

Client Alert

A report
for clients
and friends
of the firm **March 2004**

Compensatory and Punitive Damages and Jury Trials Not Available for ADA Retaliation Claims, Seventh Circuit Rules

The United States Court of Appeals for the Seventh Circuit recently issued a significant decision for employers forced to defend suits brought by employees under the Americans with Disabilities Act of 1990 ("ADA"). In *Kramer v. Banc of America Securities, LLC*, 355 F.3d 961 (7th Cir. 2004), the Court held that compensatory and punitive damages are not statutorily available remedies for ADA retaliation claims. Rather, an employee asserting a retaliation claim under the ADA is limited to equitable remedies, such as back pay and reinstatement. Because equitable remedies are determined by judges, not juries, the Seventh Circuit further held that an employee who is seeking relief based solely on an ADA retaliation claim is not entitled to a jury trial. Although the Seventh Circuit's decision directly affects employment cases only in Illinois, Indiana and Wisconsin, it likely will influence courts in other jurisdictions throughout the country, as this decision was one of first impression for the federal circuit courts.

Background

Colleen Kramer was employed by Banc of America Securities, LLC ("BOA"), where she was a managing director heading a team responsible for restructuring loans. Following BOA's merger with NationsBank, Kramer reported to a new supervisor who found her leadership and interpersonal skills lacking. Kramer was, accordingly, replaced as team leader and placed on a 90-day performance improvement plan, although she retained the same salary and job title. Kramer challenged this change in responsibility, in a letter from her attorney, demanding that she be

restored to team leader, and also informing BOA that Kramer suffered from multiple sclerosis.

At the end of the 90-day period, Kramer was not restored to team leader, was issued another warning notice documenting performance deficiencies, and was advised that if her performance did not improve within the next 30 days, she faced termination of her employment. Within this final probationary period, Kramer filed a charge of disability discrimination with the EEOC and so notified BOA. Kramer's employment was terminated at the end of the 30-day period.

Kramer promptly received a right to sue letter from the EEOC and filed a lawsuit in the U.S. District Court for the Northern District of Illinois, claiming disability discrimination and retaliation under the ADA, and intentional infliction of emotional distress under state law. Her complaint sought front pay, back pay, compensatory and punitive damages, reinstatement and attorney's fees and costs, and also included a demand for a jury trial. Six months later, Kramer filed a second charge of discrimination with the EEOC, in which she included a claim of retaliatory discharge. The EEOC issued a second notice of right to sue and Kramer amended her federal complaint by dropping her state law claims.

The Court Decisions

BOA moved for summary judgment on all of Kramer's claims. The court granted the motion with respect to the claims of disability discrimination, but denied the motion on Kramer's claim of retaliatory discharge. Ten days before trial, BOA filed a Motion to Exclude Compensatory and Punitive Damages and to Strike Plaintiff's Jury Demand, in which it asserted that compensatory and punitive damages were not available under the statute for ADA retaliation claims. BOA further argued that, because Kramer could only seek equitable relief, she was not entitled to a jury trial. The district court agreed with BOA, held that Kramer could not recover compensatory or punitive damages on an ADA retaliation claim and, accordingly, refused to impanel a jury. The trial progressed before the district court judge, who found in BOA's favor.

Kramer appealed to the Seventh Circuit, which affirmed the district court ruling. The Seventh Circuit predicated its decision on a careful reading of the controlling statutes. Remedies available to a party claiming retaliation under section 503 of the ADA (42 U.S.C. § 12203) are determined by reference to 42 U.S.C. § 12117, which identifies the remedies as those available to plaintiffs under Title VII of the 1964 Civil Rights Act, as amended, 42 U.S. §§ 2000e-4 through e-9. The Seventh Circuit explained that those sections of Title VII do *not* provide for compensatory or punitive damages awards but, rather, permit courts to award appropriate equitable relief, such as back pay, front pay or reinstatement.

