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SHOCKING TO THE CONSCIENCE: SIX FIGURE PUNITIVE DAMAGES
AWARDS IN EMPLOYMENT DISCRIMINATION CASES

A survey of punitive damage awards for employment discrimination claims in Massachusetts and the First Circuit has yielded several interesting points.

1. Punitive Damages are Almost Always Awarded if Liability is Found

In cases in which the jury was permitted to award punitive damages, only three cases were found in which a jury failed to award punitive damages after concluding that employment discrimination took place.¹ Plaintiff's lawyers may feel some confidence that a jury will award punitive damages if liability is found.

2. Punitive Damages Will Likely be Awarded in an Amount of \$100,000 or Higher

Of the 119 cases with awards of punitive damages, the award in 79 of those cases was in the amount of \$100,000 or greater.

Narrowing that inquiry to jury verdicts in c. 151B, Title VII and ADA claims (excluding other claims such as section 1983 claims against individuals), of 86 instances in which punitive damages were awarded, 67 of those cases awarded punitive damages in

¹ Generally, the question of punitive damages is one for the jury. McDonough v. Quincy, 452 F.3d 8 (1st Cir. 2006); Che v. MBTA, 342 F.3d 31; Powell v. Alexander, 391 F.3d 1 (1st Cir. 2004); Haddad v. Wal-Mart Stores, Inc., 455 Mass. 91 (2009); Abramian v. President & Fellows of Harvard College, 432 Mass. 107 (2000).

the amount of \$100,000 or greater. Thus, if a c. 151B violation is found, the punitive damages will likely be awarded in a very substantial amount.

3. When Punitive Damages are Awarded in the Amount of \$100,000 or Higher, There is a Great Likelihood That Either the Award Will be Reduced, the Underlying Finding of Liability Will be Reversed, or a New Trial Will be Ordered

Employment discrimination plaintiffs succeeding in obtaining large punitive damages awards at trial are having a hard time defending these awards at the post-trial and appellate levels.

In the context of six figure punitive damages, it appears that the jury is usually "wrong." Of the 79 cases in which the trier of fact awarded punitive damages of \$100,000 or greater, the amount was cut, limited by a damages cap, or the underlying finding was subject to reversal and/or remand, or the jury verdict was otherwise altered to the plaintiff's detriment in 44 cases. Thus, 44% of those cases have so far been allowed to stand unaltered. Those statistics could get worse, as some of the successes are being challenged.

4. When Punitive Damages are Awarded in an Amount Less Than \$100,000, There is Only a Small Likelihood That Either the Award Will be Reduced, the Underlying Finding of Liability Will be Reversed, or a New Trial Will be Ordered

Of the 61 cases awarding less than \$100,000 in punitive damages (or none), the awards and underlying judgments have so far been permitted to stand, or be modified in the plaintiff's favor, in 43 cases. Thus, when punitive damages are low or non-existent, the chance that the verdict will be left untouched, or changed in some pro-plaintiff way rises to 70%.

5. Judicial Hostility to Punitive Damages?

The bare statistics indicate that a case with a low punitive damages award stands a much greater likelihood of being affirmed than a case with a high award. Does this indicate a judicial intolerance of high punitive damages? Not necessarily.

It should be remembered that sometimes damage awards must be reduced based on grounds not relating to judicial discretion, such as application of the Title VII damages cap. Defendants have a greater incentive to vigorously appeal high awards. Moreover, very high awards may exceed Constitutional or statutory standards of fairness and due process. Therefore, it should be expected that cases with high punitive damages will be permitted to stand with less frequency than those with low damages.

On the other hand, one must be concerned with a system of justice when the primary factfinder is deemed wrong in a majority of a certain category of cases. Jury determinations are supposed to be sacrosanct, and subject to rare interference. See Coffin v. Coffin, 4 Mass. 1, 41-42 (1808). “Only infrequently – and then, for compelling reasons – will we from the vantage point of an algid appellate record, override the jury’s judgment as to the appropriate amount of non-economic damages to which a plaintiff is entitled.” Monteagudo v. Asociacion de Empleados Del Estado Libre Asociado de Puerto Rico, 554 F.3d 164, 174 (1st Cir. 2009). Judicial undermining of jury verdicts awarding substantial punitive damages (the majority of all successful discrimination claims) is the norm and certainly is not rare.

The two possible areas of fault are as follows: [1] that juries are incapable of appropriately considering these types of cases, or [2] that judges are applying an overly heavy hand in reviewing such cases. Regardless of which type of fault is the controlling

or greater culprit, each has very disturbing implications. They are at odds with our constitutional system of justice which holds the right to a jury trial as sacred.

Those believing that a high award may prompt greater appellate scrutiny may want to consider asking for less from the jury, in weaker cases. Lawyers are encouraged to review the raw data below to form their own opinions on the extent of judicial hostility toward punitive damages.

6. Despite the Fact that Six Figure Punitive Awards are Usually Not Permitted to Stand, so Many Juries have Awarded High Punitive Awards That it Should be Easier to Convince a Judge That a High Award Properly Reflects the Judgment of the Community

Such a large number of cases have been reported with substantial awards of punitive damages that attorneys are now in a very strong position to argue that future large verdicts are reasonable and properly reflect the appropriate common sense judgment of the factfinder. Plaintiffs' lawyers seeking to uphold sizable punitive damages should not ignore the cases that on first blush go against their position, because the award has been reduced, remanded, or vacated. Massachusetts and First Circuit juries are speaking loudly and clearly that punitive damages awards in the six figures are reasonable, balanced, and proportionate remedies for violations of civil rights laws. See also Cerqueira v. American Airlines, Inc., 484 F. Supp. 2d 241 (D. Mass. 2007), reversed on other grounds, 2008 U.S. App. Lexis 456 (1st Cir. 2008) (where the plaintiff was removed from a flight and was later denied service, Judge Young held that the award of \$270,000 in punitive damages was not remarkable and did not constitute "extraordinary success"). It is important that judges be educated as to what juries are generally awarding in these types of cases, so that they can make informed decisions as to what is beyond the bounds.

