



# New Jersey Court Ruling Raises Price Of Employment Discrimination

SUPREME COURT DECISION IMPACTS POTENTIAL EMOTIONAL DISTRESS DAMAGES

Insights

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On September 19, 2016, the New Jersey Supreme Court upheld a jury's award of \$1.4 million in emotional distress damages to two Hispanic brothers who were found to have suffered race-based harassment at the hands of company executives and who claimed they were fired for complaining. In the process, the court made it much more difficult for employers to seek reductions in such awards from trial judges, meaning that New Jersey employers could face the possibility of higher emotional distress damage verdicts (*Cuevas v. Wentworth Group*).

## Case Involved Allegations Of “Grotesque” Harassment

Brothers Ramon and Jeffery Cuevas each began working for Wentworth Property Corporation in New Jersey in 2005. Both held prominent positions in the company; Ramon was hired as regional vice president, and Jeffrey was soon promoted to executive director after a successful stint as a portfolio manager.

During the course of their employment, however, the brothers allege that they were on the receiving end of a barrage of demeaning remarks based on their heritage. For example, they claimed that the executive vice president of operations commented while out at a restaurant meeting that Ramon could join his father in the kitchen “and you guys can wash dishes” if he did not pick up the check.

According to Jeffrey, company executives joked “they would have to order twice as much Mexican food and hire a salsa band” to satisfy the plaintiffs. They claimed that another company executive referred to the brothers as “Latin lovers,” which they found to be “particularly grotesque and demeaning” because the insult purportedly came from the human resources director.

On November 30, 2007, Jeffrey claims that he told the company in-house counsel that he wanted the harassment to stop. He claims that the company lawyer told him to “calm down” and apparently did nothing. Four days later, Jeffrey was fired and told to leave the premises immediately, even though he had just received a \$10,000 performance-based raise.

Ramon said he contacted the president and CEO to complain about the treatment of his brother, but it did neither of them any good. Within a month, company executives called Ramon and ordered him

to meet them at a rest area off the Garden State Parkway. Upon his arrival, Ramon was unceremoniously fired, purportedly for poor performance and misconduct.

### **Allegations Of Emotional Damage, But No Medical Support**

The brothers sued the company and one of the key executives under the New Jersey Law Against Discrimination. At trial, they testified that the racist remarks were embarrassing, wore them down, and made them feel helpless, especially because they were made by or in the presence of senior executives and there was “no one” to complain to.

Ramon claimed that he became depressed and worried about his financial security and business reputation, though he never obtained treatment from a mental health professional. Jeffrey also said that his treatment at the hands of his employer affected his “psyche” and plunged him into a depression, but likewise he did not seek mental health counseling.

### **The \$2.5 Million Verdict**

The jury returned a verdict in favor of the brothers on their racial discrimination, hostile work environment, and retaliation claims. In addition to back pay, front pay, punitive damages, and attorneys’ fees and costs, the jury awarded Ramon \$800,000 and Jeffrey \$600,000 in emotional distress damages.

The defense asked the court to reduce the emotional distress damage award (a “remittitur” motion). The trial judge denied the defendant’s motion; the defendants appealed, and the New Jersey Appellate Division affirmed.

### **Verdict Upheld: Judicial Conscience Not Shocked**

Earlier this week, the New Jersey Supreme Court affirmed the decision and the massive jury award of emotional distress damages, effectively overruling its 2011 holding in *He v. Miller*. The court reiterated the established general standard that a jury’s award of damages is entitled to a “presumption of correctness,” which is not overcome unless the employer clearly and convincingly establishes that the award was a “miscarriage of justice.” A damage award must “shock the judicial conscience,” meaning it is “wide of the mark,” “pervaded by a sense of wrongness,” and “manifestly unjust to sustain.”

The court’s conscience was not shocked here. In particular, the court did not mind that the plaintiffs did not present expert testimony to justify their claims of emotional distress damages, ruling that their testimony on the matter was sufficient.

### **Now What?**

This case could make claims of employment discrimination even more expensive for New Jersey employers. There is no cap in the state on punitive damages; now, with this ruling, it will be much more difficult for New Jersey employers to successfully prevail in having a jury’s emotional distress damage award set aside.

The only way for you to avoid being in a similar situation is to have a true zero-tolerance policy for discrimination, harassment, and retaliation. You should seek an unequivocal commitment from the highest levels of management that harassment at your organization will not be tolerated.

You should maintain formal policies prohibiting harassment in the workplace, and formal and informal complaint procedures for employees. You should also hold mandatory anti-harassment training for supervisors and managers, and anti-harassment training for all employees. Finally, you should ensure that you establish effective monitoring mechanisms to check the trustworthiness of the policies and complaint process.

For more information, visit our website at [www.fisherphillips.com](http://www.fisherphillips.com), or contact any member of [our New Jersey office](#) at 908.516.1050 or your regular Fisher Phillips attorney.

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