



THE CASE FOR INCLUSION

News and Legal Analysis on Issues Related to Diversity and Inclusion

Permission to Retire: Can Active Litigation Prevent Admission to Life 2.0?

BY LYNETTE PACZKOWSKI • APRIL 19, 2021

Back in 2019, we told you about Jennifer Freyd, a professor at the University of Oregon who had [sued the school and two University officials for gender discrimination](#), claiming that although her own department chair identified a “glaring” pay gap between her and the men she works with, nothing had been done to equalize her pay. The United States District Court for the District of Oregon dismissed Freyd’s case, relying at least in part on duties that her colleagues owed to independent funding sources, not to the University itself, to justify the gender pay gap at the University. Freyd appealed, and her case remains pending in the Ninth Circuit Court of Appeals.

In the meantime, and after 33 years at the University, Professor Freyd was among a group of senior faculty who were offered a retirement package. The University originally took the position that [Freyd could not accept the package unless she dismissed her appeal and dropped the ongoing pay equity lawsuit](#). Freyd responded with an [open letter](#) to the University’s Board of Trustees, arguing that the University’s requirement that would-be retirees release the University from all legal claims is uniquely injurious to her, as the only eligible faculty member currently suing the University, and represents “a new form of discrimination for all those with a history of discrimination.”

Ultimately, the University reversed course, saying in a statement that since Freyd was the only potential retiree with a claim, the University’s general counsel “modif[ied] the waiver to allow any program participant to preserve litigation claims against the [University] that had already been initiated.”

The University’s decision to modify the waiver was somewhat surprising, given that early retirement incentive programs routinely require participants to sign waivers of claims in exchange for the packages being offered. In Freyd’s case, however, the case for inclusion and representation was strong. In addition to Freyd’s own letter to the Board of Trustees, there was a second open letter that came from a collective group of psychology professors, graduate students, and research assistants. That letter urged the University to allow Freyd to retire while continuing to pursue her lawsuit, sought to bring “broader attention to gender inequity in [the] department, a problem that over the past seven years has only worsened,” and expressed concern that the situation “could deter talented academic women



from joining...and also affect [the department's] ability to retain the female faculty members who are already [t]here.” For the department's many female graduate students, the letter said, “the prospect of facing a similar devaluing of [our] contributions to science is demoralizing.”

We now await the Ninth Circuit's decision.