

ARE OUR COURTS UNCONSCIOUSLY ALLOWING PLAINTIFFS TO BLATANTLY CIRCUMVENT DAMAGE LIMITATIONS IMPOSED UNDER TITLE VII?

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What is the Problem?

As more and more claims are filed under Title VII, an alarming trend has developed. It has become quite common for plaintiffs filing employment discrimination claims to include a variety of tort claims. In many cases, where a jury has adopted a very sympathetic view of the plaintiff, this combination of causes of action has enabled the jury to award appropriate damages for violations under Title VII, particularly sexual harassment, and present a blank check to the plaintiff for damages based on a finding of intentional infliction of emotional distress. In doing so, plaintiffs have been able to elude the caps placed on statutory claims under Title VII as well as under corresponding state discrimination statutes.



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Congress and many state legislatures have carefully crafted caps on punitive and mental anguish damages for employment claims in the workplace. This legislation was intended to deal with all cases of sexual harassment and other discriminatory actions, and provisions were made to assess punitive damages and damages for mental anguish suffered by a plaintiff. It is not the intent of this article to question the efforts of Congress and our state legislators regarding such damages, as they have attempted to bring order and civility to the workplace. However, there is a need to examine the conflict created by utilizing tort claims concurrent with statutory claims where legislators have set forth damage limitations for the same type of damages also available for various tort claims. The classic example of this duplication and expansion of remedies is a sexual harassment claim accompanied by an intentional infliction of emotional distress cause of action.

Analysis of Intentional Infliction as a Gap-filler

A number of states view the tort of intentional infliction of emotional distress as only a gap-filler. This tort should not be utilized to circumvent statutory limitations or caps which may be placed on the recovery of damages for mental anguish or punitive damages. Some courts have concluded that such tort claims cannot be brought if the plaintiff's claims are primarily addressing sexual harassment. A building body of commentary has characterized this issue as a "tortification of labor and employment law."

Unfortunately, in those cases where judicial intervention has not occurred, awards for intentional infliction in sexual harassment cases have been extremely excessive and in some cases are very high multiples of damages awarded under Title VII or state discrimination statutes. Allowing this result completely undermines the concept that intentional infliction should be utilized only as a gap-filler where other avenues of redress are not available. Some courts have concluded that such a gap-filler tort should not be extended to circumvent limitations placed on the recovery of mental anguish damages under a statute. Other states have moved a step further and concluded that state employment statutes preclude claims for intentional infliction. Indeed, there are some decisions which hold that this presents such a duplication that the state statute should provide the sole remedy for redress of misconduct in the workplace.

Numerous holdings in various states support the concept of gap-filler or exclusivity of remedy. For example, in Missouri an appellate court stated that a cause of action for intentional infliction in a wrongful termination claim would subvert the law of the state. In Kentucky, the court noted that the plaintiff's claim for intentional infliction failed because of an existing form of recovery for emotional distress under the Kentucky Civil Rights Act. A federal district court in New York found that the gap-filling function of the tort of

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intentional infliction was even more compelling where the legislature had created carefully limited statutory remedies. Another New York court noted that while there is harassment that is undoubtedly outrageous in character, comprehensive statutory schemes have been developed to counter the harsh effects of such misconduct. In another decision, a Washington court of appeals affirmed the dismissal of an intentional infliction claim since the plaintiff could pursue her statutory discrimination claim and recover emotional distress damages which would be duplicated by the intentional infliction claim. Texas courts have also embraced the gap-filler concept in ruling that the tort of intentional infliction of emotional distress is not available in a sexual harassment claim where the same facts form the basis for both claims. In a recent decision, the Texas Supreme Court reversed a jury verdict in which damages for the intentional infliction of emotional distress were thirty times the cap on punitive and compensatory damages.

Legislative Intent of Damage Limitations

A very objective reading of the legislative history of Title VII and the 1991 amendments and corresponding state employment law legislation readily demonstrates that the \$300,000 cap on punitive and compensatory damages was intended to address the very type of damages which are duplicated by the assessment of damages for tort claims. By allowing a duplication of damages, the net result has been quite an increasing number of uncontrolled and excessive verdicts and judgments based on intentional infliction of emotional distress claims. This aberration should be analyzed in terms of legislative intent and a rational development of the law as it is applied to employees in the workplace. Without such restraint and discipline, the workplace is rapidly becoming an opportunity to hit the jackpot rather than an opportunity to earn a living.

The consensus view from many courts is that the tort of intentional infliction was conceived as a remedy for tortious conduct where no remedy previously existed. New York courts have found that this cause of action is a theory of recovery that should only be invoked as a last resort. Many courts view the workplace as a unique area which should be controlled legisla-

tively. Plaintiffs should not be allowed to use intentional infliction to circumvent or displace the damage limitations that federal and state legislatures have imposed on claims for sexual harassment against employers. Various statutes specifically address sexual harassment and allow damages for mental anguish and emotional distress. Such a duplication throws the door wide open for emotional awards by juries when the legislators clearly contemplated that such remedies would have strict, well-defined limitations.

Conclusion

Our courts should be wary of this abuse by plaintiffs and quickly close the door to any further outrageous results which occur all too frequently. In the context of employment law, the need for the gap-filler tort of intentional infliction was eliminated when Title VII was amended in 1991 to permit the award of compensatory and punitive damages. This concept was thoroughly examined with a clear understanding that in egregious cases a plaintiff could recover damages for mental anguish as a result of sexual harassment. Various state legislatures and Congress set forth provisions whereby a plaintiff could be awarded compensatory and punitive damages in the event that a jury found that the plaintiff suffered mental anguish. However, Congress also placed a clear limitation on these damages by setting a maximum cap of \$300,000 for large employers. Where duplication and multiplication of damages through the tort of intentional infliction is allowed, the tort completely swallows the sexual harassment claim and no longer functions as a gap-filler, but rather as a damages enhancing device. To allow juries to ignore the caps placed on workplace harassment and award excessive damages for intentional infliction totally undermines the intent and purpose of Congress' efforts to deal with harassment in the workplace. By not allowing the duplication of damages through the intentional infliction tort, our courts can discourage the lottery mentality which exists in the workplace.