

**SHOW ME THE MONEY:
RECENT DEVELOPMENTS REGARDING DAMAGES
IN EMPLOYMENT CASES**

MARK SHANK

GREG MCALLISTER

Gruber Hurst Johansen Hail Shank, LLP
1445 Ross Avenue, Suite 2500
Dallas, Texas 75202

State Bar of Texas

24TH ANNUAL

**SUING AND DEFENDING GOVERNMENTAL ENTITIES
COURSE**

July 26-27, 2012

Austin

CHAPTER 7

TABLE OF CONTENTS

INTRODUCTION 1

I. FEDERAL EMPLOYMENT LAWS 1

 A. Title VII and ADA 1

 1. Remedies for lost wages and benefits 1

 a. Back Pay 1

 b. Front Pay 2

 2. Compensatory and punitive damages 2

 a. Compensatory Damages 2

 b. Punitive Damages 2

 3. Attorneys’ Fees 3

 a. Prevailing Plaintiff 3

 b. Prevailing Defendant 3

 4. Paralegals’ Fees 4

 5. Interest 4

 6. Injunctive relief 4

 7. Remittitur 4

 8. Loss of Consortium 4

 9. Emotional Damages 4

 B. ADEA 5

 1. Backpay 6

 2. Reinstatement and Front Pay 5

 3. Liquidated Damages 5

 4. Interest 5

 5. Older Worker Benefit Protection Act 5

 6. Hostile Work Environment 7

 C. 42 USC §1981 7

 D. 42 USC §1983 7

 1. Compensatory Damages 7

 2. Attorneys’ Fees 8

 E. ERISA 8

 1. Restitution 8

 2. Attorneys’ Fees 8

 F. Family and Medical Leave Act 9

 1. Summary of Available Damages 9

 2. Reinstatement 9

 3. Interest 9

 4. Lost Compensation 9

 5. Immunity 10

 G. Sarbanes-Oxley Act of 2002 10

 H. Equal Pay Act/Fair Labor Standards Act 11

 1. Individuals 11

 2. Emotional Distress and Punitive Damages 11

 3. Offset/Set-off 11

 4. Liquidated Damages 12

 5. Attorneys’ Fees 12

 I. Federal Employers’ Liability Act 13

 J. Rehabilitation Act 14

 K. Uniformed Services Employment and Reemployment Rights Act 14

II. TEXAS STATUTES ON EMPLOYMENT LAW DAMAGES 14

 A. The Texas Commission on Human Rights Act 14

 1. Equitable Relief 14

- a. Back Pay 14
 - b. Declaratory and Injunctive Relief..... 15
 - 2. Compensatory and Punitive Damages 15
 - a. Past Compensatory 15
 - b. Future Compensatory..... 16
 - c. Compensatory and Punitive Damages 16
 - 3. Attorneys’ Fees..... 17
 - 4. Plaintiff’s Duty to Mitigate..... 16
 - 5. Mixing Remedies..... 17
- B. Workers’ Compensation Retaliation 17
- C. Whistleblower Act..... 18
 - 1. Jurisdiction 18
 - 2. Compensatory Damages 18
 - 3. Actual Damages..... 19
 - 4. Attorneys’ Fees..... 19
- D. Covenant Not to Compete Act 19
- E. Constitutional Rights..... 19

III. TEXAS STATE COMMON LAW DAMAGES IN EMPLOYMENT CLAIMS 19

- A. General Rules of Recovery..... 19
 - 1. Tort reform/punitive damages 19
- B. Contract and Quasi-Contractual Causes of Action..... 19
 - 1. Breach of Employment Contract 20
- C. Trade Secrets 20
- D. Common Law Tort 20
 - 1. Wrongful Discharge in Violation of Public Policy..... 20
 - 2. Defamation 21
 - 3. Intentional Infliction of Emotional Distress 21
 - 4. Fraud..... 21
 - 5. Negligent Supervision 21