6. Raw Data Supporting Conclusions

Case	Amount of Punitive Damages Awarded By Factfinder	If Jury Verdict Was Altered by Court	If Jury Verdict Was Left Undisturbed	Trial Judge, if Case Was Tried in Massachusetts
<u>Charles v. Boston</u> , Memorandum of Decision on Defendants' Motion for New Trial on Damages or Remittitur and Plaintiff's Amended Motion for Attorney's Fees and Costs, C.A. No. 2012-00895, April 25, 2016, at 4 (race discrimination and retaliation)	\$10 million	Remitted to \$2 million	Jury Verdict	Judge Wilkins
<u>Edwards v. MBTA</u> , C.A. No. 99-0458-F, Suffolk ss. jury verdict, July 8, 2001	\$7,000,000		Case settled with post-trial motions pending	
<u>Clifton v. MBTA</u> , 445 Mass. 611 (2005) (c. 151B race harassment and retaliation case)	\$5,000,000	New trial ordered on damages		Judge Gants
<u>Monteiro v. City of Cambridge</u> , C.A. No. 2001-02737, Memorandum of Decision and Order on the Defendant's Motion for Judgment Notwithstanding the Verdict; Motion for a New Trial, or, in the Alternative, Remittitur; Motion to Strike Plaintiff's Memorandum in Response to Defendant's Post-Trial Submission; and Motion to Supplement Record on Appeal, Middlesex, ss., April 24, 2009, Jury verdict (c. 151B retaliation claim), <u>affirmed</u> , 2011 Mass. App. Unpub. Lexis 965	\$3,500,000		May 2008 jury verdict, upheld on post-trial motions, and affirmed by the Court of Appeals	Judge Bonnie H. MacLeod-Mancuso
<u>Rowlett v. Anheuser-Busch, Inc.</u> ,	\$3,000,000	Award was deemed		

832 F.2d 194, 206 (1 st Cir. 1987) (Section 1981 race discrimination)		excessive and reduced to \$300,000		
<u>Labonte v. Hutchins & Wheeler</u> , 424 Mass. 813, 826-7 (1997) (c. 151B handicap claim)	\$2,500,000	Remanded to Trial Court to analyze amount in light of due process principles. On remand, Trial Court remitted award to \$900,000		Judge White
<u>Galarneau v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</u> , 504 F.3d 189 (1 st Cir. 2007) (defamation claim)	\$2,100,000	Punitive damages vacated in their entirety. Where the employer sent a U-5 falsely explaining the reason for plaintiff's termination, effectively derailing the employee's career, this was deemed to be inadequate evidence of malicious or outrageous conduct to support any punitive damages		
<u>Hill v. Belmont Springs, C.A. No. 00-03983, Omnibus Memorandum of Decision and Order</u> , Middlesex, ss., Giles, J., February 3, 2003	\$2,000,000	Punitive damages vacated on grounds that conduct was not outrageous		Judge Giles
<u>New Boston Select Group v. DeMichele</u> , 15 Mass. L. Rptr. No. 20, 473, 476 (January 13, 2003) (c. 151B retaliation for termination, stoppage of benefits, and initiation of retaliatory lawsuit for misrepresentation and breach of fiduciary duty)	\$1,500,000		October 2002 jury verdict, affirmed after post trial motions	Judge van Gestel
<u>Pelletier v. Somerset</u> , Findings	\$1,250,000	Remitted to \$400,000		Judge Moses

and Order on Plaintiff's Emergency Motion for Reconsideration of the Court's Allowance of Defendant's Motion for a New Trial, or in the Alternative, for Remittitur, C.A. No. 2003-0736, Bristol, ss., Moses, J., March 21, 2008, later at 2010 Mass. Lexis 933, ___ Mass. ___ (2010).		by trial judge, and later vacated in its entirety, and remanded to Superior Court for a new trial, by the SJC.		
<u>Kiely v. Teradyne, Inc., Memorandum of Decision and Order on Defendants' Motion for Judgment Notwithstanding the Verdict or in the Alternative, Motion to Vacate Punitive Damages Award, Suffolk Superior Court Docket No. 08-5744-D, Hines, J., October 26, 2012 (c. 151B retaliation)</u>	\$1,100,000	Reduced to \$0, because a retaliatory refusal to rehire is not outrageous		Judge Hines
<u>Mercado-Berrios v. Cancel-Alegria, 2010 U.S. App. Lexis 13332 (1st Cir. 2010) (section 1983 claim of whistleblower retaliation)</u>	\$1,000,000 against individual defendant	Punitive damages remitted to \$500,000		
<u>Walden v. City of Providence, 596 F.3d 38 (1st Cir. 2010) (Constitutional and statutory violations for wiretapping)</u>	\$1,000,000	Qualified immunity found, and new trial ordered based on a flawed special verdict form and lack of an official custom or policy.		
<u>Trinh v. Gentle Communications, LLC and Tencer, 71 Mass. App. 368, 375-378 (2008) (c. 151B sexual harassment claim)</u>	\$1,000,000 against employer and \$65,000 against individual	\$1,000,000 award against the employer vacated on the grounds that the plaintiff did not seek to hold the employer responsible on grounds of vicarious liability, and the employer did not	The \$65,000 award against the individual was upheld	Judge Sikora

		engage in sufficient conduct independent of the abusive supervisor to justify punitive damages. The trial judge further found that a million dollar award was too large in comparison with \$40,000 in compensatory damages		
<u>Barszcz v. Smurfit-Stone Container</u> , C.A. No. 2006-00786, Hampden, ss., Kinder, J. (sexual harassment)	\$1,000,000		February 2008 jury verdict	Judge C. Jeffrey Kinder
<u>Dixon v. International Brotherhood of Police Officers</u> , Memorandum and Order, C.A. No. 01-11806, Young, J., D. Mass. June 19, 2006) (Title VII and c. 151B gender discrimination and retaliation)	\$1,000,000		October 18, 2005 jury verdict, affirmed 504 F.3d 73 (1 st Cir. 2007)	Judge Young
<u>Haddad v. Walmart Stores, Inc.</u> , 455 Mass. 91 (2009), reversing in part, C.A. No. 05-0274, Berkshire, ss., Agostini, J., December 12, 2007 (c. 151B sex discrimination claim)	\$1,000,000		June 2007 jury award of punitive damages was vacated by the trial judgment, but reinstated by the SJC, which found that Wal-Mart had acted in a particularly egregious fashion	Judge Agostini
<u>Stephens v. Global NAPS</u> , 70 Mass. App. 676, 677-678 (2007) (July 2004 jury verdict in maternity leave discrimination)	\$1,000,000	Punitive damages remitted to \$0, in February 2005		Judge Muse

