Supreme Court Clarifies Standard for Obtaining Punitive Damages Under Title VII
June 28, 1999

By decision dated June 22, 1999, the U.S. Supreme Court has clarified the legal standard a plaintiff must meet to be eligible for an award of punitive damages in a Title VII discrimination case. Kolstad v. American Dental Assoc., No. 98-208, 1999 WL 407481 (June 22, 1999). Specifically, the Court vacated a Court of Appeals decision in which the lower court had held that a plaintiff is not entitled to punitive damages in a Title VII case absent evidence of "egregious misconduct" (and not merely intentional discrimination).

By way of background, the Civil Rights Act of 1991 authorizes punitive damage awards in Title VII cases in which there is evidence that the defendant intentionally discriminated against the plaintiff "with malice or reckless indifference to the federally protected rights of an aggrieved individual." 42 U.S.C. § 1981a(b)(1). In Kolstad, the Supreme Court unanimously concluded from this language that the relevant inquiry in determining whether punitive damages are available in a Title VII case is the employer's knowledge that it may be acting in violation of federal law. Thus, it is the defendant employer's state of mind that dictates whether punitive damages are appropriate, not the severity of the discriminatory conduct. Evidence of egregious conduct may support a claim for punitive damages, but only to the extent it provides evidence of the employer’s malicious or recklessly indifferent state of mind.

The Supreme Court's ruling in Kolstad effectively insulates from punitive damage claims in Title VII cases those employers who are unaware of or who mistakenly misinterpret Title VII's prohibitions on discrimination, while exposing to possible punitive damage liability those who recklessly disregard or are willfully indifferent to those statutory proscriptions. Irrespective of how outrageous an employer's intentionally discriminatory conduct may be, that employer will not be liable for punitive damages if, for example, the employer was unaware of the relevant Title VII prohibition, or believed that its discrimination was lawful because it satisfied a bona fide occupational qualification, or where the underlying theory of discrimination is novel or not widely recognized. On the other hand, an employer may be liable for punitive damages if it expressed contempt toward employment discrimination laws or concealed evidence of its "true" selection procedures to cover up its knowing violation of those laws.

In a separate part of its opinion on an issue neither argued by the parties nor considered by the lower courts, a bare majority of the Supreme Court held that even a showing of the requisite malice by one or more of the employer’s agents will not necessarily establish the plaintiff’s right to seek punitive damages. Applying the principles of agency law, the Court concluded that an employer will not be liable for punitive damages under Title VII where its employees acted contrary to the employer’s good faith efforts to comply with Title VII. Thus, a plaintiff seeking punitive damages under Title VII bears the burden of identifying facts sufficient to support an inference that the requisite maliciousness
of reckless indifference can be imputed to the employer. The Court suggested that the requisite mental state could not likely be imputed to an employer that had been making good faith efforts to enforce an antidiscrimination policy. Accordingly, Kolstad gives employers yet another reason to adopt and enforce a rigorous policy against discrimination in the workplace; by so doing, employers may avoid punitive damage liability in Title VII cases.