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State Laws

Punitive Damages for Job Bias Easier to Get Under NYC Law

Employers in New York City face a greater risk of being socked with costly punitive damages for sexual harassment or other forms of workplace bias under city law than under federal law, the state's top court held.

What the different standard will look like in practice is unknown, a pair of New York-based employment lawyers told Bloomberg Law Nov. 21. Thus, the degree to which state and federal judges may more frequently put the issue of punitive damages before a jury in cases involving New York City law "remains to be seen," they say. So does the issue of whether the lesser test will make juries more likely to award punitive damages.

Workers suing under the city's anti-discrimination law need to show their employer acted recklessly or with a conscious disregard for their rights if they want to recover additional damages beyond an award for financial and emotional harm caused by job bias, the New York Court of Appeals said Nov. 20 (*Chauca v. Abraham*, 2017 BL 415033, N.Y., No. 113, *certified question answered* 11/20/17).

The 6-1 ruling answers a question posed by a federal appeals court and rejects the tougher-to-prove federal standard, which requires a showing of malice or reckless indifference to federal anti-bias law. The New York-based U.S. Court of Appeals for the Second Circuit had sought the top state court's help in a case brought by Veronika Chauca against Park Health Center and its owners.

In contrast to compensatory damages, punitive damages are awarded to punish a wrongdoer and to deter similar conduct in the future. Such extra damages are easier to get under New York City law because it's meant to be read more liberally than federal or state law, the court majority said.

Chauca had sued in federal district court, asserting claims of sex and pregnancy discrimination under city, federal, and New York state laws. The federal judge denied her request for a jury instruction on punitive damages under New York City law, believing the tougher federal standard applied and hadn't been met. A jury in April 2015 awarded Chauca \$10,500 for lost compensation and \$50,000 in emotional distress damages, and she appealed.

The case will now return to the federal appeals court, where the Second Circuit is expected to order the trial judge to use the test set forth by the New York Court of Appeals in reconsidering his denial of Chauca's request

for a jury instruction on punitive damages on her city law claim.

Dissent: In Play Whenever Bias Is Proven Judge Michael J. Garcia wrote the majority opinion, which was joined by Judges Janet DiFiore, Jenny Rivera, Eugene M. Fahey, Leslie E. Stein, and Paul G. Feinman. Judge Rowan D. Wilson dissented, saying the court should have embraced Chauca's call for an even broader standard.

Chauca, backed by the National Employment Lawyers Association, had argued that punitive damages should be available in every case under New York City law in which a jury finds an employer intentionally or unintentionally discriminated against a worker. That should be the test except where the employer can show it had in place adequate anti-discrimination policies and practices, Wilson said.

That's so because the New York City Council twice amended the New York City Human Rights Law to make clear that similar federal law provides only a floor on worker rights. The amendments provide that city law is meant to be "uniquely broad and remedial" and provide far greater rights than those provided by federal law, he said.

The majority acknowledged the city council's intent that city law be given the "most liberal construction." But the view urged by the dissent would stretch such liberal interpretation beyond what is "reasonably possible," it said. The city council itself acknowledged that how city law may be read is restricted by what's reasonable when it most recently amended the law in 2016, the majority said.

What's the Difference? The difference between the federal standard and the test set here for city law is that employees suing under federal law must show that their employer intentionally discriminated against them with knowledge that they might be acting in violation of the employee's federally protected rights, plaintiff-side attorney Mike Pospis told Bloomberg Law. Workers suing under city law don't need to make such a showing to get the issue of punitive damages to a jury, he said Nov. 21.

Management-side attorney Joseph Baumgarten agrees. "What the majority wanted to highlight is that you don't need to show the defendant knew it was violating a worker's statutory rights" before a judge or jury can impose punitive damages against the employer. "That's consistent with the higher degree of ill will" the court may be seeing as part of the federal "malice" requirement, he told Bloomberg Law Nov. 21.

Pospis is with Pospis Law PLLC in New York. Baumgarten is a partner in the New York office of Proskauer Rose LLP and a co-chair of the firm's Labor

& Employment Law Department. Neither attorney participated in the case.

But it “remains to be seen” what that difference will mean in practice, Baumgarten said. The different distinctions that may be drawn between the federal and city standards “may be lost on a jury,” he said. And it’s unclear how courts will read and apply the city test in determining whether the question of punitive damages should even get to the jury in the first place, he said.

Pospis also said it will take a while before the practical effects of the ruling will be known. It may not increase how often punitive damages are sought, but it will likely increase the number of cases in which they are awarded under city law, he said.

That may be especially true for city law claims heard in federal court, where federal judges—like the one in Chauca’s case—may have been more likely to decide the issue based on the more stringent federal standard, Pospis said. That would be a win for workers generally.

For employers, “counsel needs to focus on how this impacts” the way in which evidence in a case is prepared, how a case is valued for settlement and other purposes, and “how you advise your client,” Baumgarten said.

Stephen Bergstein of Bergstein & Ullrich LLP in New Paltz, N.Y., represented Chauca. Arthur H. Forman of Forest Hills, N.Y., represented Park Medical Center.

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