case)				
Massachusetts State Police (c. 151B claim by four women challenging maternity policy)	\$1,000,000		October 2002 jury verdict	
Handrahan v. Red Roof Inns, Inc., 43 Mass. App. 13 (1997) (c. 151B handicap claim)	\$1,000,000	Trial Court found award excessive and reduced it to \$100,000; lower amount upheld by Appeals Court		Judge Cratsley
Johnson v. Spencer Press of Maine, Inc., 364 F.3d 369 (1 st Cir. 2004) (Title VII religious discrimination case)	\$750,000	Punitive award vacated due to cap		
Malone v. Lockheed Martin Corp., 610 F.3d 16 (1 st Cir. 2010) (VII race and retaliation claims)	\$750,000	The entire verdict was thrown out on a jnov decision.		
Daigle v. Rudomin, Memorandum and Order Pursuant to Rule 1:28, 94-P-1848, 41 Mass. App. 1110 (1996) (unpublished) (c. 151B sexual harassment claim)	\$750,000		Appeals Court upheld award, despite closing argument requesting a “huge” award	
Abramian v. President & Fellows of Harvard College, 9 Mass. L. Rptr. No. 25, 563 (April 19, 1999), affirmed in part and vacated in part, 432 Mass. 107 (2000) (c. 151B national origin and retaliation claim)	\$750,000 for each of two counts	Trial Court ordered new trial solely on issue of punitive damages, on grounds that jury instructions did not require the finding that Harvard’s conduct was outrageous. Moreover, Trial Court ruled that only a single punitive award would be permitted, and the two awards would		Judge McHugl

		not be cumulated. The SJC affirmed the requirement for a new trial on punitive damages and on the national origin discrimination claim		
Demas v. B.J.'s Wholesale, Berkshire, ss. (December 2015 jury verdict on c. 151B retaliation claim)	\$650,000		Award upheld after consideration of post-judgment motions	Judge Ford
<u>Walsh v. Carney Hospital Corporation</u> , Memorandum and Order on Defendants' Motion for Judgment Notwithstanding the Verdict, or, in the Alternative, for a New Trial or Remittitur, C.A. No. 94-2583, Norfolk, ss., Cowin, J., June 10, 1998 (perceived homosexuality discrimination case)	\$650,000		Appeal pending	Judge Cowin
<u>Romano v. U-Haul International</u> , 233 F.3d 655 (1 st Cir. 2000) (Title VII and Maine Human Rights Act sex discrimination claim)	\$625,000	Reduced to \$285,000 by District Court to comply with Title VII damages cap		
<u>Khakian v. Fleet National</u> , Order on Def.'s Motions for Remittitur or in the alternative, For a New Trial on Damages and for Judgment Notwithstanding the Verdict, C.A. No. 03-1403, Norfolk ss., May 16, 2006 (c. 151B national origin claim, decided by a jury in March 2006)	\$600,000		Jury verdict upheld after post-trial motions	Judge Dortch-Okara
<u>Fontaine v. Ebttec Corp.</u> , 415 Mass. 309 (1993) (c. 151B age claim)	\$600,000	Vacated because no punitive damages may be awarded in a		Judge Welch

		c. 151B age discrimination claim, and because amendment providing for the damages is not retroactively applied		
<u>Gyulakian v. Lexus of Watertown</u> , Memorandum of Decision and Order on Parties' Post Trial Motions, C.A. No. 2013-0017, Middlesex, ss. (2014) (jury verdict on c. 151B sexual harassment claim), <u>reversed in part</u> , 475 Mass. 290 (2016).	\$500,000	Eliminating punitive award in its entirety, because an employer is not liable for punitive damages based on vicarious liability principles, and there was insufficient evidence of the employer's bad faith	Award reinstated by the Supreme Judicial Court, subject to a further motion on remittitur.	Judge Kimberly Bud
<u>Stoyle v. Mansfield Municipal Electric Dept.</u> , Memorandum and Order, C.A. No. 05-10354, Woodlock, J., March 20, 2009 (c. 151B retaliation and/or Whistleblower claim)	\$500,000	Remitted to \$250,000, and new trial ordered with respect to punitive damages awarded against an individual defendant, and punitive damages against MMED capped at \$50,000, and new trial ordered based on failure to have specific jury verdict questions on adverse actions		Judge Woodlock
<u>Hart v. City of Peabody</u> , 5 Mass. L. Rptr. No. 10, 221, 223 n.2 (June 10, 1996) (c. 151B claim)	\$500,000		Unappealed	Judge Fremont-Smitl
<u>Brown v. Office of the Commissioner of Probation</u> , Memorandum of Decision and Order on the Defendant's Motion for Remittitur and Brown's Cross-Motion for Additur, C.A. No. 07-03552-A, Suffolk, ss,	\$500,000	Remitted to \$108,000, which represents 18 times compensatory damages, due to the non-severity of the retaliation.		Judge Troy, and affirmed by Appeals Court

