

CLIENT ALERT: SJC Reinstates Punitive Damages Award Against Employer In Sexual Harassment Verdict - By Allison Cherundolo and Sean O'Connor

On August 24, 2016, the Massachusetts Supreme Judicial Court issued an opinion addressing the standard for awarding punitive damages against employers who are found liable for sexual harassment in Massachusetts. In *Gyulakian v. Lexus of Watertown, Inc. et al.*, a Superior Court jury determined that the plaintiff, a finance manager for the defendants, Lexus of Watertown, Inc. and Post Motors, Inc., had been subjected to a sexually hostile or offensive work environment by her direct supervisor during her employment. The jury awarded the plaintiff \$40,000 in compensatory damages for emotional distress, and \$500,000 in punitive damages. However, the Superior Court vacated the punitive damages award and the case was then heard on direct appellate review by the SJC after the parties filed cross-appeals.

The SJC reversed the Superior Court's decision and reinstated the jury's punitive damages award, while also affirming the jury's award of compensatory damages. In doing so, the SJC explained that "a supervisor's creation of a sexually hostile or offensive work environment alone is [not] sufficient to warrant the imposition of punitive damages on the employer." "Punitive damages are intended to fulfil a prophylactic purpose, and serve little benefit when imposed on an employer for the actions of a supervisory employee where that supervisor's discriminatory transgressions were unknown to the employer."

The SJC went on to hold that there is a two-step inquiry for determining whether punitive damages should be awarded against an employer who is found liable for sexual harassment. First, the fact finder must consider whether the employer was on notice of the harassment and failed to take steps to investigate and remedy the situation. Second, the fact finder must determine whether or not such failure was outrageous or egregious.

In applying its holding, the SJC first found that a jury could infer from the evidence that the defendants were on notice of the harassing behavior and failed to take "adequate remedial measures" after learning of the illegal conduct. While acknowledging that "[t]here is no bright line rule delineating who must be notified before an employer has been on notice of harassment in the workplace", the SJC held that the defendants were clearly on notice here where: members of senior management had directly observed instances of the inappropriate behavior; the plaintiff had complained about her supervisor's conduct on several occasions to the assistant general sales manager; and the plaintiff again reported the same on her last day of employment.

Further, the evidence suggested that the defendants failed to take remedial measures once they were aware of the conduct. Initially, the SJC noted that "where a conduit for sexual harassment notifications, as delineated in the employer's sexual harassment policy, fails to appropriately report or in any way investigate a sexual harassment complaint, that lack of response is per se evidence of a failure to adequately remedy the purported discrimination." Such evidence existed here. In addition, the SJC explained that "the failure to remedy alleged discrimination also can arise where the employer purports to investigate discrimination, but does so in an inadequate manner." The SJC then held that a jury was entitled to reach this conclusion here, pointing to the following shortcomings in the defendants' investigation: no members of the finance department, who would have been most likely to witness the alleged conduct, were interviewed, purportedly because the internal investigator did not want to undermine the alleged harassing supervisor; the plaintiff was never contacted during the course of the investigation; and the investigation was carried out by a member of management who admitted to carrying a bias against the plaintiff.

Finally, the SJC held that there was sufficient evidence for the jury to conclude that the defendants' failure to remedy the discriminatory conduct was "outrageous or egregious" so as to warrant punitive damages based on the factors it previously set forth in *Haddad v. Wal-Mart Stores, Inc.*, 455 Mass. 91 (2009). In particular, the court found that the defendants "both failed to comply with [their] own sexual harassment policy and also failed to make an adequate inquiry once an investigation began." Because the defendants were aware that the plaintiff had complained about her supervisor's discriminatory conduct, their failure to proceed with any investigation, as required by their own sexual harassment policy, was done with the defendants' knowledge that such conduct would cause continued discriminatory harm. Accordingly, the SJC held that a jury could infer that the defendants acted intentionally or with reckless disregard for the plaintiff's rights under Massachusetts law, and that their actions were outrageous or egregious. Therefore, the SJC reinstated the jury's punitive award and remanded the case to the trial court for consideration of the defendants' motion for remittitur.

This decision serves as a significant reminder to employers of the importance of promptly and thoroughly investigating and addressing any allegations of sexually harassing conduct in the workplace. As the *Gyulakian* decision indicates, failure to do so could result in a significant liability – including the potential award of punitive damages.

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