New York Court Rejects Punitive Damages Under Human Rights Law
April 1, 1992

The New York State Human Rights Law (the "HRL") prohibits discrimination in employment on the basis of race, color, national origin, religion, sex, age, disability, pregnancy, and marital status. An aggrieved employee under the HRL may choose either an administrative or judicial forum in which to assert a claim: the employee may either litigate a charge of discrimination in a proceeding before the State Division of Human Rights, or bring an action directly in State court. The statute provides that a successful plaintiff may recover "for damages and such other remedies as may be appropriate . . ."

It is well established that in an administrative proceeding before the State Division, a complainant may recover remedies such as backpay, front pay, equitable relief (i.e., reinstatement) and compensatory damages (i.e., damages for emotional distress, pain and suffering), but not punitive damages. Courts have disagreed, however, as to whether punitive damages are available if the aggrieved employee elects to pursue his claim directly in court rather than before the State Division. In the first ruling on the issue by a New York appellate court, Thoreson (a/k/a DiLorenzo) v. Penthouse International, Ltd., N.Y.L.J., April 6, 1992, at 25, Col.2 (App. Div., April 2, 1992), the Appellate Division recently held that punitive damages are not recoverable in court proceedings under the HRL. Consequently, the court reversed the lower court's award of $4 million in punitive damages to a former model for Penthouse magazine who prevailed in a suit charging various forms of sexual harassment.

The Thoreson court based its decision primarily on an analysis of the remedial provisions of the HRL, which sought to ascertain whether the State Legislature intended punitive damages to be recoverable for unlawful employment discrimination. For example, the court noted that a recent amendment to the HRL explicitly provides that punitive damages may be awarded to plaintiffs alleging discrimination in housing, suggesting that the Legislature intended to exclude punitive damages in all other HRL cases, such as those involving employment discrimination.

Noting previous rulings that punitive damages are not available in administrative proceedings before the State Division, the court also expressed concern that if a punitive damages remedy not available in a State Division proceeding were available in a court action, claimants would be discouraged from seeking a resolution of their claims in the administrative forum, which would thereby increase the burden on the courts.

The Thoreson decision is especially significant when read in conjunction with the federal Civil Rights Act of 1991. As reported in the December, 1991 issue of this Newsletter, under the 1991 Act, plaintiffs suing under Title VII of the Civil Rights Act of 1964, as well as plaintiffs alleging violations of the Americans with Disabilities Act, are now
entitled to seek punitive damages; but such damages are subject to a series of statutorily imposed caps ranging from $50,000 to $300,000, depending on the size of the employer. If punitive damages were recoverable under the HRL, the significance of the punitive damage caps under Title VII would be greatly reduced, since plaintiffs in many cases could easily avoid those limits simply by suing under the State law instead. The result in Thoreson helps insure that the Title VII limitations on punitive damages will remain meaningful.

In light of the importance of the legal issue and the size of the punitive damage award at issue in Thoreson, an appeal of the Appellate Division’s ruling to the New York Court of Appeals, the State’s highest court, is likely.