

AGE DISCRIMINATION

Texas employer ordered to pay \$767K in attorneys' fees in discrimination case

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Under Texas law, a prevailing party may be entitled to attorneys' fees. Although that happens regularly, a discrimination case in which a court awarded an employee more than \$700,000 in attorneys' fees has many employers worried.

Facts

In December 2012, Cathryn "Cathy" Davis, a 59-year-old paralegal working at Apache Corporation, told her supervisor and Apache's HR lawyer that she was concerned that her supervisor was engaging in discriminatory practices. On January 25, 2013, Apache decided to terminate Davis for insubordination. In April 2014, she filed a lawsuit alleging that Apache engaged in age discrimination and retaliated against her for expressing her concerns about age and gender discrimination.

At trial, Davis alleged that Apache discriminated against her by promoting two younger paralegals and giving them scheduling accommodations, and she was not promoted or given scheduling accommodations despite her superior work performance. She alleged that Apache fired her for raising concerns about age and gender discrimination.

Apache argued that Davis was terminated for insubordination. The company asserted that, among other things, she refused to submit work schedules in accordance with its policies and failed to follow her supervisor's instruction to stop working unauthorized overtime. Apache argued that after terminating her, it discovered that she had engaged in misconduct that would have given it grounds to legitimately fire her based solely on the misconduct.

After a three-week trial, a jury determined that Apache did not terminate Davis because of discrimination and that she engaged in misconduct that would have led to her discharge. However, the jury found that Apache fired her in retaliation for making allegations of discrimination against her supervisor. The jury awarded her no back pay or damages for future pain and suffering, but it did award her \$150,000 for past pain and suffering.

Attorneys' fees determination

Under the Texas Labor Code, a prevailing party in an age discrimination case is entitled to reasonable attorneys' fees and expenses. Texas courts use the two-step "lodestar" method to determine reasonable attorneys' fees. First, courts determine the base lodestar (a reasonable amount of time spent on the case *multiplied by* a reasonable hourly rate for the attorney). Second, courts adjust the base lodestar if factors indicate that an adjustment is necessary to reach a reasonable fee.

In July 2016, Davis filed a memorandum with the court requesting reasonable attorneys' fees as required by law. In her request, she asserted the hourly rates of her attorney, support staff, counsel, and expert witness and the amount of time each person spent on the case. She asked the court to consider the substantial amount of time her attorney spent addressing the opposing counsel's aggressive pretrial tactics, which were evidenced by the nine motions to compel her attorney had to file.

In December 2016, the court concluded that Davis was entitled to attorneys' fees, expert witness fees, and costs totaling \$767,742. *Cathryn C. Davis v. Apache Corporation*, No. 2014-23898 (152nd Dist. Ct., Harris County, Tex., May 11, 2016).

Bottom line

Discrimination and retaliation cases can be difficult to prove. However, remember that if an employee wins any part of her claim, you may be ordered to pay her attorneys' fees and expenses, which may be significantly more than the judgment itself.

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