



# CLIENT NEWS BRIEF

February 2010

Number 3

## NINTH CIRCUIT HOLDS THAT PUNITIVE AND COMPENSATORY DAMAGES ARE NOT AVAILABLE FOR ADA RETALIATION CLAIMS

In Alvarado v. Cajun Operating Company (9th Cir. Dec. 11, 2009) 588 F.3d 1261, the Ninth Circuit Court of Appeals recently held that punitive and compensatory damages are not available for retaliation claims under the Americans with Disabilities Act (“ADA”).

Tannislado Alvarado was hired by Church’s Chicken restaurant to perform part-time work when he was sixty-five years old, and eventually became a cook. During his first three and a half years of work at Church’s Chicken, Mr. Alvarado received positive performance evaluations. However, after he called the company’s hotline to complain that his manager had made inappropriate comments about his age, Mr. Alvarado received his first negative performance evaluation. Seven more negative evaluations, from two different assistant managers, followed. In response to these evaluations, Mr. Alvarado called the hotline a second time, accusing his manager of retaliation against him for making the first hotline call. Mr. Alvarado was subsequently terminated.

Mr. Alvarado then filed a federal lawsuit against Cajun Operating Company, which owns Church’s Chicken, alleging, among other claims, employment discrimination and retaliation in violation of the ADA. Mr. Alvarado argued that because punitive and compensatory damages are available under the Civil Rights Act, he should be able to recover compensatory and punitive damages for his ADA retaliation claim.

The Ninth Circuit reviewed the differing conclusions of other federal appellate courts on the question of whether compensatory and punitive damages should be allowed for ADA retaliation claims, and ultimately rejected Mr. Alvarado’s argument. The Ninth Circuit instead adopted the view of the Seventh Circuit Court of Appeals that compensatory and punitive damages are not available for retaliation claims under the ADA. The plain and unambiguous language of the ADA limits the availability of compensatory and punitive damages to those specific ADA claims listed in the statute, from which retaliation claims are excluded. As a result, the court held that the remedies for ADA retaliation claims are limited to equitable relief only.

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It is important to note that this decision is limited in scope only to ADA retaliation claims, and not to ADA claims based on failure to participate in the interactive process, failure to provide reasonable accommodations, or disability discrimination. Additionally, while punitive damages are unavailable against public entities in California (Gov. Code, § 818), it should be noted that compensatory damages are available for disability-related retaliation claims under California's Fair Employment and Housing Act ("FEHA").

If you have any questions regarding this matter, please contact one of our [seven offices](#) located statewide.

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