

Recent U.S. Supreme Court Decision Reminds Employers of High Cost of Unlawful Employment Discrimination

Sharon Pollard successfully brought suit against her former employer alleging that she had been subjected to a hostile work environment in violation of Title VII of the Civil Rights Act of 1964. The trial court found that Pollard was subjected to sexual harassment by her co-workers and that her supervisors were aware of the harassment but failed to take adequate measures to end the harassment. The court awarded Pollard \$360,361 in backpay, benefits and attorney fees. Pollard was also awarded \$300,000 comprising the maximum compensatory damages permitted under statute as a result of the Civil Rights Act of 1991.

The trial court included "front pay" as an element in the calculation of the \$300,000 compensatory damage award. "Front pay" is simply money awarded for lost compensation during the period between judgment and reinstatement, or in lieu of reinstatement. Pollard argued that including "front pay" as part of statutory compensatory damages was erroneous. She argued that the statute, by its very terms, explicitly excludes all remedies that had been available prior to the passage of the Civil Rights Act of 1991. In other words, Pollard argued that she should have been awarded backpay, benefits, attorney fees, front pay and, in addition, \$300,000 in compensatory damages.

The United States Supreme Court agreed. In a decision issued by the Court on June 4, 2001, the Court discussed the historical development of remedies available to plaintiffs alleging intentional discrimination. The Court explained that when Congress passed Title VII of the Civil Rights Act of 1964, plaintiffs were entitled to such remedies as injunctions, reinstatement, backpay, lost benefits and attorney fees. In the Civil Rights Act of 1991, Congress expanded the remedies available to plaintiffs by permitting - for the first time - the recovery of compensatory and punitive damages *in addition to* the traditional remedies. In so doing, Congress was careful to create statutory caps for compensatory and punitive damages that are based on the number of people employed by the employer.

In the Pollard case, the Court carefully read the entire text of the statute and decided that "front pay" was a remedy akin to traditional remedies such as

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backpay and/or reinstatement. The Court decided that compensatory and punitive damages were available to a plaintiff *in addition to* traditional remedies such as "front pay." Therefore, "front pay" is not an element of compensatory damages and is not subject to the damages cap imposed by statute.

For employers, the Pollard case should be viewed as a good reminder of the high cost of unlawful employment discrimination. To guard against legal exposure, employers are reminded to re-examine their employment policies and procedures to ensure compliance with all relevant state and federal labor and employment laws. At a minimum, employers must ensure the following protective measures are in place:

1. adopt a written policy forbidding all forms of unlawful harassment, including harassment based on race, age, national origin or religious beliefs, and sexual harassment committed by a member of the same sex;
2. establish and thoroughly communicate a method for employees to report harassment complaints,
3. train appropriate personnel as to the proper procedures for managing harassment complaints,
4. investigate all harassment complaints promptly and thoroughly,
5. carefully document the results of the investigation, and
6. take appropriate remedial action based upon the results of the investigation.

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