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U.S. Supreme Court Rules that Front Pay Is Not Subject to Title VII Damages Cap

In [Pollard v. E.I. du Pont de Nemours & Company](#) (6/4/2001) the U.S. Supreme Court ruled that money awarded for lost compensation during the period between judgment and reinstatement is not subject to the damages cap applicable to Title VII. Sharon Pollard sued her former employer, DuPont, alleging that she was subjected to a hostile work environment based on her sex in violation of Title VII. After a trial, the court awarded Pollard \$107,000 in back pay and benefits, \$253,000 in attorneys' fees and \$300,000 in compensatory damages, the maximum permitted under the statutory cap. The court explained that employees alleging employment discrimination on the basis of sex traditionally had been entitled to injunctions, reinstatement, back pay, lost benefits, and attorneys' fees. In 1991, however, Congress amended Title VII to allow employees to recover compensatory and punitive damages. The amount of those compensatory and punitive damages, however, were subject to a statutory damages cap based on the number of employees. For companies with more than 500 employees, like DuPont, the cap is \$300,000. The court sent the case back to the lower court for further proceedings.

Employee Cannot Rely on Hearsay to Prove Hostile Work Environment

Diane Leibovitz worked for the New York City Transit Authority as a supervisor in the maintenance shop. Leibovitz learned from a female employee that a second female employee had complained of sexual harassment by a male supervisor. Leibovitz also learned that a third female employee, who had previously complained about the supervisor's behavior, had been transferred to another work site. According to the first employee, the male supervisor had engaged in a pattern of harassing women by making remarks, touching them and flirting with them. Leibovitz sued the Authority under Title VII, claiming sexual harassment and claiming that she suffered a major depressive disorder caused by her frustrated attempts to secure a remedy for the women alleging harassment. Following a jury trial on Leibovitz' hostile work environment claim, the jury awarded her \$60,000 and the court awarded her attorneys more than \$140,000 in fees and expenses.

In [Leibovitz v. New York City Transit Authority](#) (6/6/2001), the U.S. Court of Appeals for the Second Circuit overturned the jury verdict because Leibovitz did not witness any of the alleged harassment. The women worked far from Leibovitz' work area, performed different jobs, and were allegedly harassed by a supervisor who did not supervise Leibovitz. The alleged harassment did not occur in her presence and much of what she learned was second- or third-hand. Accordingly, the court found that Leibovitz failed to show that the harassment suffered by the other women adversely affected the terms and conditions of her own employment.

Employee Not Entitled to Intermittent or Reduced Schedule Leave under ADA and FMLA

Minnie Hatchett worked as the business manager for Philander Smith College. While on business, Hatchett was injured. Following the accident, she was confused and disoriented. Her job description includes holding monthly meetings and attending seminars and conferring with parents and students about unpaid tuition. Hatchett's doctor instructed that she only work on one-on-one projects that involved a focused subject, were goal-oriented, and were relatively conflict-free. Her doctor explained that she became confused and emotionally upset when faced with conflict or multiple input and recommended that she not confer with students or attend staff meetings and other large group meetings. The college offered Hatchett three alternate positions that would require her to work part-time for lower pay. When she refused to accept any of the three alternate positions, the college eliminated the business manager position pursuant to a restructuring plan approved prior to her injury. Hatchett filed a complaint alleging violations of the Americans with Disabilities Act, the Family and Medical Leave Act, and other claims.

In [Hatchett v. Philander Smith College](#) (6/1/2001) the U.S. Court of Appeals for the Eighth Circuit affirmed dismissal of Hatchett's ADA and FMLA claims because she could not

perform the essential functions of the business manager position which included holding meetings, attending seminars and conferring with parents and students. Although Hatchett argued that she deserved a reasonable accommodation in the form of a part-time schedule or intermittent leave, the court ruled that the college was not required to reallocate the essential functions of her position or to hire additional employees for those tasks she was unable to perform.

Job Rotation Found Not an Essential Function under the ADA

Jeffrey Kiphart suffered hand, arm and neck impairments restricting his mobility. His employer, Saturn Corporation, determined that Kiphart could not comply with its job rotation system in which workers grouped into teams were responsible for one step of the automobile manufacturing process. As a result of his restrictions, Saturn followed its policy of providing temporary job assignments for Kiphart while it searched for an alternate job. After 1,300 days, Saturn found an alternate job for Kiphart in which he could be fully rotational.

Kiphart sued Saturn alleging that it violated the Americans with Disabilities Act by failing to reasonably accommodate his impairment. A jury awarded him \$90,000 in compensatory damages. The trial court rejected the jury award and instead dismissed his claims. The trial court ruled that Saturn's policy of job rotations was an essential function and Kiphart's failure to be fully functional rendered him unqualified to perform the essential functions of his job.