Troy, J., June 28, 2011, <u>aff'd</u> , 2013 Mass. App. Unpub. Lexis 882				
<u>Quint v. A.E. Stanley Mfg. Co.</u> , 172 F.3d 1 (1 st Cir. 1999) (ADA claim for termination of employee with carpal tunnel syndrome)	\$420,000	reduced to \$300,000 in light of statutory cap, even though court found the award proper		
<u>Brock v. Springfield</u> , C.A. No. 05-563, April 2008 jury verdict	\$400,000		Unappealed	Judge Josephson
<u>Carey v. Mt. Desert Island Hospital</u> , 156 F.3d 31 (1 st Cir. 1998) (Title VII gender claim)	\$400,000	Reduced in light of statutory cap		
<u>Zimmerman v. Direct Federal Credit Union</u> , 2000 U.S. Dist. LEXIS 17107 (D. Mass. November 16, 2000) (c. 151B retaliation claim), <u>aff'd</u> 262 F.3d 70 (1 st Cir. 2001)	\$400,000		Affirmed by First Circuit	Magistrate Judge Collings
<u>Blockel v. J.C.Penney Co.</u> , 337 F.3d 17 (1 st Cir. 2003) (c. 151B retaliation for requesting a reasonable accommodation)	\$350,000		Affirmed by First Circuit	Judge Freedman
<u>Harper v. Commonwealth of Mass. Executive Office of Transportation</u> , 2012 Mass. Super. Lexis 358 (c. 151B retaliation)	\$375,000	Back Pay was cut back, but punitive damages were upheld based on employer's failure to investigate sexual harassment complaint		Judge Josephson
<u>Sampaio v. Agar Supply Company, Inc.</u> , Memorandum of Decision and Order of Defendant's Motion for Judgment Notwithstanding the Verdict, and in the Alternative for a New Trial, C.A. No. 91-8389, Suffolk, ss., Barrett, J., August 12, 1993 (c. 151B)	\$350,000	A new trial on liability and damages was ordered based in part on the assumption that the jury's punitive damages award of \$350,000 was based partly on prejudicial		Judge Barrett

age/national origin claims)		statements made by Plaintiff's counsel.		
<u>Dalrymple v. Town of Winthrop</u> , 50 Mass. App. 611 (2000) (c. 151B gender and retaliation claim)	\$300,000		Upheld on appeal where award was similar to the award of compensatory damages and jury instructions were proper	Judge Fremont-Smitl
<u>Monteagudo v. Asociacion de Empleados Del Estado Libre Asociado de Puerto Rico</u> , 554 F.3d 164, 169 n.4 176-177 (1 st Cir. 2009) (VII sexual harassment)	\$300,000		Upheld despite challenge based on Farragher defense	
<u>Aly v. Mohegan Council, Boy Scouts of America</u> , Memorandum and Order on Defendant's Motion for Judgment as a Matter of Law, or in the Alternative, Motion for New Trial, C.A. No. 08-40099, Saylor, J. (D. Mass. 2012) (Title VII national origin and religion discrimination), affirmed 2013 U.S. App. Lexis 5804 (1 st Cir.)	\$300,000	Weak evidence that Defendant discriminated, and that Defendant was aware of federal and state anti-discrimination laws, did not support award of punitive damages, which were cut to \$0.		Judge Saylor
<u>Bisbal-Ramos v. Mayaguez</u> , 467 F.3d 16 (1 st Cir. 2006) (42 U.S.C. § 1983 political retaliation)	\$300,000	Remanding to District Court amounts to award in compensatory and punitive damages		
<u>Enos v. Brockton</u> , C.A. No. 01 CV 10343 EFH, (D. Mass) February 2, 2004 jury verdict, (42 U.S.C. § 1983 political retaliation)	\$300,000		Resolved while post-trial motions pending	Judge Harrington
<u>Acevedo-Garcia v. Vera-</u>	\$300,000	Award of		

<u>Monroig</u> , 368 F.3d 49 (1 st Cir. 2004) (42 U.S.C. § 1983 political discrimination case)		reinstatement was vacated		
<u>Aly v. Mohegan Council, Boy Scouts of America</u> , 2012 U.S. Dist. Lexis 69517, at 9-10	\$300,000	New trial ordered on punitive damages		Judge Saylor
<u>Kerr-Selgas v. American Airlines, Inc.</u> , 69 F.3d 1205, 1214-5 (1 st Cir. 1995) (Title VII sex discrimination and retaliation)	\$300,000	Vacated because no compensatory or nominal damages were awarded		
<u>Rivera-Torres v. Ortiz Velez</u> , 341 F.3d 86, 102 (1 st Cir. 2003) (section 1983 political discrimination)	\$250,000	Punitives upheld, but compensatory damages were reduced by the District Court.		
<u>Rodriguez-Torres v. Caribbean Forms Manufacturer, Inc.</u> , 399 F.3d 52 (1 st Cir. 2005) (Title VII gender discrimination claim)	\$250,000	Reduced due to Title VII damages cap		
<u>Porter v. Cabral</u> , 2007 U.S. Dist. Lexis 12306, 28-33 (D. Mass. 2007) (First Amendment retaliation claim), <u>affirmed</u> 587 F.3d 13 (1 st Cir. 2009).	\$250,000		Verdict upheld after post-trial motions challenged the amount as excessive.	Judge Woodlock
<u>Contardo v. Merrill Lynch, Pierce, Fenner & Smith, Inc.</u> , 753 F. Supp. 406 (D. Mass. 1990) (c. 151B)	\$250,000		Damages awarded by Judge, not jury	Judge Skinner
<u>Babyak v. Smith College</u> , 30 M.L.W. 3753, reverse discrimination gender claim (2001)	\$250,000 for gender claim, \$250,000 for later retaliatory conduct		Jury award, appeal contemplated	
<u>Kelley v. Commonwealth of</u>	\$250,000		Affirmed after	Judge

Massachusetts, C.A. No. 2007-1910, Suffolk, ss. Jury Verdict, December 2012 (c. 151B retaliatory transfer), affirmed <u>Kelley v. Comm. of Mass.</u> , Memorandum of Decision and Order on the Defendants' Motion for Judgment Notwithstanding the Verdict and Motion for Remittitur, or, in the Alternative, a New Trial, C.A. No. 2007-1910, Suffolk, ss., MacLeod, J., March 17, 2014, affirmed 2016 Mass. App. Unpub. Lexis 1007, at 3 n.5			ruling on post-trial motions	MacLeod
<u>Criado v. IBM Corp.</u> , 145 F.3d 437, 440 (1 st Cir. 1998) (ADA wrongful termination)	\$250,000	With \$200,000 compensatory damages awarded, punitive damages reduced in light of \$300,000 damages cap		
<u>Marcano-Rivera v. Pueblo International, Inc.</u> , 232 F.3d 246 (1 st Cir. 2000) (handicap discrimination under ADA and Local Law 44)	\$225,000, awarded by Judge, pursuant to Puerto Rico law requiring doubling of compensatory damages awarded by jury	Judge would not permit jury to consider question of punitive damages under ADA, although judge later doubled the compensatory award under P.R. law, as there was insufficient evidence to prevail under <u>Kolstad</u> inquiry; verdict vacated with respect to claim brought by employee's husband		
<u>Saxe v. Baystate Medical Center, Inc.</u> , Memorandum of Decision and Order on Defendant's Motion for a New Trial Notwithstanding the Verdict,	\$200,000		Affirmed on post-trial motions, with compensatory damages of	Judge Ferrara

