# CLIENT ALERT: Massachusetts' Highest Court Clarifies Standard For Punitive Damage Awards Under State Anti-Discrimination Statute

The Massachusetts Supreme Judicial Court ("SJC") recently clarified the standard for awarding punitive damages when a defendant engages in employment discrimination in violation of Massachusetts General Laws Chapter 151B ("Chapter 151B"). In *Haddad v. Wal-Mart Stores, Inc.*, 455 Mass. 91 (2009), the SJC re-instated a $1 million punitive damage verdict which a jury had awarded Cynthia Haddad after she prevailed on her claim against her former employer, Wal-Mart, for gender discrimination in violation of Chapter 151.

Under the existing standard in Massachusetts, punitive damages may be awarded for conduct which is deemed to be "outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others." In *Haddad*, the SJC explained that, with the exception of age discrimination claims, a jury may award punitive damages under this standard even if a plaintiff is unable to demonstrate that the defendant knew its actions violated Chapter 151B. Rather, the defendant's knowledge of such is just one of the circumstances which may warrant an award of punitive damages.

In *Haddad*, the SJC clarified its guidance describing the circumstances in which punitive damages may be awarded under Chapter 151B, stating that "[a]n award of punitive damages requires a heightened finding beyond mere liability and also beyond a knowing violation of the statute. Punitive damages may be awarded only where the defendant's conduct is outrageous or egregious. Punitive damages are warranted where the conduct is so offensive that it justifies punishment and not merely compensation. In making an award of punitive damages, the 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."

To determine whether a defendant's conduct rises to the level of "outrageous

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or egregious," all of the factors surrounding the wrongful conduct must be considered, including: (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.

The SJC held that the factors surrounding Wal-Mart's violation of Chapter 151B supported a finding that its conduct was "outrageous or egregious" and that the jury award of punitive damages to Haddad was justified. The Court noted certain factors in support of affirming punitive damages, including Wal-Mart's refusal to pay Haddad, a female, the hourly pay differential it paid male employees in the same position; Wal-Mart's firing of Haddad, a 10-year employee, for a single infraction when male pharmacists were not investigated or disciplined for similar or more serious infractions; disparate treatment of Haddad concerning product-loss investigations; and Wal-Mart's implied knowledge that its actions were wrongful based upon its maintenance of a policy prohibiting harassment.

The SJC further found that the award of $1 million in punitive damages was not excessive based upon "the degree of reprehensibility of the defendant's conduct, the ratio of the punitive damage award to the actual harm inflicted on the plaintiff, and a comparison of the punitive damages award and the civil or criminal penalties that could be imposed for comparable misconduct." Whereas Haddad had been awarded $972,774 in compensatory damages, the SJC held that the punitive damages award was justified.

The SJC's decision in *Haddad* serves to remind employers of the potentially severe consequences of discriminatory conduct in violation of Chapter 151B. In light of the SJC's holding, employers may be ordered to pay punitive damages for illegal discrimination even where they did not have actual knowledge that their conduct violated a specific statute. Accordingly, employers should continue to take all necessary precautions to ensure that they maintain a discrimination-free workplace.

For more information, please contact your MBJ attorney.

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