______________________ ______________________________
Foreperson's Signature

((Rev. 03/2022) | Judicial Council of the United States Eleventh Judicial Circuit)

Annotations and Comments

I. Cause of Action

The Americans with Disabilities Act, 42 U.S.C. §12101 et seq. ("ADA"), prohibits employment discrimination on the basis of a disability. Pattern Instruction 4.11 is meant to be used for an ADA discrimination claim based on any adverse employment action, such as failure to hire, failure to promote, discharge, reduction in force, and elimination of position. This Pattern Instruction is to be used for claims arising under the ADA Amendments Act of 2008 ("ADAAA"), Pub. L. No 110-325, 122 Stat. 3553 (2008), which became effective on January 1, 2009. At the time of this publication, the Eleventh Circuit had not squarely addressed the question whether the ADAAA applies retroactively, but it has suggested that it does not. *Tarmas v. Sec'y of Navy, 433 F. App'x 754, 762 n.9 (11th Cir. 2011)* (per curiam) (noting that Eleventh Circuit has never held that the ADAAA is retroactively applicable and that other circuits have concluded that the ADAAA is not retroactively applicable). Accordingly, in the absence of an Eleventh Circuit decision holding that the ADAAA is retroactively applicable, the ADA as it existed prior to the ADAAA applies to claims based on conduct that occurred before January 1, 2009, and the court should use 2005 Pattern Instruction 4.11 for such claims.

Pattern Instruction 4.11 is not intended to be used for ADA retaliation claims. Pattern Instruction 4.22, infra, may be adapted to address such claims. An instruction on ADA retaliation should incorporate the damages instructions of Pattern Instruction 4.11.

At the time of this publication, the Eleventh Circuit had not decided whether the ADA provides a cause of action for hostile work environment, though other circuits have recognized such a claim. E.g., *Flowers v. S. Reg'l Physician Servs. Inc., 247 F.3d 229, 234-35 (5th Cir. 2001)*. Pattern Instruction 4.11 is not intended to be used for hostile work environment claims that do not involve a tangible employment action; Pattern Instructions 4.6 and 4.7, infra, may be adapted to address claims for a disability-based hostile work environment.

II. Disability Element

To state a claim under the ADA, a plaintiff must prove that the plaintiff has a disability, which is a physical or mental impairment that substantially limits one or more major life activities, a record of such an impairment, or being regarded as having such an impairment. 42 U.S.C. §12102(1). Pattern Instruction 4.11 is intended to guide the jury through the elements of a "disability."

A. "Major Life Activity"

A non-exhaustive list of "major life activities" is codified at 42 U.S.C. §12102(2). In some cases, it is undisputed that the activity at issue is a "major life activity," and in such cases the jury should be instructed accordingly. Where the jury is to decide whether a major life activity is limited by a physical or mental impairment, the bracketed charge defining "major life activity" should be used.

B. Mitigating Measures

The determination of whether an impairment substantially limits a major life activity shall be made without regard to the ameliorative effects of mitigating measures except for "ordinary eyeglasses or contact lenses." 42 U.S.C. §12102(4)(E)(i)-(ii). Examples of mitigating measures which may not be considered are set forth in 42 U.S.C. §12102(4)(E)(i) and 29 C.F.R. §1630.2(j)(5). In most cases, this issue will be decided as a matter of law and will not need to be submitted to the jury. Therefore, the pattern instruction does not include a "mitigating measures" charge. In the rare cases where there is a fact question on this issue, the court should include a mitigating measures instruction that is tailored to the alleged disability and mitigating measures at issue.

C. Episodic Impairment

Under the ADAAA, "[a]n impairment that is episodic or in remission is a disability if it would substantially limit a major life activity when active." 42 U.S.C. §12102(4)(D). The bracketed instruction defining episodic impairment should be provided to the jury where the parties dispute the existence of an episodic impairment.

D. "Record of" Disability and "Regarded As" Disabled

Pattern Instruction 4.11 contains bracketed instructions to be used when there is a jury question on whether the plaintiff had a "record of" a disability or was "regarded as" disabled. These charges are based on the statutory language of the ADAAA, including the new rule that a plaintiff cannot be "regarded as" disabled based on a "transitory and minor" impairment, meaning a minor impairment "with an actual or expected duration of 6 months or less." 42 U.S.C. §12102(3)(B).

III. "Qualified Individual" – Direct Threat

An individual is not a "qualified individual" if, by performing the duties of a given position, he would pose a "direct threat" to himself or others. *Pinckney v. Potter, 186 F. App'x 919, 925 (11th Cir. 2006)* (per curiam). A "direct threat" is "a significant risk to the health or safety of others that cannot be eliminated by reasonable accommodation." 42 U.S.C. §12111(3). "The employee retains at all times the burden of persuading the jury either that he was not a direct threat or that reasonable accommodations were available." *Moses v. Am. Nonwovens, Inc., 97 F.3d 446, 447 (11th Cir. 1996)* (per curiam). The "Definition of 'Qualified Individual'" section contains an optional "direct threat" instruction that should be used if there is a fact question on this issue. If there is a fact question as to whether the risk could have been eliminated by a reasonable accommodation, the court should tailor the "reasonable accommodation" portion Pattern Instruction 4.12, infra, to address this issue.