C.A. No. 2011-00827, Ferrara, J., July 30, 2015 (c. 151B retaliation claim).			\$68,000	
<u>Sprague v. United Airlines, Inc.</u> , 2002 U.S. Dist. Lexis 14519, 66 (ADA)	\$200,000		Awarded by Judge	Judge O'Toole
<u>Saltzberg v. Medical Weight Loss Center, Suffolk, ss.</u> , C.A. No. 97-05310B, 27 M.L.W. 2287 (June 14, 1999) (sexual harassment), 59 Mass. App. 1110 (2003) (unpublished)	\$200,000	Award remitted to \$50,000, with \$10,000 in actual damages, by trial judge		
<u>Rodriguez-Marin v. Rivera-Gonzalez</u> , 438 F.3d 72, 84-85 (1 st Cir. 2006) (section 1983 political discrimination case)	\$195,000 and \$120,000 to two plaintiffs		Affirmed by First Circuit	
<u>Dartt v. Browning-Ferris Industries, Inc.</u> , 427 Mass. 1, 16-17 (1998), motion for reconsideration pending (c. 151B handicap discrimination)	\$175,000	Vacated because termination based on handicap was not an outrageous act warranting punitive damages		Judge Ball
<u>Arrieta-Colon v. Wal-Mart Puerto Rico, Inc.</u> , 434 F.3d 75 (1 st Cir. 2006) (ADA harassment and constructive discharge claim)	\$160,000		First Circuit affirmed the verdict	
<u>Nardone v. Patrick Motor Sales, Inc.</u> , 1994 WL 902899 (Mass. Super. Nov. 3, 1994) (c. 151B), affirmed 40 Mass. App. 1118 (1996), see also 46 Mass. App. 452 (1999)	160,000		Jury verdict	
<u>MacCormack v. Boston Edison Co.</u> , 423 Mass. 652 (1996) (c. 151B retaliation)	\$150,000	Vacated because claim as whole was dismissed as lacking adequate supporting evidence		Judge Connolly

<u>Doty v. Sewall</u> , 908 F.2d 1053, 1056, 1062 (1 st Cir. 1990) (suit of union member against a union based on LMRDA violations)	\$150,000		Upheld	Judge McNaught
<u>Izen v. Toshiba America Consumer Products, Inc.</u> , an unpublished opinion noted at 132 F.3d 20 (1 st Cir. 1997) (c. 151B retaliation claim)	\$150,000	Vacated because Judge withheld constructive discharge question from the jury		
<u>McMillan v. MSPCA</u> , 140 F.3d 288, 307 (1 st Cir. 1998) (c. 151B sex discrimination)	\$135,662 against employer and \$171,200.00 against individual	Vacated because salary disparity was not egregious violation warranting punitive damages		Judge Stearns
<u>Bandera v. City of Quincy</u> , 220 F. Supp. 2d 26 (D. Mass. 2002) (c. 151B gender discrimination)	\$135,000		Jury Verdict was "reasonable and modest," even despite lack of compensatory damages	Magistrate Judge Bowler
<u>Avila v. Levy Premium Food Service</u> , C.A. No., 2013-112, Suffolk, ss. (race discrimination) (jury verdict March 2016)	\$125,000		Jury verdict	Judge Wilkins
<u>DeMichele v. Guardsmark, Inc.</u> , Order, C.A. No. 90-10975, Tsoucalas, J., June 15, 1993 (c. 151B handicap discrimination claim)	\$125,000	Vacated because amendment authorizing punitive damages was not retroactive		Judge Tsoucalas
<u>Bogan v. Scott-Harris</u> , 118 S. Ct. 966 (1998) (Section 1983 free speech claim)	\$120,000 against Mayor	Vacated based on legislative immunity		
<u>Belanger v. Saint-Gobain Industrial Ceramics, Inc.</u> , 9	108,000		Two sexually harassing	Judge McDonald

Mass. L. Rptr. No. 26, 581 (April 26, 1999)			comments support award	
<u>Bain v. City of Springfield</u> , 424 Mass. 758, 769 (1997) (c. 151B retaliation claim)	\$100,000	Punitive damages award alone was vacated and remanded for retrial, based on introduction of prejudicial evidence		Judge Sweeney
<u>Brown v. Cooley Dickinson Hosp.</u> , 2014 Mass. App. Unpub. Lexis 824	\$100,000		Affirming Jury Award	Judges Green, Trainor and Grainger
<u>Conetta v. National Hair Care Centers, Inc.</u> , 236 F.3d 67, 71 (1 st Cir. 2001) (Title VII and R.I. Gen. Laws § 42-112-1 sexual harassment and retaliation claims)	\$100,000	Magistrate did not have authority to assess damages and enter judgment on default case. District Court damages assessment awarding \$0 in punitive damages upheld		
<u>Salvi v. City of Boston, Suffolk County Sheriffs Dept.</u> , 67 Mass. App. 596 (2006) (c. 151B sexual orientation case)	\$100,000		Jury Verdict upheld by the Appeals Court	Judge White
<u>Morrison v. Carleton Woolen Mills, Inc.</u> , 108 F.2d 429, 432, 440 & n. 6 (1 st Cir. 1997) (sexual harassment)	\$100,000	Underlying harassment claim was not supported by sufficient evidence, and punitive award was excessive based on weakness of the sexual harassment alleged		
<u>Hogan v. Bangor and Aroostook R. Co.</u> , 61 F.3d 1034, 1037 (1 st Cir. 1995 (ADA claim)	\$100,000	Vacated in light of statutory damages cap		
<u>Alvarez v. Lowell</u> , C.A. No. 02-4841, Middlesex ss. (c. 151B	\$100,000		Jury award upheld after	

