

Client Advisory | *October 2009*

Massachusetts' Highest Court Announces New Standard for Awarding Punitive Damages in Discrimination Cases under State Law

The Massachusetts Supreme Judicial Court announced this week a new standard concerning the circumstances in which punitive damages may be awarded on discrimination claims brought under the state's antidiscrimination law, M.G.L. c. 151B. In *Haddad v. Wal-Mart Stores, Inc.*, the SJC held that a finding of intentional discrimination alone is insufficient to warrant an award of punitive damages; rather, a heightened finding beyond mere liability and beyond a knowing violation of the statute is required.



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The Court further explained that punitive damages may be awarded only where the defendant's conduct is outrageous or egregious and "where the conduct is so offensive that it justifies punishment and not merely compensation." Similarly, in making an award of punitive damages, the Court held that a fact finder should determine that "the award is needed to deter such behavior toward the class of which plaintiff is a member, or that the defendant's behavior is so egregious that it warrants public condemnation and punishment."

The plaintiff in *Haddad*, a female pharmacist formerly employed by Wal-Mart, had sued Wal-Mart for unequal pay and unlawful termination of employment based on her gender in violation of M.G.L. c. 151B. After trial the jury found Wal-Mart liable for discriminatory termination and awarded the plaintiff \$972,774 in compensatory damages and \$1 million in punitive damages. The trial judge vacated the jury's award of punitive damages but otherwise allowed the verdict to stand. On appeal, plaintiff claimed that the judge erred in allowing Wal-Mart's motion with respect to punitive damages, and argued that the standard for awarding punitive damages be modified so that a showing of intentional discrimination alone would suffice for an award of punitive damages.

Although the Court declined the plaintiff's request to modify the standard in that respect, the Court ruled that the trial judge erred in vacating the punitive damages award and in suggesting, in part, that punitive damages could not be awarded unless it was proven that Wal-Mart acted with the specific knowledge that its conduct violated the terms of the antidiscrimination statute. Rather, the Court noted, such a showing is required only in cases of age discrimination under M.G. L. c. 151B, § 9. Consequently, the Court reversed the trial judge's decision, reinstated the jury's award of punitive damages, and used its decision as a vehicle for clarifying and restating the standard that courts should apply when making or evaluating awards of punitive damages in cases brought under state antidiscrimination law.

In addition to articulating a new standard for awarding punitive damages in its decision, the Court also listed a number of factors that should be considered by the fact finder in determining whether the defendant's conduct was so outrageous or egregious that punitive damages under M.G.L. c. 151B are warranted. Such factors include: (1) whether there was a conscious or purposeful effort to demean or diminish the class of which the plaintiff is a part (or the plaintiff because he or she is a member

of the class); (2) whether the defendant was aware that the discriminatory conduct would likely cause serious harm, or recklessly disregarded the likelihood that serious harm would arise; (3) the actual harm to the plaintiff; (4) the defendant's conduct after learning that the initial conduct would likely cause harm; and (5) the duration of the wrongful conduct and any concealment of that conduct by the defendant.

Although these factors were not expressly applied in *Haddad*, the SJC nevertheless found that there was sufficient evidence of reprehensible or recklessly indifferent conduct to support an award of punitive damages in this case. Such evidence included Wal-Mart's refusing to pay the plaintiff as an acting pharmacy manager the hourly pay differential it paid male pharmacy managers, and firing plaintiff for a single infraction after ten years of excellent performance evaluations at Wal-Mart, when male pharmacists were not investigated or disciplined

for similar or far more serious infractions. Notably, Wal-Mart had hired and paid a male pharmacist substantially more per hour than the plaintiff, even though plaintiff was the manager of record and the male pharmacist was under criminal investigation for narcotics losses at another pharmacy and did not have the required license to perform the legally-mandated functions as manager. The SJC also concluded that Wal-Mart's unequal treatment of the plaintiff and other male pharmacists concerning investigations for narcotics losses rose to a level of egregiousness necessary to support an award of punitive damages. For these reasons, the Court rejected Wal-Mart's contention that there was insufficient evidence to justify an award of punitive damages.

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