

Employment Law Notes

April 2004

DISCRIMINATION

COURT ADOPTS A NEW CLASS OF REMEDIES FOR WLAD CLAIMS

The Washington Supreme Court has recognized a broad new class of remedies available to successful claimants under the Washington Law Against Discrimination.

Legal Background

Remedies under the Washington Law Against Discrimination ("WLAD") include injunctions against future violations, actual damages, attorney fees and costs. Its federal counterpart, Title VII of the Civil Rights Act, was amended in 1991 to include a broad, catch-all provision authorizing "such affirmative relief as may be appropriate." In 1993 WLAD's remedy provision was amended, but because of ambiguities it was unclear if the amendment gives courts broader discretion in formulating remedies. The state Supreme Court has now ruled that it does.

The Case

Linda Blaney was active in her local union, which, along with 13 other local unions, was represented by International Association of Machinists and Aerospace Workers District No. 160 ("District") as its official bargaining representative. Ms. Blaney applied to be the District's business representative for several years, but it hired less qualified males instead. Blaney successfully sued the District for failing to hire her in 1998, 1999 and 2000.

In addition to the jury's verdict, Blaney asked

the trial court to award her the increased amount of federal income taxes she would have to pay because she will receive the money in a lump sum rather than over the three year period the District should have employed her. The taxes do not qualify as "actual damages" recoverable under WLAD, but the Supreme Court ruled that the 1993 amendments allow courts to grant "any other appropriate remedy" authorized by Title VII. The Court held that making Blaney whole for her increased taxes was authorized by Title VII and therefore authorized by WLAD as well.

The case is *Blaney v. International Association of Machinists and Aerospace Workers Dist. No. 160*, decided April 1, 2004, available at www.dehnlaw.com.

Why it Matters

Courts now have the power under WLAD to grant any affirmative relief that restores claimants to the position they would have been in if they had not been the victim of discrimination. That includes orders requiring reinstatement or hiring and awards of money for virtually anything, limited only by the claimant's imagination and ability to persuade the trial court that it is fair and necessary to make them whole.

The case also illustrates how even a modest-paying job can be a source of substantial exposure. The position paid about \$37,000 per year, but Blaney was awarded over \$1.1 million, including \$112,903 in back pay, \$450,861 in front pay, \$75,000 for pain and suffering, \$237,625 in fees, costs & interest, and \$244,753 for increased taxes. ✍

© 2004 Kenneth Dehn.

Employment Law Notes is published to inform clients and friends about recent developments in employment law. It is not a substitute for legal advice.