retaliation claim) (Jury verdict Feb. 2006), 2011 Mass. App. Unpub. Lexis 1332, 10-11			post trial motions, and appeal	
<u>Beaupre v. Cliff Smith & Associates</u> , 50 Mass. App. 480 (2000) (c. 151B sexual harassment suit)	\$87,500		Awarded against individual	Judge Herman Smith
<u>In re C.F. Smith & Assoc., Inc.</u> , 235 B.R. 153, 157 (Bkrcty. D. Mass. 1999) (c. 151B sexual harassment claim based on retaliation of jilted lover/President)	\$87,000		awarded against harasser/Pres. but not against the company	
<u>Marrero v. Goya of Puerto Rico, Inc.</u> , 304 F.3d 7 (1 st Cir. 2002) (Title VII sexual harassment and retaliation)	\$75,000	remanded for new trial due to insufficiency of evidence in support of retaliation claim		
<u>Bhaduri v. Middlesex County Sheriff's Department</u> , 22 Mass. L. Rptr. No. 14, 329 (May 14, 2007) (c. 151B aiding and abetting claim)	\$75,000	Remanded based on deficient jury instructions on the aiding and abetting provision		Judge MacLeod-Mancuso
<u>Dichner v. Liberty Travel</u> , 141 F.3d 24, 33 (1 st Cir. 1998) (c. 151B handicap discrimination)	\$75,000		Intent to discriminate as to violate c. 151B is sufficient to justify punitive award	Judge Stearns
<u>Hernandez v. Winthrop Printing Co.</u> 99-588 G (c. 151B retaliation claim) (May 2002 jury verdict in Superior Court)	\$70,000		jury verdict	
<u>Gomez v. Rodriguez</u> , 344 F.3d 103 (1 st Cir. 2003) (section 1983 political discrimination case)	Approx. \$60,000 awarded to 24 plaintiffs	New trial ordered on evidentiary issues		

<u>Ciccarelli v. School Dept. of Lowell</u> , 70 Mass. App. 787 (2007) (c. 151B retaliation claim based on failure to rehire a teacher)	\$50,000		Upheld by the Appeals Court, as there was sufficient evidence to support the award, and it was not excessive	Judge Chernof
<u>Lizzotte-Muise v. Video Merchandisers</u> , C.A. No. 97-4055, Middlesex ss., (c. 151B pregnancy discrimination)	\$50,000		Jury award upheld after post-trial motions	
<u>DiMarco-Zappa v. Cabanillas</u> , 238 F.3d 25 (1 st Cir. 2001) (42 U.S.C. § 1983 action for discriminatory provision of real estate licensing examination toward English speaking citizens of the United States)	\$50,000		Judicial award of punitive damages against individuals were not excessive	
<u>Atkinson v. National Boston Video Center, Inc.</u> , Memorandum and Order Pursuant to Rule 1:28, 06-P-189, June 13, 2007 (c. 151B pregnancy discrimination failure to promote claim)	\$50,000		Affirming award despite challenge based on excessiveness, where underlying damages were only \$2,500	
<u>McDonough v. Massachusetts State Lottery Commission</u> , Memorandum of Decision and Order on Post Trial Motions, C.A. No. 02-1712, Norfolk, ss., Donovan, J., September 15, 2005) (c. 151B failure to remedy sexual harassment)	\$50,000	Remitted to \$0, based on lack of evidence that employer's response to sexual harassment was malicious or reckless		Judge Elizabeth Bowen Donovan
<u>Bishop v. Bell Atlantic Corp.</u> , 299 F.3d 53 (1 st Cir. 2002) (Maine Human Rights Act)	\$50,000	vacated based on lack of evidence of adverse action and		

		causation		
<u>Brown v. Freedman Baking Co.</u> , 810 F.2d 6, 11 (1 st Cir. 1987) (racially discriminatory or retaliatory terminations in violation of 42 U.S.C. § 1981)	\$50,000		Upheld because terminations were outrageous conduct	
<u>Miller v. Town of Hull, Mass.</u> , 878 F.2d 523, 528, 534 (1 st Cir. 1989) (§ 1983 political discrimination claims)	\$43,700		Upheld	Judge David Nelson
<u>Vezquez-Valentin v. Santiago-Diaz</u> , 385 F.3d 23 (1 st Cir. 2004) (§ 1983 political discrimination)	\$42,000 awarded against various individual defendants	Vacated based on lack of sufficiency of the evidence.		
<u>Memphis Community Sch. Dist. v. Stachura</u> , 106 S. Ct. 2537, 2541 (1986) (§ 1983 claim of teacher suspended for teaching sexual education)	\$41,000 awarded against nine defendants ranging from \$1,000 to \$15,000	Reversed because of improper jury instructions on compensatory damages		
<u>Rodriguez Rodriguez v. Munoz Munoz</u> , 808 F.2d 138 (1 st Cir. 1986) (§ 1983 wrongful termination case)	\$40,000	Vacated based on qualified immunity		
<u>Arbaugh v. Y& H Corp.</u> , 126 S. Ct. 1235 (2006) (Title VII gender discrimination claim)	\$30,000		The Supreme Court found that the defendant waived its defense that it employed	

			fewer than 15 employees	
<u>Fishman v. Clancy</u> , 763 F.2d 485, 489 (1 st Cir. 1985) (claim for firing and harassing a teacher in violation of 42 U.S.C. § 1983)	\$39,000 and \$26,000		Upholding awards against individuals as high but not shocking	
<u>Concepcion Chaparro v. Ruiz-Hernandez</u> , 607 F.3d 261 (1 st Cir. 2010) (§ 1983 wrongful termination)	\$15,000 awarded against municipality and \$15,000 against individual defendant, awarded to twenty two employees	Awards against municipality upheld, but awards against individual defendants vacated based on qualified immunity grounds		
<u>Acevedo-Diaz v. Aponte</u> , 1 F.3d 62 (1 st Cir. 1993) (§ 1983 wrongful termination cases)	\$25,000		Reinstated	
<u>Draper v. Centennial Healthcare Corp.</u> , Memorandum of Decision and Order on Defendants' Motions for Judgment Notwithstanding the Verdict and Motions for a New Trial, C.A. No. 00-2180, Middlesex, ss., Brassard, J., October 19, 2001 (sexual harassment)	\$25,000		Judgment affirmed by trial judge after post-trial motions	Judge Brassard
<u>Wennik v. Polygram Group Distribution, Inc.</u> , 304 F.3d 123 (1 st Cir. 2002) (c. 151B handicap discrimination claim)	\$21,000		Judgment affirmed and case remanded for a judicial explanation for the amount of attorneys fees awarded or a recalculation	Judge Saris

