

Management Alert



Ninth Circuit Delivers \$700,000 In Attorney's Fees To UPS Employee With Damages Of Less Than \$30,000

California's Fair Employment and Housing Act ("FEHA") empowers a court to award "reasonable attorney's fees" to a prevailing party. In *Muniz v. United Parcel Service*, the Ninth Circuit of the U.S. Court of Appeals was asked to determine whether the district court abused its discretion in awarding a plaintiff nearly \$700,000 in attorney's fees in connection with a jury verdict of just \$30,000.

The Facts

The Plaintiff, Kim Muniz, a UPS Division Manager demoted to Supervisor, sued UPS in state court for discrimination in violation of the FEHA. Specifically, Muniz alleged that UPS, because of her age, gender, and protected activity, (1) denied her a stock bonus, (2) placed her on a performance improvement plan, and (3) demoted her from Division Manager to Supervisor. UPS removed the case to federal court on the basis of diversity jurisdiction. By the time of trial, only the gender discrimination claim remained.

The Trial Court Decision

The case was tried and a jury returned a verdict in favor of Muniz, awarding \$27,280 in damages. UPS defeated all but one of Muniz's claims and the jury awarded her only a small fraction of the damages she sought.

But then Muniz, as the "prevailing party," sought an astronomical \$1.9 million in attorney's fees. The fee request consisted of a "lodestar" (the number of hours expended times hourly rates) of almost \$1.3 million, enhanced by a 1.5 multiplier. The district court discounted the fees request by 20% (Muniz's attorneys could not prove the number of hours they claimed to have spent on the case), denied the multiplier enhancement, and further reduced the award by 10% because of Muniz's limited victory on the merits.

The Ninth Circuit Decision

UPS appealed from the fee award, emphasizing that Muniz had very limited success on the merits—an award of less than 4% of the amount she requested—and had made a highly inflated request for fees.

The Ninth Circuit, in a split 2-1 decision, upheld the fee award. The majority opinion noted the broad discretion that trial courts have in awarding attorney's fees and that the trial court's determination to award \$700,000 in fees on a \$27,000 jury verdict was not an abuse of that discretion. Although the district court could have made further deductions from the lodestar, because neither party could segregate the hours spent on Muniz's unsuccessful claims, the district court did not commit reversible error in making its limited deduction. The Ninth Circuit thus let the district court's award stand.

The dissenting judge would have sent the fees motion back for another look. The dissent argued that the district court erred by applying an unexplained percentage reduction to the requested fees rather than engaging in a "line-by-line analysis." Moreover, the dissent suggested that the fees approved could not be reasonable in light of small damages awarded.

What *Muniz* Means For Employers

Although *Muniz* is not groundbreaking—fee awards in prior FEHA cases have also dwarfed the damage awards—*Muniz* does serve as a cautionary tale to employers who face litigation that entitles the prevailing party to attorney's fees. The discrepancy between what Muniz received and what her attorneys received to try (and largely lose) her case is difficult to explain under a standard that calls for attorney's fees to be "reasonable." *Muniz*, therefore, teaches two lessons: (1) employers should contemplate the size of a prevailing plaintiff's request for attorney's fees, in addition to any possible damages, in assessing the exposure created by a FEHA claim; and (2) employers should consider making early offers of judgment, which threaten to have the effect of cutting off a plaintiff's ability to receive an award of attorney's fees for work performed after the offer is rejected if the plaintiff later fails to obtain a damages award that exceeds the offer of judgment.

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