

Legal Connections



POWERED BY THE COLUMBUS BAR ASSOCIATION

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SUPREME COURT OF OHIO UPDATE

Every year, the Supreme Court of Ohio decides issues affecting the business community. Two pending cases will likely make an impact for years to come.

Class Actions

In 2001, the Public Utilities Commission of Ohio (PUCO) found that Ameritech had engaged in "rate discrimination," where cellular service resellers paid Ameritech more for capacity than Ameritech's retail arm.

In *Satterfield v. Ameritech Mobile Comm'n's*, Plaintiffs filed a class action claiming Ameritech's inflated wholesale prices increased consumer prices. The plaintiffs generally described their theory of common injury and damages and argued that a damages model would be developed after class certification and discovery.



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The trial court certified the class, and the appellate court affirmed, noting that a damages model would "delve too deeply into the merits" during the class certification phase.

Ameritech appealed and is arguing that courts must scrutinize a damages model at the class certification stage. Ameritech argues that individual

issues were especially apparent because consumer pricing depended on many discrete factors, such as length of contract, type of phone and the underlying wholesale price.

A ruling in favor of Ameritech will require plaintiffs at the class certification stage to identify common injury and damages and expend additional resources to develop a detailed class-wide damages model. Class certification will become more rigorous, more expensive, and without a strong showing of class-wide injury, less likely.

Noneconomic Damages Cap

In Ohio, noneconomic damages, such as emotional distress, are capped at \$250,000 in cases not involving permanent disability or death. The damages cap has been applied to cases involving physical injury or property damage. No Ohio court has applied the caps to claims of injury to one's reputation.

In *Wayt v. DHSC, LLC*, plaintiff was a nurse active in the local union who was terminated from her position. The employer claimed plaintiff was terminated because of poor performance. Plaintiff claimed she was terminated due to union activity, and that the employer made defamatory statements about her competence as a pretext for termination.

The jury agreed with the nurse and found the employer liable for defamation. The nurse was awarded \$800,000 in compensatory and \$750,000 in punitive damages.

"In the midst of community events and sharing time with family this Memorial Day weekend, let us make time to remember that peace is fragile and to honor those who sacrifice their lives in service to our nation."



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In post-trial briefing, the employer argued that the noneconomic damages caps should apply thereby reducing compensatory damages to \$250,000 and punitive damages to \$500,000.

The lower courts held that the damages cap only applied to injuries to person or property. Because reputational injuries were distinct, the caps did not apply.

The employer appealed, claiming that reputational harm is a noneconomic injury arising from a tort that should be subject to the statutory caps. The Supreme Court of Ohio accepted the issue for review.

If the Supreme Court agrees with the employer, courts will likely extend Ohio's noneconomic damages caps to any tort claim, regardless of whether it is focused on physical injury, property damage, emotional distress or reputational harm. This would reduce the amount of damages awarded and impact plaintiffs' incentive to bring claims. ■

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EMPLOYEE DISCRIMINATION AND INTERVIEWS: WHAT TO ASK AND ANSWER

The state and federal laws that prohibit employers from discriminating against employees on the basis of race, gender, national origin and religion do not include a list of questions prospective employers cannot ask. So, it is not explicitly illegal to ask questions about your gender, race, national origin or religion. While these questions are not illegal, the questions may imply an illegal motive of the employer. If an employer asks these types of questions and the



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candidate does not get the job, it can be used as evidence of discrimination. So, employers should not ask questions that could reveal personal details about a candidate. Employers, however, often do ask these questions.

So what rights do candidates have during the application and interview process if they are asked questions about their race, gender, national origin or religion? Since the law does not prohibit asking the questions, the employer has not done anything illegal by asking the questions.

Should a candidate answer these types of questions? Yes. If you refuse to answer the question, the likelihood of getting the job decreases substantially. If so, how should you answer those? Tackle the question head-on, do not show your disapproval of the question and redirect the conversation back to your qualifications. If a female candidate is asked if she has children, answer honestly but state your children do not limit your availability or dedication to the job. You should also provide examples of how you handled work and family life in previous positions. ■

EDUCATION & EVENTS

Friday, June 1 • 8:30 a.m. – 1:30 p.m.
2018 Summer Associate Legal Research Seminar

Saturday, June 2 • 9 – 10 a.m.
Notary Public: Test Only

Tuesday, June 5 • 9 a.m. – 12:15 p.m.
Personal Injury Primer: Basic Auto Accident Cases
Video; 3.0 NLT or CLE Hours
(with 1.0 Prof. Conduct)

All classes listed are offered at the Columbus Bar Associations offices, 175 S. Third St. Ste. 1100. To register, call 614-221-4112 or enroll online at www.cbalaw.org.

Columbus Bar
Annual
Meeting

June 14, 2018 12:00pm Sheraton Capitol Square

You are cordially invited to attend the 2018 Columbus Bar Annual Meeting, featuring the installation of new officers for 2018-19.



Samuel A. Peppers, III
CBA President,
2018-19
Dinsmore & Shohli, LLP



Belinda S. Barnes
CBF President,
2018-19
Gallagher Gams Pryor
Tallan & Littrell LLP

RSVP:

Tickets are \$45 per person or \$450 per table of 10. To reserve your seats, please contact Donna Sweet at (614) 221-4112 or donna@cbalaw.org.