UT Austin Reconsiders Tenure Bid After $3M Pregnancy Discrimination Jury Verdict

BY BOWDITCH & DEWEY • JULY 28, 2022

Following a $3,000,000 jury verdict against it earlier this year, The University of Texas at Austin ("UT Austin"), recently reconsidered the tenure bid of Dr. Evdokia Nikolova ("Dr. Nikolova"). In July 2020, Dr. Nikolova filed suit in the United States District Court for the Western District of Texas, Austin Division, against UT Austin asserting that the University discriminated and retaliated against her on the basis of her sex and pregnancy when it denied her tenure.

As alleged in her Complaint, Dr. Nikolova joined UT Austin's Department of Electrical and Computer Engineering ("ECE") in January 2014. She took what UT Austin refers to as a "probationary extension" and "modified instructional duty" ("MID") for pregnancy and childbirth. These policies provided assistant professors with additional time during their tenure review period (under the probational extension policy) and additional time off for new parents (under the MID policy). Dr. Nikolova argued that her tenure request was supported by the University's ECE Department and relevant tenure and promotion committees, but recommended against by the School's Dean (on the basis that it would amount to an "early promotion" for tenure). While denying that the promotion would have been "early," Dr. Nikolova asserted that at least two male professors and one (non-pregnant) female professor in the School of Engineering were approved for so-called "early" tenure. In addition to sex/pregnancy discrimination and retaliation claims, Dr. Nikolova also asserted that UT Austin violated the Equal Pay Act, 29 U.S.C. sec. 206(d)(1). On March 11, 2022, following a jury trial, Dr. Nikolova was awarded $1,000,000 in past compensatory damages, $2,000,000 in future compensatory damages, and $50,000 in back pay and benefits.

On April 28, 2022, Dr. Nikolova's counsel filed a motion for judgment. By that motion, her counsel acknowledged that the relevant $300,000 cap on compensatory damages would necessarily reduce the $3,000,000 awarded by the jury. Dr. Nikolova (who remains employed by UT Austin) asked the Court to confirm an award in the amount of $300,000 in total compensatory damages and $50,000 in back pay. They requested front pay damages and discussed various hypotheticals, including the possibility of UT Austin awarding Dr. Nikolova tenure. However, the motion acknowledged that an order directing UT Austin to 'instate' her with tenure was infeasible "because of the discord and antagonism between the parties." (Apr. 28, 2022, ECF No. 99). In its response of June 20, 2022, UT Austin agreed with Dr. Nikolova's

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positions regarding compensatory damages and back pay/benefits, but argued that the Court should decline to award front pay or limit it to no more than $71,001 (as proffered by UT Austin's damages expert). (June 20, 2022, ECF No. 102). UT Austin agreed that a court order granting Dr. Nikolova tenure would be "inappropriate." Thereafter, on July 7, 2022, Dr. Nikolova's counsel replied to UT Austin's response, reiterating its position that "instatement" was not an appropriate remedy vis-à-vis Dr. Nikolova's front pay damages. (July 7, 2022, ECF No. 104).

While her motion for judgment was pending, on July 19, 2022, Dr. Nikolova's counsel informed the Court that, apparently, *sua sponte*, the current University of Texas President Jay C. Hartzell recommended that Dr. Nikolova be promoted to an associate professor with tenure effective September 1, 2022 and that her nine-month salary be increased that same day to $132,000. (July 19, 2022, ECF No. 105). No word yet on whether Dr. Nikolova will accept the promotion, as her jury award hangs in the balance.

CLIENT TIP

The Biden Administration's proposed changes to the current Title IX regulations clarify recipients' obligations to students and employees who are pregnant or experiencing pregnancy-related conditions. Clients should keep these proposed changes in mind when reviewing their Title IX compliance documents. Additionally, clients should be cognizant of the potential for significant damages in gender and pregnancy discrimination and retaliation cases. For more information, please contact the author or your Bowditch attorney.

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