The Seventh Circuit's Rationale

With the enactment of the Civil Rights Act of 1991, 42 U.S.C. § 1981a, Congress amended the discrimination laws to expand available remedies for certain types of statutory discrimination claims. Section 1981a(a)(2) of that Act provides, in pertinent part, that a plaintiff claiming unlawful intentional discrimination in violation of sections 102 or 102(b)(5) of the ADA may recover compensatory and punitive damages, in addition to the equitable relief available under Title VII. That provision, however, nowhere references retaliation claims under Section 503 of the ADA, and seemingly denies ADA retaliation complainants such expansive remedies.

In *Kramer*, the Seventh Circuit concluded that because the Civil Rights Act of 1991 did not expressly make available compensatory and punitive damages for ADA retaliation complainants, such relief was not afforded to them and, therefore, plaintiffs asserting disability retaliation claims were limited to the equitable remedies. The Seventh Circuit, accordingly, disagreed with several district courts, which had ruled that the Civil Rights Act of 1991 should not be read literally but, rather, should be construed broadly to effectuate the remedial purposes underlying the 1991 amendments which were to provide extra relief to all aggrieved victims of unlawful intentional discrimination or retaliation under the discrimination laws, including the ADA.

Having concluded that Kramer was not entitled to obtain compensatory and punitive damages, the Seventh Circuit further agreed with the district court that she had no statutory right to a jury trial. The federal courts have long recognized that there is no right to a jury where the remedies available are equitable in nature. Indeed, the availability of jury trials was one of the most significant consequences of the expansion of statutory remedies set forth in the Civil Rights Act of 1991. However, where there are *both* equitable and legal claims in one action, at least as a technical matter, legal claims go to the jury, equitable claims are resolved by the court.

Finally, in *Kramer*, the Seventh Circuit also rejected the plaintiff's claim that BOA had consented to a jury trial when it included a demand for a jury trial in its answer to her complaint and amended complaint. The court explained,

because Kramer had no statutory right to a jury trial on her retaliation claim, BOA could properly withdraw its consent and move to strike Kramer's jury trial demand.

Editors' Comment

Kramer marks the first time that a federal appellate court has actually addressed the issue whether compensatory and punitive damages are available in ADA retaliation cases. Although the Second, Eighth, and Tenth Circuits have all affirmed compensatory and punitive damages awards from jury verdicts in ADA retaliation cases, the Seventh Circuit noted that, in those cases, the appellate courts only looked at the sufficiency of the evidence supporting the damages awarded, and were *not* asked to address the more fundamental statutory issue of whether such damages are available for an ADA retaliation claim.

Kramer does not, however, mean that all federal courts will automatically find that compensatory and punitive damages are unavailable in ADA retaliation cases. There is a split among the district courts that have addressed this statutory question. For instance, in *Johnson v. Ed Bozarth #1 Park Meadows Chevrolet, Inc.*, 297 F. Supp. 2d 1286 (D. Colo. 2004), decided a few days before *Kramer*, the District Court of Colorado held that compensatory and punitive damages were not available for an ADA retaliation claim. The *Johnson* court noted that it was following a decision from the District of Kansas, *Boe v. AlliedSignal Inc.*, 131 F. Supp. 2d 1197 (D. Kan. 2001). On the other hand, in *Lovejoy-Wilson v. Noco Motor Fuels, Inc.*, 242 F. Supp. 2d 236 (W.D.N.Y. 2003), the Western District of New York rejected *Boe* and permitted the plaintiff to have a jury trial and seek compensatory and punitive damages. The *Lovejoy-Wilson* court's decision, in turn, is consistent with a prior case from the Eastern District of California, *Ostrach v. Regents of the Univ. of Cal.*, 957 F. Supp. 196 (E.D. Cal. 1997).

The reasoning in *Kramer* is persuasive and, accordingly, the decision should be brought to the attention of federal district and appellate courts in any ADA retaliation case, but it will likely be some time before the courts develop a consistent position on the availability of punitive and compensatory damages for ADA retaliation claims.

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