A "direct threat" may include an infectious disease. In *Waddell v. Valley Forge Dental Associates, Inc., 276 F.3d 1275 (11th Cir. 2001)*, the Eleventh Circuit held that where a person poses a significant risk of communicating an infectious disease to others in the workplace and where a reasonable accommodation will not eliminate that risk, the person will not be otherwise qualified for his or her job and thus is not a "qualified individual" under the ADA. Id. at 1280. To determine whether a person who carries an infectious disease poses a significant risk to others, the Eleventh Circuit noted that the following evidence should be considered:

[findings of] facts, based on reasonable medical judgments given the state of medical knowledge, about (a) the nature of the risk (how the disease is transmitted), (b) the duration of the risk (how long is the carrier infectious), (c) the severity of the risk, (what is the potential harm to third parties) and (d) the probabilities the disease will be transmitted and will cause varying degrees of harm.

Id. (alteration in original) (quoting *Sch. Bd. of Nassau Cnty. v. Arline, 480 U.S. 273, 288 (1987)*).

There is a circuit split on the issue of who has the burden on the "direct threat" issue. In some circuits, "direct threat" is an affirmative defense, so the employer has the burden to establish that the plaintiff was a direct threat. *Wurzel v. Whirlpool Corp., 482 F. App'x 1, 9 n.14 (6th Cir. 2012)* (discussing different approaches to burden of proof in direct threat cases). In the Eleventh Circuit, however, "[t]he employee retains at all times the burden of persuading the jury either that he was not a direct threat or that reasonable accommodations were available." *Moses v. Am. Nonwovens, Inc., 97 F.3d 446, 447 (11th Cir. 1996)* (per curiam).

IV. Causation Element

The ADA prohibits discrimination "on the basis of" or "because of" disability. 42 U.S.C. §12112. It also prohibits retaliation "because" an employee has opposed a practice made unlawful by the ADA. 42 U.S.C. §12203. The causation language is the same as the causation language in the Age Discrimination in Employment Act, which prohibits discrimination "because of" age, 29 U.S.C. §623(a), and retaliation "because" an employee has opposed an employment practice made unlawful by the ADEA, 29 U.S.C. §623(d).

In *Gross v. FBL Financial Services, Inc., 557 U.S. 167 (2009)*, the Supreme Court held that, based on the statutory language of the ADEA, a plaintiff must prove that "age was the 'but-for' cause of the employer's adverse decision," not merely a motivating factor in the decision. Gross, 557 U.S. at 176-77. The Court also rejected the mixed motive defense (also known as the same decision defense) in the context of the ADEA, noting that unlike under Title VII, a mixed motive defense was not incorporated into the ADEA. Id. at 173-75. In *University of Texas Southwestern Medical Center v. Nassar, No. 12-484, 2013 WL 3155234 (U.S. June 24, 2013)*, Nassar, the Supreme Court extended the rationale of Gross to Title VII retaliation claims "[g]iven the lack of any meaningful textual difference between the text in" Title VII's anti-retaliation provision and the ADEA's anti-retaliation provision. *Nassar, 2013 WL 3155234, at *10*. Therefore, "Title VII retaliation claims must be proved according to traditional principles of but-for causation, not the lessened causation test stated in [42 U.S.C.] §2000e-2(m)." Id. at *14. Although the Eleventh Circuit has not, at the time of this publication, issued an opinion on this matter, the Committee believes that the rationale of Gross and Nassar may extend to the ADA because the statutory causation language is the same in the ADA and the ADEA. Accordingly, Pattern Instruction 4.11 instructs that the adverse employment action must be "because of" the plaintiff's disability.

The model instruction includes in brackets an optional charge discussing the inference of pretext. The basis for this charge is explained in further detail in the annotations following Pattern Instruction 4.5, supra.

V. Remedies

A plaintiff prevailing on an ADA discrimination claim may recover back pay, other past and future pecuniary losses, damages for pain and suffering, punitive damages, and reinstatement or front pay. 42 U.S.C. §12117(a) (stating that the remedies and enforcement procedures available in Title VII of the Civil Rights Act of 1964 – including 42 U.S.C. §§2000e-4, 2000e-5, 2000e-6, 2000e-8, and 2000e-9 – apply to actions for disability discrimination under the ADA). For annotations and comments regarding Title VII remedies, please see the annotations and comments following Pattern Instruction 4.5, supra.

A prevailing ADA plaintiff may also recover compensatory (emotional pain and suffering) and punitive damages (exclusive of back pay and interest on back pay) pursuant to 42 U.S.C. §1981a(a)(2). The statutory caps on total damages provided in 42 U.S.C. §1981a(b)(3) apply to ADA employment discrimination actions. A further limitation on the recovery of punitive damages is that few awards exceeding a singledigit ratio between punitive and compensatory damages satisfy due process. *State Farm Mut. Auto. Ins. Co. v. Campbell, 538 U.S. 408, 425 (2003)*.

Either party may demand trial by jury when the complainant seeks compensatory or punitive damages. 42 U.S.C. §1981a(c).

The court may award a reasonable attorney's fee, litigation expenses, and costs to the prevailing party. 42 U.S.C. §12205. This is a question for the court, not a jury.