Fifth Circuit Denies Punitive and Compensatory Damages for ADEA Retaliation Claims, Creates Circuit Split

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The U.S. Court of Appeals for the Fifth Circuit, which covers Texas, Louisiana, and Mississippi, recently found that punitive and compensatory damages are not available for retaliation claims brought under the federal Age Discrimination in Employment Act of 1967 (ADEA). The ADEA already provides for liquidated damages equal to the amount of lost pay and benefits for “willful” age discrimination. The standard for finding a willful violation to award liquidated damages is quite low, resulting in the routine award of what is, in effect, double damages in ADEA cases. (Strangely, “willfulness” is also a requirement for extending the statute of limitations for ADEA claims from two years to three, but the courts apply a higher standard of proof to establish willfulness for statute of limitations purposes.)

In Vaughan v. Anderson Regional Medical Center, the plaintiff wanted more than liquidated damages. She sought punitive damages and damages for emotional distress (a form of compensatory damages) on top of lost pay and benefits and attorneys’ fees for her ADEA retaliation claim. The trial court denied these additional damage claims and the plaintiff appealed its ruling.

On February 15, 2017, the Fifth Circuit followed Dean v. Am. Sec. Ins. Co., a 1977 Fifth Circuit case that rejected punitive and compensatory claims under the ADEA for regular age discrimination claims, and held that those types of damages were not recoverable in ADEA retaliation cases. In doing so, the court explicitly rejected the Equal Employment Opportunity Commission’s position and a decision by the Seventh Circuit Court of Appeals, which both stated that punitive and compensatory damages are available under the ADEA for retaliation claims. The Fifth Circuit also found that ambiguous language in an intervening amendment to the Fair Labor Standards Act, which provides the procedural framework for ADEA lawsuits, was insufficient to overcome the Dean decision.

The Vaughan case creates a potential split between circuit courts of appeals that may ultimately have to be decided by the Supreme Court of the United States. In the meantime, age discrimination claims remain a substantial threat to employers, especially in terms of the low standard for awarding double damages to prevailing plaintiffs. Moreover, plaintiffs’ success rates in trials for retaliation claims remain higher than for the underlying discrimination claims. In addition to ensuring that employees avoid statements that could be construed as discriminatory, employers should consider documenting their reasons for taking disciplinary actions against, or implementing layoffs affecting, individuals who are 40 years of age or older.
