

LITIGATION/ EMPLOYMENT ALERT

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U.S. SUPREME COURT SETS STANDARD FOR PUNITIVE DAMAGES UNDER FEDERAL EMPLOYMENT LAW

The U.S. Supreme Court recently set the standard required for punitive damages in job discrimination cases under Title VII of the Civil Rights Act of 1964. The decision, *Kolstad v. American Dental Association*, No. 98-208, allows employees bringing claims of discrimination to seek punitive damages without a special showing that their employer's conduct was "egregious." According to the Court, the employee need only prove that the employer exhibited the requisite state of mind as evidenced by "malice" or "reckless indifference" to the requirements of federal law.

In a related ruling that may have an even greater impact on many employers, the Court limited employer vicarious liability for punitive damages resulting from the acts of their managerial agents where the agents acted contrary to the employer's "good-faith efforts to comply with Title VII."

Facts of the Case

Female attorney Carole Kolstad sued her employer for sex discrimination under Title VII of the Civil Rights Act of 1964 after she had been denied a promotion in favor of a man with half as many years of experience. She claimed that her supervisor had refused to meet with her when she sought the position, had apparently pre-selected her rival for the job, and had repeatedly used the word "bitch" to describe other prominent professional women in her presence. The jury found intentional sex discrimination in the failure to promote Kolstad and awarded \$53,000 in back pay, but the trial judge refused to allow the jury to consider whether to award punitive damages.

On appeal, an en banc panel of the U.S. Court of Appeals for the District of Columbia upheld the district court's ruling on the punitive damages issue. According to the D.C. Circuit, punitive damages should be awarded only for "egregious conduct" or "truly outrageous acts of discrimination."

Court Rejects "Egregious" Standard for Punitive Damages

The Supreme Court rejected the "egregious" standard propounded by the D.C. Circuit. Instead, the Court held that a plaintiff seeking punitive damages must simply show that the employer knew the actions might violate federal law as evidenced by "malice" or "reckless indifference" to the law. According to the Court, under this standard there will be circumstances in which intentional discrimination includes egregious conduct and gives rise to punitive damages liability. There may also be circumstances, however, in which intentional discrimination does not give rise to punitive damages liability even if the discrimination is egregious.

The Court formulated the appropriate standard by looking to the Civil Rights Act of 1991, in which Congress amended Title VII to allow for additional remedies for violations of Title VII and the Americans with Disabilities Act of 1990. Previously, remedies were limited to back pay, reinstatement and attorneys' fees. In the 1991 amendments, however, Congress added compensatory damages for pain and suffering where employees could prove intentional discrimination, and punitive damages where employees could prove that their employers had acted with "malice" or "reckless indifference." The statute provided for a sliding scale setting caps on punitive damages depending on the size of an employer, with a maximum aggregate award of \$300,000, exclusive of back pay and attorneys' fees.

Court Limits Vicarious Liability when Employers Enforce Appropriate Policies

The Court held that companies should not have to pay punitive damages for supervisors' discriminatory conduct if the employer had established appropriate policies to protect against bias on the job. According to the Court, the well-meaning employers need not pay punitive damages for a manager's misconduct when the misconduct is "contrary to the employer's good-faith efforts" to comply with the law.

The Court appeared willing to embrace the limitation because the contrary conclusion would reduce the incentive for employers to implement anti-discrimination programs. According to the Court, "such a rule would likely exacerbate concerns among employers that § 1981a's "malice" and "reckless indifference" standard penalizes those employers who educate themselves and their employees on Title VI's prohibitions." The statute's primary objective, however, is not to provide redress but to avoid harm.

Implications for Employers

This ruling has important implications to employers attempting to decrease potential liability for workplace discrimination, as it puts a litigation premium on employer preventative and remedial anti-discrimination policies, and on employee training and enforcement. The Court clarified this

affirmative defense in two sexual harassment cases it decided last term, *Faragher v. City of Boca Raton*, 524 U.S. 775 (1998), and *Burlington Industries, Inc. v. Ellerth*, 524 U.S. 742 (1998). Apparently, the Court viewed *Kolstad* as an opportunity to further encourage employers to implement appropriate anti-discrimination policies.

At the same time, the ruling may also have the effect of increasing the already significant volume of employment litigation. (According to the Administrative Office of the U.S. Courts, fully more than one-third of the federal court docket involves employment discrimination cases.) Now that the Supreme Court has made clear that punitive damages awards are permitted even in the absence of "egregious" conduct by employers, employees will have an even greater incentive to sue.

Moreover, the Supreme Court's ruling on the standards for punitive damages will affect a broad array of other discrimination statutes. In addition to the sex discrimination claims alleged in the *Kolstad* case, Title VII covers discrimination on the basis of race, religion, color and national origin. The ADA will also be affected, as it incorporates the 1991 amendments as well. Finally, discrimination claims brought pursuant to Section 1981 will also likely be affected.

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