

Class Strikes Mother Lode in Gender/Pregnancy Claims Against Employer Honored by "Working Mother" Magazine

For ten straight years "Working Mother" magazine has listed drug maker Novartis among the best 100 companies for working women. Unfortunately for Novartis, a federal jury in New York was not impressed. On May 19, 2010, this jury awarded \$250 million in punitive damages to women who have worked as sales representatives or entry-level managers for Novartis dating back to 2002. The plaintiffs had asked the jury to award the class two to three percent of Novartis's 2009 revenues, and the \$250 million figure falls in the middle of that range. With a certified class of close to 5,600 women, the award amounts to close to \$45,000 per class member. Earlier in the week, the jury had awarded \$3.4 million in compensatory damages to the 12 individuals who served as representative plaintiffs.

But wait, there's more! The plaintiffs still are asking the judge to award \$37 million in economic damages to the class. The court also will establish a procedure whereby the class may assert claims for compensatory damages based on alleged emotional distress. According to David Sanford, lead counsel for the class, individual class members from around the country would travel to New York to assert claims for compensatory damages in a process that could last as long as a year. Concerns about the efficiency and manageability of such a process have led the majority of federal appellate courts to be reluctant to certify class claims for compensatory and punitive damages. The two notable exceptions are the Second Circuit (including New York) and the Ninth Circuit (including California). Sanford estimates that total compensatory damages could approach one billion dollars!

The plaintiffs alleged that Novartis has discriminated against women, and particularly against pregnant women, in terms of pay and promotions. Among other anecdotal evidence, the plaintiffs testified that one manager had shown women pornographic images and invited them to sit on his lap. During his opening statement, counsel for Novartis conceded that the company may have been slow in investigating this manager, but stated, "He wasn't that bad a manager. He was just terrible with women." The plaintiffs reminded the jury repeatedly of this comment in arguing that Novartis still did not "get it" and needed to be taught a lesson.

In terms of what may happen next, the judge may consider reducing the award, Novartis may appeal, or it could try to settle the case. While the award sets a new benchmark for employment claims, keep in mind that the gender discrimination class action currently certified against Wal-Mart is estimated to include well more than 250 times the number of women that are included in the Novartis class.

The Novartis case should remind employers of the long-term costs of managers who perform well from a numbers perspective but treat people poorly. Employers also may wish to consider conducting internal pay equity and employment practices audits. Finally, employers may wish to consider binding pre-dispute arbitration agreements with class waivers, as discussed in our previous e-alerts.

By [Brad Harvey](#). For more information on Miller & Martin's Class & Collective Actions Practice Group, [click here](#).

The opinions expressed in this bulletin are intended for general guidance only. They are not intended as recommendations for specific situations. As always, readers should consult a qualified attorney for specific legal guidance. Should you need assistance from a Miller & Martin attorney, please call 1-800-275-7303.

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