

PUBLICATION

Eye-Popping Verdict For "The Little Guy" Against Wal-Mart

February 01, 2016

Last week, a federal jury (after only 3 hours of deliberation) awarded a Walmart female pharmacist \$31 million. Maureen McPadden, a 13-year Wal-Mart pharmacist, brought an action alleging retaliatory termination, disability discrimination, and sex discrimination. McPadden called the verdict, "a message that the little guy has a voice, that Wal-Mart did something wrong."

During the summer of 2011, McPadden began raising concerns about pharmacy staffing, specifically, what she believed to be an insufficient number of adequately trained pharmacy technicians. McPadden ultimately contacted the New Hampshire Board of Pharmacy about her concerns. Due to the stress caused by this working environment, McPadden was advised by her physician to take several weeks of FMLA leave. Soon after, when McPadden reported that she had lost her key to the pharmacy while moving residences, Wal-Mart terminated her employment. McPadden alleged that the termination was in retaliation for her reporting her concerns regarding pharmacy staffing, and due to her gender, disability, and related FMLA leave.

Of course, Wal-Mart argued that it had a legitimate business reason for McPadden's termination - this was her "third strike." Prior to her terminable offense, McPadden was disciplined twice: the first time for failing to perform essential tasks in a timely manner, and the second for being late and then leaving early before completing all of her tasks. According to Wal-Mart, losing her key was the third discipline and therefore, grounds for termination under their progressive discipline policy. McPadden was able to convince the jury that this proffered reason was pretext for discrimination and retaliation by producing evidence that Wal-Mart did not strictly follow its disciplinary policy with respect to her, and that a male pharmacist at another store was not terminated when he lost his pharmacy key. The bulk of the damages award was based on her state and federal gender bias claims, including a shocking \$15 million of punitive damages for her federal claims.

COMPASS POINT: It is essential for employers to apply policies consistently and uniformly. If an exception is made to a policy, employers must be able to articulate a legitimate non-discriminatory reason for the exception. In this case, Wal-Mart's inconsistency in policy application came back to bite them.