Labor and Employment Law Section

Limitations on Damages Under the Oklahoma Anti-Discrimination Act Upheld by the Oklahoma Supreme Court

By Kimberly Lambert Love and J. Miles McFadden

In 2011, the Oklahoma Legislature made significant changes to the Oklahoma Anti-Discrimination Act (OADA). These changes include the elimination of status-based *Burk* public policy tort claims, the creation of an exclusive statutory cause of action for plaintiffs asserting violations of the OADA and the trimming of remedies available to successful plaintiffs under the OADA. Specifically, monetary damages under the revised OADA are limited to back pay and an additional amount as liquidated damages, designed to compensate the injured party.[1] Any interim earnings or amounts that could have been earned with reasonable diligence by the party discriminated against are deducted from these damages.[2, 3] Emotional distress and punitive damages are not mentioned in the revised OADA.

Recently, in *MacDonald v. Corporate Integris Health*, the Oklahoma Supreme Court was asked to decide whether the new limitation on damages violates the Oklahoma Constitution as a special law. Guindelee MacDonald brought suit against her former employer alleging that she was discriminated against on the basis of her age and gender in violation of the OADA and federal anti-discrimination laws when she was terminated.[4] MacDonald filed her action in the Western District of Oklahoma.[5] MacDonald's complaint and amended complaint stated that the limits on damages available under the OADA were unconstitutional because the limits were special laws prohibited by the Oklahoma Constitution.[6] MacDonald contended she was "entitled to the full range of normal tort damages," including punitive damages, with her OADA claim.[7] The defendant maintained that the damages were limited to those specifically enumerated in the amended OADA.[8] Because there was no Oklahoma precedent on the matter, the Western District certified the issue to the Oklahoma Supreme Court.[9]

The Supreme Court applied its standard test to determine if the law is a "special law" that violates the Oklahoma Constitution.[10] That test examines "whether the statute operates on an entire class of actionable claims that are similarly situated."[11] MacDonald argued that all victims of wrongful termination must be provided the same remedies because they are a similarly situated class of tort victims.[12] MacDonald asserted that limiting the remedies for victims of status-based discrimination would therefore violate the Oklahoma Constitution because similarly situated individuals (those bringing a non-status based wrongful discharge tort claim) are treated differently.[13]

The court rejected MacDonald's argument, finding there was no violation of the special law provisions by limiting the damages available to plaintiffs bringing status-based claims.[14] Importantly, the court drew on its previous decisions finding that victims of discrimination based on status are a single, unified class, apart from the larger category of wrongful termination victims.[15]

The court reasoned that the public policy driving a status-based claim is not the same as the public policies driving other wrongful discharge claims, such as whistleblower claims.[16] The public policies underlying whistleblower

claims, for instance, are preventing corruption in, and preserving the integrity of, state government for state employees and protecting public health and safety in the case of private employees.[17] Protecting an individual from discharge because of his or her protected status does not advance the same public policy.[18] Because the OADA operates on an entire class of actionable claims — those asserting status-based discrimination — it is not a special law that violates the Oklahoma Constitution.[19] As a result, the remedies provided in the OADA are the exclusive remedies available to victims of status-based discrimination for claims brought under the OADA.[20]

1. Okla. Stat. tit. 25, §1350.
2. *Id.*
3. Section 1350 also authorizes a court to enjoin discriminatory practices and grant affirmative relief such as reinstatement.
4. *MacDonald v. Corporate Integris Health*, 2014 OK 10, ¶1, __ P.3d ____.
5. *Id.* at ¶2.
6. *Id.* at ¶3.
7. *Id.*
8. *Id.*
9. *Id.* at ¶0.
10. The sections of the Oklahoma Constitution at issue in *MacDonald* were Art. 5, §46 and 59. The relevant portion of Art. 5, §46 provides:

> The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law authorizing: . . . Regulating the practice or jurisdiction of, or changing the rules of evidence in judicial proceedings or inquiry before the courts, justices of the peace, sheriffs, commissioners, arbitrators, or other tribunals, or providing or changing the methods for collection of debts, or the enforcement of judgments or prescribing the effect of judicial sales of real estate; [and] . . . For limitation of civil or criminal actions . . . .

The relevant portion of Art. 5, §59 provides:

> Laws of a general nature shall have a uniform operation throughout the State, and where a general law can be made applicable, no special law shall be enacted.

11. *Id.* at ¶4 (quoting *Reynolds v. Porter,* 1988 OK 88, ¶18, 780 P.2d 816, 823).
12. *Id.* at ¶5.
13. *Id.*
14. *Id.* at ¶6.
15. *Id.* at ¶7 (citing *Smith v. Pioneer Masonry, Inc.*, 2009 OK 82, ¶10, 226 P.3d 687, 689; *Shephard v. CompSource Oklahoma*, 2009 OK 25, ¶10, 209 P.3d 288, 292; *Kruchowski v. Weyerhaeuser Co.*, 2008 OK 105, ¶9, 202 P.3d 144, 148; *Saint v. Data Exchange Inc.*, 2006 OK 59, ¶6, 145 P.3d 1037, 1038; and *Collier v. Insignia Financial Group*, 1999 OK 49, ¶14, 981 P.2d 321, 326-27).
16. *Id.*
17. *Id.* at ¶9.
18. *Id.* at ¶7.
19. *Id.* at ¶11.
20. *Id.*

ABOUT THE AUTHORS

Kimberly Lambert Love is a partner with Titus Hillis Reynolds & Love. She is the past chairperson of the OBA Labor and Employment Section.

J. Miles McFadden is an associate attorney with Titus Hillis Reynolds & Love, primarily practicing in civil litigation, including employment law. He received his B.A. *summa cum laude* from OU in 2007 and graduated with honors from OU College of Law in 2010.

"Live" CLE Credit

With 24/7 availability, you can easily meet your MCLE requirements whenever and wherever it is convenient as long as you have a computer, phone, iPad, Android and more.

oba.peachnewmedia.com

Find out more about upcoming OBA/CLE webcast encores!