

## The California Supreme Court Weighs In On Excessive Punitive Damages

All businesses face the specter of run-away juries issuing huge awards for punitive damages. Nowhere do potential damages loom larger than in the employment arena. Many potential jurors feel “wronged” by a prior employer and sympathize with the ex-employee. Even more, continued economic pressure leads to layoffs, followed by an up-tick in the number of claims for wrongful termination and discrimination, many of which seek punitive damages. The lack of any insurance coverage for punitive damages heightens employers’ concern.

When a jury awards high punitive damages, the employer can ask the judge to reduce the amount of the award, arguing that the award is “grossly excessive or arbitrary” and therefore violates the Fourteenth Amendment of the U.S. Constitution. Courts have few guidelines, however, to determine what is excessive. A recent California Supreme Court decision in an employment case, *Roby v. McKesson Corp.*, (2009) 47 Cal.4th 686 sheds some light on the question.

In any evaluation of punitive damages, the facts of the case are important. In *Roby*, plaintiff was a long-term employee of a large company who had favorable reviews until she began experiencing panic attacks. The attacks resulted in excessive and unpredictable absences. Her medication caused offensive body odor, and she developed a nervous disorder that caused her to dig her fingernails into her skin, resulting in open sores. Roby’s supervisor, who was aware of Roby’s condition, called her “disgusting” in front of others, excluded her from office social gatherings, made inappropriate facial expressions and comments when she took breaks or she called in absent, denigrated her work, belittled her contribution to the company, spoke to her in a demeaning manner, and ignored her when she spoke. Roby’s complaints to mid-level managers were ignored. Eventually, Roby was terminated for excessive absences under the employer’s complicated attendance policy. After termination, she was financially and emotionally devastated and lost her medical insurance, such that she did not receive needed medical treatment. Plaintiff developed agoraphobia and became suicidal. In short, the facts certainly supported an award of punitive damages. The jury awarded the plaintiff a large amount of compensatory damages (lost pay, medical costs, and pain and suffering), and punitive damages against the employer of \$15,000,000. One of the questions before the California Supreme Court was whether that punitive damages award was excessive.

In deciding if an award is excessive, courts look to the degree of reprehensibility of the misconduct (how bad it was), the disparity between the actual harm suffered and the punitive damages awarded (how much it was), and the difference between the punitive damages awarded and the civil penalties that would have been imposed by a governmental agency (how much could it have been). In considering reprehensibility,

the Court noted that while there were many instances of wrongful conduct by the supervisor, the employer's conduct in adopting complex and inflexible attendance policy, was not. While the application of that policy to Roby's situation resulted in her termination and the employer's liability for wrongful termination, the conduct of adopting that plan was a single event. Similarly, the employer did not adopt the policy with a malicious intent toward plaintiff, and there was no corporate culture supporting the supervisor's wrongful conduct. However, the employer's mid-level manager's failure to respond to Roby's complaint against the supervisor warranted some award of punitive damages.

In looking at the amount of the award, the Court found that the civil penalty that would have been awarded if Roby's complaint had proceeded through the California Fair Employment and Housing Commission, would have been a fine not to exceed \$150,000. Comparing the amount of the award, \$15,000,000, and the actual damages (\$1,905,000), where there was a relatively low amount of reprehensibility to the employer's conduct, the Court determined that the one-to-one ratio of compensatory damages to punitive damages was appropriate. Under that one-to-one ratio, which was the ratio suggested by the United States Supreme Court in another case of low reprehensibility and high punitive damages, the punitive damages against the employer were reduced to \$1,905,000.

Although the California Supreme Court did not mandate that courts follow the one-to-one standard for punitive damages, *Roby* stands as another signpost for California courts. If the compensatory damages and any applicable civil penalty are relatively low, a one-to-one ratio should apply.

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