<u>Melnychenko v. Raab</u> , Findings, Rulings and Order for Judgment, C.A. No. 91-876, Ford, J., October 31, 1993, at 22, <u>affirmed</u> , 424 Mass. 285 (1997) (c. 151B same sex sexual harassment case)	\$20,000		Award of Judge, not jury	Judge Ford
<u>Brisette v. Franklin County Sheriff's Office</u> , 235 F. Supp. 2d 63 (D. Mass. 2003) (hostile work environment based on gender, under c. 151B and Title VII)	\$20,000		Award of Judge, not jury	Judge Ponsor
<u>Conway Chevrolet Buick, Inc. v. Travelers Indem. Co.</u> , 136 F.3d 210, 213 (1 st Cir. 1998) (reporting jury verdict for Title VII sexual harassment action)	\$20,000		Trial court denied a JNOV motion	
<u>Cortes-Reyes v. Salas-Quintana</u> , 608 F.3d 41 (1 st Cir. 2010) (section 1983 political discrimination and due process claims)	\$19,000 to each of seven plaintiffs	Compensatory damages vacated based on qualified immunity defense, where the plaintiffs' property interests were not clearly established.		
<u>Martinez-Velez v. Rey-Hernandez</u> , 506 F.3d 32 (1 st Cir. 2007) (section 1983 political discrimination claims)	\$10,000	Various claims brought by co-plaintiffs were dismissed		
<u>DeCarlo v. ABCC and Riley</u> , SUCV 2002-01135 (c. 151B retaliation claim), App. Docket No. 07-P-1257, Rule 1:28 (2009)	\$10,000		Jury Verdict on August 10, 2005	
<u>Powell v. Pittsfield</u> , 221 F. Supp. 2d 119, 152 (D. Mass. 2002) (§ 1983 retaliation claim), <u>affirmed</u> , 391 F.3d 1 (1 st Cir. 2004)	\$10,000		Award of Judge, not jury, against individual	Judge Ponsor
<u>Acosta-Sepulveda v. Hernandez-Purcell</u> , 889 F.2d 9, 13 (1 st Cir.	\$10,000		Upheld	

1989) (§ 1983 wrongful termination case)				
<u>Campos-Orrego v. Rivera</u> , 175 F.3d 89 (1 st Cir. 1999) (§ 1983 and retaliation case)	\$10,000 awarded for § 1983 claim		Upheld despite lack of compensatory damages, and despite numerous challenges to sufficiency of evidence and propriety of damages	
<u>Lynch v. City of Boston</u> , 180 F.3d 1 (1 st Cir. 1999) (§ 1983 wrongful termination)	\$10,000	Reversed, because underlying conduct did not constitute § 1983 violation		Judge Keeton
<u>Kercado-Melendez v. Aponte-Roque</u> , 829 F.2d 255, 267 (1 st Cir. 1987) (§ 1983 wrongful termination)	\$10,000		Upheld	
<u>Alicea Rosado v. Garcia Santiago</u> , 562 F.2d 114 (1 st Cir. 1977) (discriminatory transfer violation of § 1983).	\$10,000	Award of Judge vacated due to lack of aggravating circumstances		
<u>Burroughs v. Hogg Robinson, Inc.</u> , C.A. No. 95-6723, Suffolk ss., May 16, 1997 (c. 151B age discrimination wrongful termination claim on which jury was permitted to award punitive damages)	\$10,000		Jury Verdict, without appeal or post-trial motions	
<u>Provencher v. CVS Pharmacy, Div. of Melville Corp.</u> , 145 F.3d 5 (1 st Cir. 1998) (Title VII retaliation claim)	\$8,000		Upheld, despite lack of compensatory damages	
<u>Smith v. Boston</u> , 413 Mass. 607 (1992) (wrongful termination under 42 U.S.C. § 1983)	\$5,000 awarded against		Claim against individual was allowed to	Judge Greenberg

	individual defendant		stand and was not appealed. The SJC affirmed the pre-verdict grant of directed verdict for the claim against Boston based on insufficient evidence to establish municipal liability	
<u>Moreta and Cortes v. Trend-Lines, Inc.</u> , C.A. No. 97-4742E, Suffolk, ss. (pregnancy and disability claims)	\$3,000 for each plaintiff		Jury verdict in October 1999. Case settled before appeals	
<u>Sanchez-Lopez v. Fuentes-Pujols</u> , 375 F.3d 121 (1 st Cir. 2004) (section 1983 claim based on political discrimination)	\$2,500 per plaintiff up to a total of \$12,500	Vacated and remanded		
<u>Lopes v. Town of Mattapoisett</u> , C.A. No. 00-CV-11970 (D. Mass.) (Section 1983 jury verdict in April 2002)	\$2,500, \$1,500 and \$200 against individuals		Jury Verdict	
<u>Yung v. Revelation Bra Co.</u> , 7 Mass. L. Rptr. No. 6, 121 (August 18, 1997) c. 151B handicap discrimination and coercion case)	\$2,166.98	Punitive award was vacated as plaintiff had not shown that she was a qualified handicapped individual		
<u>Kepnes v. Albert Corp.</u> , C.A. No. 2010-01886, Norfolk, ss. (c. 151B retaliation case—Jury verdict May 2013)	\$0		Jury failed to award punitives, and awarded only \$10,000 in compensatory damages	

