

New Jersey Supreme Court Clarifies Framework for Punitive Damages Award

The New Jersey Supreme Court recently determined that a jury should not be allowed to increase an award of punitive damages to deter non-parties from engaging in discrimination. In *Tarr v. Bob Ciasulli's Mack Auto Mall, Inc.*, the trial court permitted the plaintiff-employee, who alleged claims under the New Jersey Law Against Discrimination, to argue that the jury should impose a punitive damages award to "send a message to deter" not only the named defendant, but also other employers, from future wrongful conduct. The court instructed the jury that it was permitted to enhance a punitive damages award as a general deterrent, as a result of which the jury awarded \$85,000 in punitive damages. This award was in addition to compensatory damages and legal fees that the plaintiff recovered at trial. After vacating the punitive damages award, the Supreme Court ordered a new trial limited to determining the amount of punitive damages to be awarded to the plaintiff to punish the employer-defendant and deter it from future wrongful conduct.

In *Tarr*, the Supreme Court also reinforced the well-settled principle that a defendant's financial condition is a factor to be considered by the jury when assessing a punitive damages award. The financial condition of a defendant will necessarily determine if the award will serve the dual goals of a punitive damages award, namely punishing and therefore deterring future wrongful conduct. The Supreme Court observed that the Punitive Damages Act, anticipates a "nuanced factual examination" by the jury of a defendant's financial position, among other factors.

In addition to reinforcing this principle, the *Tarr* Court addressed a second related question: Should the jury consider the financial condition of the defendant-employer at the time of the wrongful conduct or when the judgment is entered against that employer? Keeping in mind the goals of punishment and deterrence, the Court recognized that the punitive damages award also must be fair and reasonable and should consider the defendant's ability to pay, which does not necessarily equate to net worth. Another relevant consideration, the Court observed, is whether the defendant purposefully was stripped of assets to avoid judgment. In light of the policies, goals and purposes underlying a punitive damages award, as well as the need for a fact sensitive analysis, the Supreme Court held that a jury may evaluate the defendant's financial condition at the time of the defendant's wrongdoing, but that it also may consider subsequent events concerning the defendant's financial condition, including its worth at the time judgment was entered.

The *Tarr* decision can have a significant impact on employers or other defendants faced with the unfortunate circumstance of a lawsuit where the threat of a punitive damages award must be addressed. While the Supreme Court has not created a basis for a defendant, even a financially troubled defendant, to avoid a punitive damages award, it has clarified that defendants should have an opportunity to present information to the jury regarding their historic as well as current financial condition in order to persuade the jury to render a fair and reasonable punitive damages award, rather than an excessive award.

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If you have any questions regarding the information in this alert or about labor & employment law, please feel free to contact Annmarie or any of the attorneys in the Norris McLaughlin & Marcus Labor & Employment Group.

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