In [Kiphart v. Saturn Corporation](#) (5/31/2001) the U.S. Court of Appeals for the Sixth Circuit reversed and reinstated the jury's verdict. The appellate court noted that there was conflicting evidence about whether job rotation was an essential function. Some employees testified that job rotation is part of Saturn's operational vision and that a number of job postings listed the ability to fully rotate as a necessary qualification. However, Kiphart identified many other job announcements that did not list job rotation as a necessary qualification. Many employees testified that work teams did not operate under the job rotation system because employees swapped tasks among themselves to satisfy personal preferences. Some witnesses testified that they did not know of any work team that fully rotated job tasks. Accordingly, the court found that a reasonable jury could have determined that Saturn failed to reasonably accommodate Kiphart.

Missing Documents Lead to Sex Discrimination Jury Award

Deborah Zimmerman was hired as an assistant vice president of Associates Financial Services Company. Fifty-one days later she was terminated for inferior performance. Zimmerman claimed sex discrimination in violation of Title VII. In support of her assertion that her performance was not inferior, she put in evidence her weekly and monthly sales reports, bonus statements, and similar documents. Associates failed to produce any documents supporting its assertion that it terminated Zimmerman for inferior performance.

As a result of Associates' failure to introduce any documents, the trial court instructed the jury that it may infer that the missing documents would be unfavorable to Associates. The jury returned a verdict awarding Zimmerman \$165,000 in back pay, \$50,000 in compensatory damages, and \$1,000,000 in punitive damages. The compensatory and punitive damages were capped at \$300,000. In [Zimmerman v. Associates First Capital Corporation](#) (5/31/2001) the U.S. Court of Appeals for the Second Circuit affirmed, ruling that the missing documents instruction to the jury was appropriate where Zimmerman wanted to use the documents to show her treatment differed from the treatment of male employees.

Employee Not Entitled to Payment of Accrued Sick Leave for Remainder of FMLA Leave

In [Santos v. Knitgoods Workers' Union, Local 155](#) (6/5/2001) the U.S. Court of Appeals for the Second Circuit ruled that Julia Santos was not entitled to payment of accrued sick leave for the remaining weeks of leave under the Family and Medical Leave Act. Santos, who worked as an organizer for the union, sustained a medical condition rendering her totally disabled. She was terminated three weeks later for reasons that were neither discriminatory nor retaliatory under the FMLA. Although she had accrued 150 days of sick leave, the union only paid her for three weeks of sick pay, consistent with the union's leave policies. Santos argued that she should receive an additional nine weeks of sick pay, for a total of twelve weeks of leave, as required by the FMLA. In upholding the union's refusal to pay Santos further sick leave, the court relied upon the FMLA regulations which provide that, where an employee is terminated during an FMLA leave, the employer's responsibility to continue FMLA leave ends at the time the employee is terminated. Santos' termination did not violate the FMLA and loss of accrued sick leave was the consequence of termination under the union's normal policies, and thus suffered no loss of benefit within the meaning of the FMLA.

Employer Offering More than Twelve Weeks of Leave Did Not Violate FMLA

In [Szpryngel v. Waterbury Extended Care Facility, Inc.](#) (4/24/2001), the Connecticut Superior Court ruled that an employer offering twenty-six weeks of paid leave for medical conditions did not violate the FMLA when it refused to offer the injured employee an additional twelve weeks of leave. The court found that, in enacting the FMLA, Congress intended to protect workers whose employers provided less than twelve weeks of leave. But Congress did not intend to provide more leave if an employer already provided such leave. In dismissing the plaintiff's claim, the court relied on [Ragsdale v. Wolverine Worldwide, Inc.](#), reported in our 7/31/2000 edition of e-News.

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Failure To Include Contraception Coverage in Health Plan Violates Title VII

In [Erickson v. Bartell Drug Company](#) (6/12/2001) a federal court in Washington ruled that an employer's policy of excluding prescription contraceptives from coverage under its comprehensive employee health plan discriminated against women on the basis of sex in violation of Title VII. Bartell's self-insured benefit plan covered all prescription drugs, except for a handful of products including contraceptives, drugs for weight loss, infertility, and smoking cessation, growth hormones, dermatologicals for cosmetic purposes and experimental drugs. The court explained that, while Title VII does not require employers to offer any type of benefit, when an employer offers a benefit it must not discriminate on sex-based characteristics and must provide equally comprehensive coverage to both sexes. The court further explained that special healthcare needs associated with a woman's unique sex-based characteristics must be met to the same extent and on the same terms as other healthcare needs. The court ordered that Bartell cover prescription contraceptives just like other drugs and that it cover related services, including the initial doctor's visit and any follow-up visits, just like other outpatient services.