

EMPLOYMENT LAW

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IN THIS ISSUE

Chris Callanan reports on a case that articulates a new standard with respect to punitive damage awards and discrimination cases in Massachusetts.

Haddad v. Wal-Mart: Massachusetts' Newly Articulated Standards of Punitive Damage Awards in Discrimination Cases



ABOUT THE AUTHOR

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The Massachusetts' Supreme Judicial Court (SJC) recently articulated a new standard for punitive damage awards in discrimination cases. Haddad v. Wal-Mart Stores, Inc., 455 Mass. 91 (2009) involved a claim of gender discrimination (Mass.Gen.L. c. 151B §4(1)) by a Wal-Mart employee pharmacist.

Cynthia Haddad worked for Wal-Mart as a pharmacist for ten years, seven in its Pittsfield, Massachusetts store. Massachusetts regulations require all pharmacies to designate a pharmacist of record. The pharmacist of record must be a registered pharmacist, is responsible for compliance with State and Federal reporting requirements and supervises the pharmacy staff. The pharmacist of record must be present and on duty at all times. Wal-Mart designated its Pharmacy Manager as its pharmacist of record. In addition to the Pharmacy Manager, Wal-Mart employed a staff pharmacist and several (non-pharmacist) pharmacy technicians. Pharmacy Managers received an hourly wage plus an additional hourly stipend and annual bonus for serving as Pharmacy Manager.

Haddad served as staff pharmacist for most of her tenure at Wal-Mart. In March, 2003, she received a promotion to Pharmacy Manager. From the time she became Pharmacy Manager until her termination thirteen months later in April, 2004, she was paid at a lower hourly rate than other male pharmacy managers and did not receive the additional hourly stipend or annual bonus she was promised as Pharmacy Manager. After complaining about not receiving the additional pay due a Pharmacy Manager, she received the annual bonus after the male employees received theirs. She never received the additional hourly pay.

Shortly after Haddad received her bonus pay, a Wal-Mart District Manager and two other managers met with her at the Pittsfield store to investigate two prescriptions fraudulently written and filled by a pharmacy technician. One of the fraudulent scripts had been written on a shift where Haddad served as Pharmacy Manager. When asked about the prescription, Haddad admitted she might have been away from the pharmacy speaking with customers, getting a soda, using the restroom or in the back counting narcotics. Haddad was terminated that day for failing to secure the pharmacy. The second prescription was written while a male pharmacist was on duty. He was neither questioned about it nor disciplined for it. He testified at trial that he regularly left the pharmacy area during shifts he supervised to speak to customers, to use the restroom or to get a snack. He was unaware of any policy prohibiting such conduct.

The jury found that Wal-Mart had discriminated against Haddad because of her gender and awarded her \$972,774 in compensatory damages (including a 13-year frontpay award) and \$1,000,000.00 in punitive damages. The Trial Court allowed Wal-Mart's motion for judgment notwithstanding the verdict as to the punitive damage award and struck the award in its entirety finding that the jury was not warranted in finding intentional and outrageous conduct necessary to support punitive damages.

The jury received an instruction on punitive damages taken from Dartt v. Browning-Ferris Industries, Inc., 427 Mass. 1 (1998). That case held that punitive damages are warranted when it is necessary to punish a defendant for conduct that is outrageous because of evil motive or reckless indifference to the rights of others and when the conduct warrants condemnation and deterrence.

The SJC endorsed that instruction and reversed the Trial Court's decision on punitive damages, concluding that the jury was warranted in finding that Wal-Mart knowingly and intentionally discriminated against Haddad and that its conduct could be found to be outrageous, evil in motive or exhibiting reckless disregard for her rights. The SJC noted that Wal-Mart refused to pay the plaintiff the additional hourly pay that male managers received; it terminated a ten-year employee over a single infraction following what could be considered a "sham" investigation. It also treated a similarly situated male Pharmacy Manager differently in its investigation.

The SJC then took the opportunity to articulate more specifically the circumstances necessary for punitive damage awards in discrimination cases. It stated that an intentional violation alone is not sufficient for a punitive damage award. Instead, the defendant's behavior must be particularly outrageous or egregious. To determine whether or not conduct is sufficiently outrageous or egregious to warrant punitive damages, the fact finder should consider the following factors:

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 it remains to be seen whether the Haddad decision will limit the frequency of punitive damage awards, there can be no doubt that it provides critical guidelines for parties to consider when investigating claims, conducting discovery and trying discrimination cases.



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