CALIFORNIA
EMPLOYMENT LAW LETTER

DISABILITY DISCRIMINATION

$3.7 million compensatory damages award to Rite Aid store manager upheld

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In 2015, a Los Angeles jury awarded $8.7 million in compensatory and punitive damages to a store manager at Rite Aid Corporation. The award consisted of more than $3.7 million in compensatory damages and $5 million in punitive damages. Rite Aid appealed, with partial success.

Manager injured during store robbery

Rite Aid is one of the largest drugstore chains in the United States, operating more than 4,000 stores nationwide. Since 1985, Robert Leggins was employed by Rite Aid or its predecessor. He was a store manager for 25 years, from 1998 until he was terminated in 2013.

As a store manager, Leggins was required to receive dozens of pallets of inventory weekly, which had to be unloaded and stocked. In addition to performing physical tasks, he was required to work long hours—sometimes 15 to 16 hours a day—and manage a team of employees. From 1985 until 2010, he received positive performance evaluations, and no employee complaints were lodged against him.

In 2006, Leggins sustained serious injuries to his neck and shoulders when he was severely beaten during a robbery at the store where he worked. He was off work for seven months because of his physical injuries. When he returned to work, he continued to suffer severe pain that made it difficult to walk and use his left arm and leg. He took pain medications and underwent acupuncture and chiropractic therapy. He eventually informed his regional manager about his pain and medical issues, and asked to be assigned to a less busy store. Rite Aid granted his request.

In 2010, Leggins took a second leave of absence to undergo back surgery. While recovering, he updated Rite Aid on his medical status. He returned to work in January 2011 but continued to experience severe back pain. As a result, he took pain medications during the workday and went to physical therapy at lunch.

Three months after Leggins' return, his new district manager, Nick Gauger, inspected his store and gave him a poor evaluation. Gauger found the store to be in poor physical condition and the stockroom oversupplied with inventory that hadn't been rotated onto the sales floor. Leggins explained that the condition of the store had deteriorated during his absence, and despite his best efforts, three months was insufficient time to rectify the situation. He also explained that he was still recovering from his surgery and was unable to clear pallets and lift heavy objects.

At trial, Leggins testified that on several occasions in 2011, he asked Gauger for more employees to staff the store and notified the district manager of his physical limitations. Gauger ignored his complaints and assigned him even more physical tasks. After Leggins complained to HR manager Lenora Bejerano about his physical limitations and the district manager's insults, Gauger called Leggins a "sissy" and commented that a "big Black guy like [him]" should be tougher.

Rite Aid took no action in response to Leggins' complaint. He testified that throughout the remainder of his employment, he continued to endure insults, harassment, and discrimination from Gauger and others at Rite Aid based on his injuries and his race.

Events leading up to manager's termination

In April 2012, Bejerano received an e-mail in which an employee at Leggins' store claimed he treated her unfairly. An investigation revealed that several employees at the store were afraid to go to Leggins with their concerns because he was often "abrupt" or "short" with them. The investigation also found operational deficiencies. Following the investigation, Rite Aid counseled Leggins about his performance and offered to transfer him to a less busy store. He accepted the transfer.

In July 2012, an inspection of Leggins' new store revealed graffiti on the building and trash in the planters and parking lot. The merchandise was in disarray, and a new hazmat policy hadn't been implemented. Rite Aid issued Leggins a "last and final" warning about his performance, which he didn't dispute.

One day in December 2012, Leggins closed his store 35 minutes early. On New Year's Day 2013, he closed his store five hours early. In response, Bejerano conducted a second investigation into his performance. She interviewed Leggins as well as seven to 10 other Rite Aid employees. She concluded that he had no justification for closing the store early on New Year's Day, employee morale at the store was low, most of the employees feared him, and several reported that he mistreated female employees and Hispanic customers.

At the conclusion of her investigation, Bejerano prepared a five-page report in which she recommended that Leggins be terminated for (1) closing his store early on New Year's Day and (2) failing to resolve the issues that led to his "last and final" warning. She added 23 attachments to support her conclusions, including witness statements from several employees. After reviewing the report, a senior HR representative and a senior manager approved Leggins' termination. He was terminated in February 2013.

At trial, Leggins argued that Rite Aid's reasons for terminating him were a pretext, or excuse, for discrimination. He claimed he had previously closed his store early on other occasions without incident and had made efforts to improve the store's appearance. Bejerano testified about her investigation report and summarized employees' concerns. However, the trial judge excluded employees' statements to Bejerano as hearsay. The court also precluded Rite Aid from introducing the investigation report, including the 23 exhibits, into evidence.

Manager awarded $8.7 million at trial, $3.7 million on appeal

The jury found that Rite Aid terminated Leggins both because he is disabled and because he complained about harassment. The jury awarded him approximately $1.2 million in economic damages, $1.5 million for past noneconomic loss, and $1 million for future economic loss. The jury also found that Rite Act acted with malice, fraud, or oppression and awarded Leggins $5 million in punitive damages as well as attorneys' fees and costs. Rite Aid appealed the jury award.

In a rather lengthy decision, the California Court of Appeal agreed with Rite Aid that there was insufficient evidence to support the award of punitive damages as well as the jury's finding that Leggins was harassed because of his disability. The court of appeal also concluded that the trial court erred in excluding the report prepared by Bejerano and relied on by the Rite Aid managers who made the discharge decision.

However, the court of appeal didn't agree that the trial court's exclusion of Bejerano's report and employees' statements about Leggins' workplace behavior was prejudicial to Rite Aid. It found that Rite Aid had ample opportunity to call witnesses and explain the reasons for its termination decision. After hearing both sides of the story, the jury still believed that Rite Aid fired Leggins for his disability, not his behavior. The court of appeal therefore affirmed the jury verdict of more than $3.7 million.

Major takeaways for employers

This opinion contains good news for employers on the punitive damages front. Following well-established case law, the court of appeal held that California employers will not be liable for punitive damages based on the conduct of local or regional supervisors and HR employees who aren't otherwise "managing agents" of the company. A managing agent is an employee who either creates corporate policy or is empowered with the discretion to set up or influence corporate policy. However, the "power to enforce a policy does not confer status as a managing agent," according to the court. Even though one of the regional managers involved in Leggins' case had responsibility for 800 stores and more than 4,000 employees, there was no evidence that he set or influenced corporate policy. Consequently, Rite Aid couldn't be liable to Leggins for punitive damages.

Evidentiary rulings can have significant consequences for employers at trial. Despite the fact that Rite Aid's decision to terminate Leggins was based on a five-page investigation report supported by 23 exhibits, the jury wasn't allowed to see or consider the report. Therefore, Rite Aid had to rely on the testimony and credibility of its witnesses in explaining its reasons for Leggins' termination.

From Rite Aid's viewpoint—and that of most employers—a well-written investigation report accompanied by documentary evidence likely would have more of an impact on a jury's decision than only witness testimony. Nevertheless, you should be aware that depending on the trial judge, hearsay objections could operate to exclude third-party witness statements and reports containing hearsay. *Leggins v. Rite Aid Corp.* (California Court of Appeal, 2nd Appellate District, 11/17/17, unpublished).

Bottom line

Jury awards in single-employee discrimination and harassment cases in California have significantly increased within the last several years. Some jury verdicts in employment cases in 2017 were in the seven- or eight-figure range. While those cases usually involved long-term employees who sued large corporations, the *Rite Aid* case shows that large verdicts in favor of employees are part of a growing trend in California, not isolated incidents.

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