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Damages In Age Discrimination Cases

Under the Age Discrimination in Employment Act (ADEA) and the Colorado Anti-Discrimination Act (CADA), it is unlawful to discriminate against an individual over age 40. While the prohibition against discrimination is similar to Title VII of the Civil Rights Act of 1964 and the Americans with Disabilities Act (ADA), the available damages in age discrimination cases differ greatly.

Backpay

A plaintiff in an age discrimination case can be awarded backpay. “[T]he ADEA provides for legal and equitable relief, including reinstatement, back-pay, and other pecuniary benefits associated with the job, but it does not permit the recovery of compensatory damages.” *Ridgell-Boltz v. Colvin*, 565 Fed. App’x 680, 683 (10th Cir. 2014) (citations omitted). Pecuniary damages include “only those pecuniary benefits connected to the job relation, including unpaid wages or overtime compensation.” *Id.* (quoting *Collazo v. Nicholson*, 535 F.3d 41, 44-45 (1st Cir. 2008)).

Frontpay

In the 10th Circuit, front pay is available under the ADEA. *See EEOC v. Prudential Federal Sav. & Loan Assoc.*, 763 F.2d 1166, 1171-73 (10th Cir. 1985) (citations omitted). An award of front pay can be continued until the plaintiff reasonably would have retired where the plaintiff presents evidence that she has little chance of finding employment comparable or superior to her former position. *Hayes v. SkyWest Airlines, Inc.*, Civ. Act. No. 15-cv-2015-REB-NYW, 2018 U.S. Dist. LEXIS 163023, *17-18 (D. Colo. Sept. 24, 2018) (awarding 52-year-old plaintiff front pay until he is 65 years old) (citations omitted). *See also Rupp v. Purolator Courier Corp.*, Nos. 93-3276 & 93-3288, 194 U.S. App. LEXIS 36233, *6-*7 (10th Cir. Dec. 20, 1994) (affirming award of “front pay in an amount representing the present value of the difference in pay between his old job and new job, for a period up to his expected date of retirement at age sixty.”); *Wulf v. City of Wichita*, 883 F.2d 842, 873-74 (10th Cir. 1989) (not disturbing trial court’s award of front pay until 8 years following the date that the plaintiff’s pension would have vested).

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Liquidated Damages

Liquidated (double) damages are awardable on the back-pay portion of an award of relief (but not front pay), if the employer's violation of the ADEA was willful. *See Cooper v. Asplundh Tree Expert Co.*, 836 F.2d 1544, 1556-57 (10th Cir. 1988) (citations omitted).

Compensatory and Punitive Damages

As noted above, compensatory damages are not available in age discrimination cases. This means that non-pecuniary (non-monetary) and pecuniary (monetary) damages cannot be awarded. Pecuniary benefits associated with the job can be awarded. Punitive damages are not available.

Attorneys' Fees

For private sector employees, attorneys' fees can be awarded by the court. However, in the federal sector administrative EEO process, compensatory damages and attorneys' fees are not available for a violation of the ADEA. *Estelle L. v. Dep't of the Army*, EEOC App. No. 0120143049 (Sept. 2, 2016) (citing *Taylor v. Dep't of the Army*, EEOC Req. No. 05930633 (Jan. 14, 1994) and *Seymour & King v. Dep't of Veterans Affs.*, EEOC Req. Nos. 05900257 and 05900256 (July 20, 1990)).

What types of damages are recoverable in your case?

The Wick Law Office represents public and private employees in Colorado in a variety of employment matters, including claims of age discrimination. Please contact us for more information or to discuss your specific situation.

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