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Should Plaintiffs' Lawyers Tell Jurors About Tax on Damages?

Helps Discrimination, Civil Rights Cases

By Sylvia Hsieh

Plaintiffs' lawyers in employment discrimination and civil rights cases should be asking for a jury instruction that an award may push the plaintiff into a higher tax bracket, experts tell *Lawyers Weekly USA*.

This is because of a recent Ohio case where the plaintiff's lawyer got the trial court to instruct the jury that the plaintiff would be taxed at a higher rate as a result of a "lump sum" damage award than if he had collected the same amount in income over several years.

The idea is to get the jury to "gross up" the award to compensate for the higher rate.

"It's incredibly advantageous if a jury finds for the plaintiff and knows the

damages are taxed. The inclination is for the jury to be sympathetic to the plaintiff and give a higher award," says Baltimore attorney Mindy Farber, who represents both plaintiffs and defendants.

This is a "terrific" idea, says New York plaintiffs' lawyer Janice Goodman.

"I think it's brilliant," agrees Roxanne Barton Conlin, a former ATLA president who practices in Des Moines, Iowa.

While some lawyers are skeptical as to whether judges will give such an instruction, others predict this case could signal a trend.

"Word is getting around the plaintiffs' bar. I have no doubt more and more people will attempt to argue it's appropriate," Goodman says.



Ellen Simon and Ann-Marie Ahern got a judge to tell the jury that any award would be taxed.

David Peñewicz