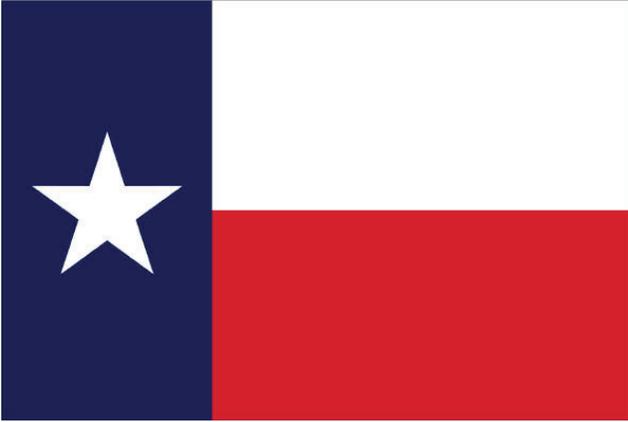

LABOR AND EMPLOYMENT LAW UPDATE



IS THE ECONOMY AFFECTING TEXAS VERDICTS AND SETTLEMENTS?

Whether the economy has impacted jury verdicts is a topic of considerable debate amongst legal experts. The answer may depend on the type of case. A nationwide study by Jury Verdict Research shows that, although overall median jury awards have declined since the economic downturn, the median damages in employment cases have actually risen.

So, has the economy affected employment cases in Texas? A review of several 2009 verdicts and settlements shows that the answer may be yes.

HOST INTL. HIT FOR \$1 MILLION IN AGE DISCRIMINATION SUIT

In 2006, Host International replaced Delaware North as food and beverage service contractor at El Paso International Airport. Fred J. Jackson, a 57-year old food and beverage service manager who worked for Delaware North for 16 years, was initially retained by Host but fired within 9 weeks. He filed suit in federal court in El Paso claiming age bias in violation of Chapter 21 of the Texas Labor Code.

On September 3, 2009, a jury found that Host had engaged in age discrimination. Jackson was awarded (1) \$227,500 in back pay, (2) \$455,000 in front pay, (3) \$200,000 in compensatory damages in the past, and (4) \$100,000 in compensatory damages in the future. Jackson's attorneys have since moved for an attorney's fee award of \$200,000.

DELL AGREES TO PAY \$9.1 MILLION IN GENDER BIAS CLASS ACTION

In October 2008, a class action suit was filed in federal court in Austin against Dell, Inc. by Jill Hubley and Laura Guenther, former employees of its Round Rock facility. The potential class consisted of 2,000 current and former female employees of the company located throughout the world. The complaint alleged "a pattern or practice of gender discrimination with respect to compensating and promoting female employees" in violation of Title VII of the Civil Rights Act of 1964.

Before a motion for class certification could be heard by the court, Dell settled the suit, without admitting liability, on July 23, 2009. The company agreed to pay (1) \$5.4 million in back pay, (2) \$1.1 million in attorney's fees, and (3) \$3.5 million for a pay-equity fund for current female employees. The company also agreed to hire experts to review hiring, compensation and promotion practices and to conduct a pay equity analysis.

\$900K RETALIATION VERDICT AGAINST UNIVERSITY OF TEXAS

Dr. Robert J. Klebe, a 66-year old tenured professor at the University of Texas Health Science Center at San Antonio, sued his employer in federal court in Austin complaining of negative performance reviews and a stagnant salary. He claimed age discrimination, as well as retaliation for filing a charge of age discrimination with the U.S. Equal Employment Opportunity Commission, in violation of Chapter 21 of the Texas Labor Code.

On September 4, 2009, a jury found that the University of Texas had not discriminated against Dr. Klebe on the basis of age. The jury did find, however, that the University had retaliated against him for filing a charge of age discrimination. Curiously, the jury did not award him any back pay, but did award him \$900,000 for "mental anguish." The court later reduced the damage award to \$300,000 to conform to the damage caps prescribed by the Texas Labor Code.

AGE BIAS VERDICT AWARDS FORMER WALGREENS CASHIER \$337,829

Isela Quintero, a 55-year old cashier, was fired after being accused of using store merchandise – a \$1.59 pair of scissors -- without paying for it. She sued in state court in El Paso alleging that she was actually fired because of her age in contravention of Chapter 21 of the Texas Labor Code.

In May 2009, a jury found that Quintero had been discriminated against by Walgreens on the basis of age. She was awarded \$337,829 in back pay and damages.

NEGLIGENT HIRING YIELDS \$300,000 VERDICT

During a cab ride, Amanda Parks escaped an attempted assault by her driver who threatened to rape her. She sued Yellow Cab for negligent hiring in state court in Houston alleging that a criminal background check, which was not done, would have revealed that the driver had been convicted of several felonies, including assault. Yellow Cab contended that it was not responsible for the driver's misconduct because he was an independent contractor.

In February 2009, a jury found Yellow Cab liable for negligent hiring. Even though Parks did not suffer any physical injuries or job loss, the jury awarded her \$300,000 in mental anguish damages.

TAKEAWAY FOR TEXAS EMPLOYERS

As always, but especially in this economy, all potential employment claims must be taken seriously by employers. A small disparity in the pay of female employees may seem negligible when there are only two claimants. As Dell learned, a small disparity can mean a huge payout when the number of prospective claimants is 2,000 current and former employees.

Some employment decisions, such as the dismissal of a short-term or low-wage employee or the compensation of a single employee, may be deemed low-risk decisions. As Host, the University of Texas and Walgreens discovered, such decisions can result in substantial judgments when the claimants prove entitlement to other relief, such as front pay, mental anguish damages, punitive damages and attorney's fees.

A belief that a jury will side with an employer's position may provide a false sense of security before a verdict. As Yellow Cab found, a large adverse verdict quickly shows that juries can and often do the unexpected.

QUESTIONS

Questions regarding Texas labor and employment issues can be directed to Robert G. Chadwick, Jr. at Campbell & Chadwick, P.C.

CAMPBELL & CHADWICK A PROFESSIONAL CORPORATION

BRUCE A. CAMPBELL
ROBERT G. CHADWICK, JR.*
TIMOTHY B. SOEFJE
KAI HECKER
LINDSAY MCNUTT

4201 SPRING VALLEY ROAD, SUITE 1250
DALLAS, TEXAS 75244
TELEPHONE: 972.277.8585
FACSIMILE: 972.277.8586
WWW.CAMPBELLCHADWICK.COM

* BOARD CERTIFIED, LABOR AND EMPLOYMENT LAW
TEXAS BOARD OF LEGAL SPECIALIZATION

LABOR AND EMPLOYMENT UPDATE is published periodically solely for the interests of friends and clients of Campbell & Chadwick, P.C. and is not intended to provide or be relied upon as legal advice in general or with respect to any particular factual scenario. Such legal advice should be obtained directly from retained legal counsel.

Circular 230 Notice. The following disclaimer is included to comply with and in response to U.S. Treasury Department Circular 230 Regulations.

ANY STATEMENTS CONTAINED HEREIN ARE NOT INTENDED OR WRITTEN BY THE WRITER TO BE USED, AND NOTHING CONTAINED HEREIN CAN BE USED BY YOU OR ANY OTHER PERSON, FOR THE PURPOSE OF (1) AVOIDING PENALTIES THAT MAY BE IMPOSED UNDER FEDERAL TAX LAW, OR (2) PROMOTING, MARKETING OR RECOMMENDING TO ANOTHER PARTY ANY TAX-RELATED TRANSACTION OR MATTER ADDRESSED HEREIN.