

Employment Law Daily Wrap Up, LITIGATION NEWS, TRENDS—Walmart pharmacist fired after reporting legal and safety concerns wins \$31.2M verdict, (Jan. 29, 2016)

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By Pamela Wolf, J.D.

A New Hampshire jury came in with a \$31.2 million verdict in favor of a Walmart pharmacist on her gender discrimination, whistleblower, and wrongful termination claims. Jurors awarded a whopping \$15 million in punitive damages on her Title VII gender discrimination claim, and another \$15 million in enhanced compensatory damages under the New Hampshire Law Against Discrimination (NHLAD). In addition, the jury awarded the pharmacist \$164,093 in back pay, \$558,392.87 in front pay, and \$500,000 in compensatory damages.

The pharmacist had worked for Walmart for 13 years at the time she was fired, ostensibly over a lost pharmacy key. But in 2012, she had reported to management legal and safety concerns, including public safety risks due to untrained and insufficient technician staff at the pharmacy that she believed had led to an increase in prescription errors, according to her attorneys, Richard E. Fradette of Beliveau, Fradette & Gallant, PA, and Lauren S. Irwin of Upton & Hatfield, LLP.

After a five-day trial, the jury deliberated just two-and-a-half to three hours before returning the verdict, the plaintiff's attorneys told Wolters Kluwer's *Employment Law Daily*. Jurors appeared to be attentive and conscientious when viewing the evidence during the trial, the attorneys said. Both attorneys thought pretext evidence played a very important role in the case.

Punitive damages under Title VII against an employer the size of Walmart are capped at \$300,000, so the jury's \$15 million award under that statute will likely be reduced. However, Fradette and Irwin pointed out that under the NHLAD, there is no cap on the \$15 million in enhanced compensatory damages that the jury awarded to the pharmacist. The standard that applies to enhanced compensatory damages required the jury to find discriminatory conduct with willful or reckless disregard of the pharmacist's rights under the NHLAD, her attorneys noted. They believe the jury properly and carefully considered that standard in making the award.

This case is very important because it shows that New Hampshire citizens take the issues of gender discrimination and public safety seriously, Fradette and Irwin agreed. The attorneys are also grateful to their client for standing up to Walmart and bringing these discrimination and public safety issues to light. They added that their client was sincerely grateful that the jury was attentive and appreciated their verdict and award—she also felt vindicated.

The lawsuit, *McPadden v. Wal-Mart Stores East, L.P.*, was filed in the District of New Hampshire; the case is No. 14-cv-475-SM.

Companies: Wal-Mart Stores East, L.P

Attorneys: Richard E. Fradette (Beliveau, Fradette & Gallant, PA) and Lauren S. Irwin (Upton & Hatfield, LLP).

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