<u>Broderick v. Evans</u> , 570 F.3d 68 (1 st Cir. 2009) (Section 1983 jury verdict)	\$0		Judge failed to permit the issue of punitive damages to go to the jury, as the facts did not indicate that the retaliatory discharge was malicious enough, and the First Circuit upheld that decision.	Judge Stearns
<u>Tobin v. Liberty Mutual Insurance Co.</u> , 2009 U.S. App. Lexis 1278 (1 st Cir.) (c. 151B and ADA failure to accommodate case)	\$0	Judge failed to permit the issue of punitive damages to go to the jury, as failure to accommodate does not establish malice or knowing violation of the law.		Judge Woodlock
<u>Lipchitz v. Raytheon</u> , 434 Mass. 493 (2001) (c. 151B sex discrimination)	\$0	Jury failed to find conduct was egregious; therefore, no second, bifurcated trial was held on punitive damages. \$500,000 in compensatory damages was reduced by trial judge, and later, a new trial was ordered for failure of the jury instructions to clearly include the requirement that the termination would not have occurred but for discrimination		Judge Chernof

<u>Moreau v. Massachusetts Mutual Life Ins. Co.</u> , 22 Mass. L. Rptr. No. 25, 580 (July 30, 2007)	\$0	Judge refused to allow jury to consider punitive damages. Verdict for plaintiff was reversed based on holding that the plaintiff had to prove herself to be handicapped to recover		Judge Moriarty II
<u>Collins v. Massachusetts</u> , C.A. No. SUCV2002-02847-D (June 2007 jury verdict) (c. 151B handicap discrimination case)	\$0		Jury verdict	
<u>Dahill v. Boston Police Department</u> , C.A. No. 98-11441 (2002 jury verdict) (c. 151B handicap discrimination case)	\$0		Punitive damages not requested	
<u>Che v. MBTA</u> , 342 F.3d 31, 41-42 (1 st Cir. 2003) (c. 151B and Title VII retaliation claim)	\$0	The Judge prevented the jury from awarding punitive damages, but the First Circuit found that a jury is entitled to award them. A new trial for the award of punitive damages was ordered.		Judge Lasker
<u>McDonough v. Quincy</u> , 452 F.3d 8, 23-25 (1 st Cir. 2006) (c. 151B and Title VII retaliation)	\$0	Judge Young did not let the issue of punitive damages get to the jury, but the First Circuit found that the punitive damages should have been considered by the jury. The underlying finding of liability and other damages was upheld.		Judge Young
<u>Tuli v. Brigham & Women's</u>	\$0	Jury not given the		Judge Gertner

<u>Hospital</u> , C.A. No. 07 cv 12338 NG (retaliation and hostile work environment jury verdict in February 2009), <u>affirmed</u> 2011 U.S. App. Lexis 18003 (1 st Cir.)		option to award punitive damages. \$1.6 million awarded in compensatory damages; affirmed on appeal		
<u>McKinnon v. Kwong Wah Restaurant</u> , 83 F.3d 498, 508-509 (1 st Cir. 1996) (Title VII sexual harassment case)	\$0	After the defendant defaulted, the court awarded compensatory damages but refused to award punitive damages, based on the cultural, ethnic and educational background of the wrongdoers. The First Circuit remanded the case back for reconsideration of the denial of punitive damages		
<u>Weber v. Community Teamwork, Inc.</u> , 1998 Mass. Super. LEXIS 90, p. 57; vacated in part and affirmed in part, 434 Mass. 761 (2001)	\$0	In jury waived trial-- Judge Hamlin refused to award punitive damages. However, SJC later vacated the underlying finding of discrimination		Judge Hamlin
<u>Horney v. Westfield Gage Co.</u> , 211 F. Supp. 2d 291 (D. Mass. 2002) (gender discrimination and sexual harassment)	\$0	Judge dismissed punitive damages claims before case went to jury. Remittitur on \$750,000 front pay damages ordered.		
<u>Joyce v. Dennis</u> , 2013 U.S. App. Lexis 12199 (1 st Cir.) (sex discrimination in golf tournament, under Mass. Public Accommodations law).	\$0		Judge found punitive damages were unwarranted and did not	Judge Gorton

			permit the jury to consider them	
<u>Cariglia v. Hertz Equipment Rental Corp.</u> , Memorandum and Order, C.A. No. 98-12516, Lindsay, J., (D. Mass. October 28, 2004) (c. 151B age discrimination case).	\$0		Judge failed to award punitive damages after a bench trial, because the actual decisionmakers were innocent, and their decision was influenced by a discriminatory subordinate	Judge Lindsay
<u>Clockedile v. New Hampshire Department of Corrections</u> , 245 F.3d 1 (1 st Cir. 2001) (Title VII retaliation claim)	\$0		First Circuit reinstated verdict despite employee's failure to file retaliation allegation with the EEOC. No punitives may be awarded against a governmental entity	
<u>O'Rourke v. City of Providence</u> , 235 F.3d 713 (1 st Cir. 2001) (Title VII sexual harassment claim)	\$0		First Circuit fully reinstated jury verdict with \$275,000 award of compensatory damages; no punitives may be awarded against a governmental entity under Title VII	

<u>Everett v. 357 Corp.</u> , 2009 Mass. Lexis 58 (c.151B handicap discrimination)	\$0. The Plaintiff did not request punitive damages	The entire claim was dismissed based on failure to exhaust administrative remedies		
<u>Williamson v. Raytheon Co.</u> , C.A. No. 02-0868, Middlesex, ss. (c. 151B quid pro quo sexual harassment and retaliation)	\$0		January 2005 jury verdict of \$500,000 for emotional distress, but no punitive damages awarded because the Judge refused to allow the jury to consider the issue.	
<u>Carrion v. Hashem, et al.</u> , Suffolk Superior Court (c. 151B pregnancy discrimination)	\$0		2011 jury verdict. No punitive damages sought	
<u>Perez v. Fayad</u> , 2015 U.S. Dist. Lexis 42689 (D. Mass.), at 13-14 (OSHA Retaliation)	\$0		Trial before judge, where Judge elected to not award punitive damages, in the absence of reprehensible conduct beyond retaliatory termination for filing OSHA complaint	
<u>Michel v. Factory Mutual Engineering Corp.</u> , 9 Mass. L. Rptr. No. 9, 200 (December 21, 1998)	\$0		No punitives awarded by Judge because conduct	

			occurred prior to punitive damages amendment	
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