

MASSACHUSETTS COURT RESTORES \$500,000 PUNITIVE DAMAGES AWARD AGAINST EMPLOYER IN SEXUAL HARASSMENT CASE – FAILURE TO PROPERLY INVESTIGATE CLAIMS

By: Walter M. Foster, Esq. and Pamela C. Rutkowski, Esq.

On August 24, 2016, the Massachusetts Supreme Judicial Court ordered a Lexus dealership to pay \$500,000 in punitive damages, as well as \$40,000 in compensatory damages to its former female employee who was sexually harassed by her supervisor. Employers who fail to adequately investigate discrimination claims may be subject to significant punitive damages under the case decided by the Supreme Judicial Court. The SJC's opinion establishes the standard for awarding punitive damages against employers in Massachusetts sexual harassment cases and underscores the importance of investigating all known claims, even those reported on the last day of employment.

In *Gyulakian v. Lexus of Watertown, Inc. et al.*, a jury awarded \$40,000 in emotional distress damages and \$500,000 in punitive damages to the plaintiff, a former finance manager with the company who had experienced "relentless sexual harassment" from her direct supervisor. The jury found that Lexus had acted intentionally or with "reckless disregard" to the employee's complaints. A superior court judge overturned the punitive damages award, but the SJC reinstated it.

The SJC found that the record was "rife with evidence" that the employee was forced to deal with offensive behavior "on a daily basis" during her employment. The plaintiff alleged that her supervisor attempted to throw coins down her blouse, discussed sexual conduct in the workplace, and ignored complaints from her and other employees regarding his improper conduct.

The SJC noted that a supervisor's creation of a sexually hostile or offensive work environment was not, on its own, sufficient to impose punitive damages on the employer. Rather, the SJC found that plaintiff's entitlement to punitive damages from an employer for exposure to a sexually hostile work environment created by its employee is based upon a two-step inquiry: (1) whether the employer was on notice of the harassment, and failed to take steps to investigate and remedy the situation; and (2) whether that failure was "outrageous and egregious."

The SJC held that a jury could infer that Lexus was on notice of the harassment. Plaintiff reported the harassment to the assistant general sales manager, numerous members of management were aware of the supervisor's inappropriate behavior, and the plaintiff reported the harassment again on her final day of employment.

The SJC also found that Lexus failed to take "remedial measures" once it became aware of the harassing conduct. First, the SJC noted, "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." Second, "the failure to remedy alleged discrimination also can arise where the employer purports to investigate the discrimination, but does so in an inadequate manner." The SJC found that Lexus's investigation was severely deficient; the employer had failed to interview the plaintiff or members of the finance department, and the investigation was conducted by a member of management with a self-professed bias against the plaintiff.

The SJC held that the jury was warranted in finding that, independent of the supervisor's harassing conduct, the employer acted "intentionally or with reckless disregard" for the employee's rights, and that the employer's failure to remedy the harassment was "outrageous or egregious" so as to impose punitive damages on the employer.

CONCLUSION: *Gyulakian* emphasizes how important it is for an employer to conduct an immediate and thorough investigation of an employee's allegation of workplace sexual harassment, consistent with their stated workplace policy. Failure to do so may result in significant punitive damages that far exceed other damages awarded, as was the case in *Gyulakian*.

This Employment Law Alert is intended to keep readers current on matters affecting employment law and is not intended to be legal advice. If you have any questions, please contact Walter Foster at 617.342.6853 or wfooster@eckertseamans.com.

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