

One Minute Memo™



SJC Strikes MCAD's Emotional Distress Award

In a strongly-worded decision, the Massachusetts Supreme Judicial Court (SJC) rejected the Massachusetts Commission Against Discrimination's (MCAD) \$50,000 emotional distress award on a prevailing complainant's retaliation claim. In *DeRoche v. Massachusetts Commission Against Discrimination*, the SJC determined that the employee failed to present sufficient evidence of emotional suffering, as well as a causal connection between his alleged emotional distress and his employer's retaliation. The SJC applied its decision in *Stonehill College v. Massachusetts Commission Against Discrimination*, 441 Mass. 549 (2004), in which it held that in order to recover emotional distress damages on a discrimination or retaliation claim, a complainant must present substantial evidence of both the emotional suffering experienced and a causal connection between the emotional distress and the unlawful act.

At a hearing at the MCAD, William DeRoche presented claims for age discrimination and retaliation. DeRoche claimed that his employer discriminated against him when it accepted his early retirement application under the mistaken belief that mandatory retirement age was 65 rather than 70. He based his retaliation claim on the unfavorable job assignment he received when reinstated. DeRoche's emotional distress evidence consisted of his testimony about the emotions he experienced leading up to his retirement at age 65 and about his reaction after learning that his employer erred in accepting his retirement application. Importantly, DeRoche failed to introduce any evidence that he

experienced physical manifestations of distress, or that he was compelled to curtail his life activities in any way as a result. DeRoche also never sought medical treatment for symptoms related to emotional distress. The hearing officer found in DeRoche's favor on his retaliation claim and awarded him \$210,000 in compensatory damages for back and front pay and \$50,000 in damages for emotional distress.

After the full Commission and a Superior Court Judge affirmed the hearing officer's decision, the SJC reversed the emotional distress award. The SJC concluded that DeRoche's evidence fell far below the threshold of proof required by the *Stonehill* decision for an emotional distress award and that he failed to prove any causal connection between his purported emotional distress and his employer's retaliation. The SJC concluded that the MCAD's emotional distress award to DeRoche "appear[ed] to be a classic example of what the principles set forth in [its] *Stonehill* decision were intended to discourage."

The SJC's decision makes it clear that it will hold the MCAD to the stringent requirements for an emotional distress award it set forth in *Stonehill*, and that it will overturn awards deviating from this standard.

If you have any questions concerning this ruling, please contact the Seyfarth Shaw LLP attorney with whom you work or any Labor & Employment attorney on our website at www.seyfarth.com.

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