

Client Alert

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Punitive Damages Deemed Available and Proper In FLSA Retaliation Suit – Case of First Impression In SDNY

In a case of first impression, the Honorable Samuel Conti, United States District Court Judge in the Southern District of New York, held that an employee could recover punitive damages under the anti-retaliation provision of the Fair Labor Standards Act ("FLSA"). *Sines v. Serv. Corp. Int'l.*, 2006 U.S. Dist. LEXIS 82164 (S.D.N.Y. Nov. 8, 2006).

On October 18, 2006, the jury found Service Corporation International ("SCI") liable for a retaliatory suspension of James Sines ("Sines") in violation of § 215(a)(3) of the FLSA. The Court instructed the jury prior to its verdict that if it found SCI liable for violating the anti-retaliation provision of the FLSA the Court would then award Sines back pay and/or liquidated damages. Based on a pre-trial stipulation, the combined back pay and liquidated damages awarded to Sines would be \$65,020.51. After the verdict as to SCI's liability, the Court then gave the jury separate instructions on punitive damages. The jury awarded Sines \$130,000 in punitive damages. Before entering the punitive damages award as a judgment, the Court allowed both sides to brief the issue of the availability of punitive damages under the FLSA.

Judge Conti held that punitive damages are available under the FLSA. The Court based its decision on § 216(b) of the FLSA, which provides that any employer who violates the anti-retaliation provision of the FLSA is "liable for such legal or equitable

relief . . . including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages."

In reaching this conclusion, the Court found persuasive the Seventh Circuit Court of Appeals decision in *Travis v. Gary Community Mental Health Center*, 921 F.2d 108 (7th Cir. 1990), cert. denied, 502 U.S. 812 (1991), which held that punitive damages were available under § 216(b) based on the history of statutory amendments, as well as the plain language of the statute. The Court expressly declined to follow *Snapp v. Unlimited Concepts, Inc.*, 208 F.3d 928 (11th Cir. 2000), cert. denied, 532 U.S. 975 (2001), which held that punitive damages were not available under § 216(b) based on the remedial scheme of § 216 and because the enumerated remedies under § 216(b) do not include punitive damages, but rather are compensatory in nature.

After holding that the FLSA permits punitive damages in retaliation cases, the Court upheld the punitive damages award as supported by the evidence and ruling that it was an appropriate amount under the circumstances. The Court also upheld the liquidated damages award because the employer could not show under § 260 of the FLSA that the retaliatory suspension was done in "good faith" and on "reasonable grounds."

EDITORS' COMMENT:

While the Second Circuit has not decided this issue, employers within the Second Circuit (New York, Connecticut and Vermont) must be more vigilant than ever in making sure that any adverse employment actions taken against an employee who has filed an FLSA complaint are not seen as retaliation. Given the potential exposure to punitive damages, employers should review any such decisions with counsel before they are implemented.

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