

CLIENT ALERT: Federal Court Grants Preliminary Approval for \$175 Million Settlement in Class Action Discrimination Lawsuit

On July 14, 2010, a United States district court granted preliminary approval to a \$175 million dollar settlement in a class action gender discrimination suit, including \$152.5 million for backpay and compensatory relief and \$22.5 million in non-monetary relief, including company-wide equal employment opportunity improvements, training, and enhanced bias complaint procedures. The preliminary settlement follows a jury verdict awarding \$3.4 million in emotional distress damages to twelve (12) named plaintiffs and \$250 million in punitive damages to the class. (Additional damage requests for backpay and compensatory relief to class members, as well backpay for the named plaintiffs, were pending at the time of the settlement.) The class action claims involved pay, promotion and pregnancy discrimination on behalf of a nationwide class of approximately 5600 current and former female sales representatives who worked for the pharmaceutical giant Novartis from 2002-2007.

The plaintiffs alleged that female sales representatives were paid less than similarly situated male sales representatives. The plaintiffs further alleged that male managers had broad discretion to distribute business opportunities among sales employees and exercised that discretion to assign those opportunities to male sales representatives.

With respect to their promotion claims, the plaintiffs alleged that the male dominated company denied advancement to female sales representatives. Indeed, statistics showed that the sales force was 50% female but the management ranks were 75% male. As with the pay system, the performance management system was extremely subjective. Plaintiffs also offered evidence in the form of consultants' reports and feedback from the company's own Women in Leadership Management Development Program, which they claimed the company ignored.

Plaintiffs offered evidence that managers concocted stories and lies to derail the careers of female sales employees who became pregnant. The fact that Novartis was designated by Working Mothers magazine as one of the top 100 companies for Working Mothers ten (10) years in a row, and was named a top 50 company by Diversity Inc. magazine every year since 2005 did not save Novartis from this unusually high award.

The jury also heard evidence that female sales representatives were encouraged to seduce doctor-customers; that the company did not respond to complaints of inappropriate behavior by doctor-customers; that the company looked the other way when confronted with managerial misconduct; and that discrimination was treated in a joking fashion.

The preliminary settlement is still subject to final court approval after a fairness hearing scheduled in November.

The Novartis jury verdict and settlement should act as a reminder to employers that prevention is the best medicine. Employers must be mindful of their obligations to provide a workplace free from discrimination. Among steps that an employer may take to meet its obligations include, without limitation, (1) reviewing and auditing pay practices and structure; (2) reviewing equal employment opportunity statistics; (3) instituting an internal reporting procedure for equal employment opportunity complaints and handling those complaints appropriately and with due diligence; (4) fostering diversity programs; (5) reviewing criteria for promotions and other employment decisions to ensure the process is free from discrimination; and (6) training managers and holding them accountable for their conduct. Any self-analysis must include a commitment to take correction action if problems are revealed. Also, employers should look for patterns in the complaints that are received and work not only to solve the specific complaint but the broader problem, perceived or otherwise, demonstrated by those complaints. As usual, employers should consult with their employment counsel before embarking on any self-analysis.

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