

## [California Supreme Court Adopts 1:1 Ratio for Punitive Damages](#)

Posted on December 8, 2009 by [Gregory Eisenreich](#)

On November 30, 2009, the [California Supreme Court](#) held in [Roby v. McKesson Corporation](#), et al. that a punitive damage to compensatory damage ratio of one-to-one is the U.S. Constitutional maximum permissible under the [Due Process Clause](#) where the compensatory damage award is substantial.

Plaintiff Charlene Roby brought wrongful discharge and harassment claims against her former employer, McKesson Corporation ("McKesson"). The jury awarded her \$3,511,000 in compensatory damages and \$15 million in punitive damages. After finding that the appropriate compensatory award was approximately \$1,900,000, the Supreme Court turned to whether the punitive damage award which had already been reduced to \$2 million by the Court of Appeal was excessive.

The Court first analyzed the reprehensibility of McKesson's conduct through the following factors:

whether [1] the harm caused was physical as opposed to economic; [2] the tortious conduct evinced an indifference to or a reckless disregard of the health or safety of others; [3] the target of the conduct had financial vulnerability; [4] the conduct involved repeated actions or was an isolated incident; and [5] the harm was the result of intentional malice, trickery, or deceit, or mere accident."

The Court found that the first three factors were present.

In addressing the fourth factor, whether the conduct involved repeated actions or was an isolated incident, the Court found that the repeated harassment by a supervisor did not constitute repeated conduct by the corporate defendant. Likewise, the Court reasoned that the employer's adoption of a strict attendance policy that did not provide reasonable accommodations to employees who had disabilities constituted a single corporate act. Therefore, the fourth factor was not present.

Similarly, the Court found that the fifth factor was lacking as there was no evidence that McKesson adopted the attendance policy with a purpose or motive to discriminate as opposed to failing to prevent foreseeable discriminatory consequences.

From the foregoing, the Court concluded that the reprehensibility was at the low end of the range of wrongdoing that can support an award for punitive damages.

After discussing the degree of reprehensibility of the employer's conduct, the Court turned to the question of the ratio between the compensatory award and the punitive award noting that the United States Supreme Court had

suggested that a ratio of one to one might be the federal constitutional maximum in a case involving, as here, relatively low reprehensibility and a substantial award of noneconomic damages . . ."

The Court also considered that civil penalties authorized in comparable administrative proceedings were tiny, \$150,000, compared to the jury's punitive damage award.

Ultimately, the Supreme Court concluded that a one-to-one ratio between compensatory and punitive damages was the federal constitutional maximum allowed in a case such as this one where there was relatively low reprehensibility and a substantial compensatory damages award. The Supreme Court's opinion reversed the Court of Appeal's decision which would have allowed a punitive award that was only slightly over the one-to-one ratio.