

## **SJC decision curbs employer access to jury trial in job-related discrimination cases**

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The state's highest court this week handed down a decision that curtails employers' ability to seek a jury trial in job-related discrimination cases.

The decision was based on the Supreme Judicial Court's review of four employment-law cases.

In February, the SJC signaled the legal community that it was mulling a major change to the case law when it consolidated and heard four related cases on employment discrimination claims and invited the legal community to submit friend-of-the-court brief.

In the Supreme Judicial Court's decision this week on the four cases, the court acknowledged that it was cutting back what many assumed to be a companies' right to a trial by jury under the state constitution. In justifying this decision, the court emphasized the rights of the employees who bring discrimination claims.

"Principles of equity and fairness dictate that complainants who have been found by the full commission to have been illegally discriminated against not be forced to re-litigate their claims in the Superior Court," wrote the justices in the decision.

Employment lawyer Mark Ventola, a partner in the Boston office of Manchester, N.H.-based Sheehan, Phinney, Bass & Green, PA, called the decision the "worst possible outcome for businesses."

Ventola said it was not unusual for employers to opt for jury trials in such cases.

"These are often 'he said, she said' type of cases where you're getting wildly different versions," Ventola said. "Having a jury of your peers decide who to believe is important."

Although employees must first bring discrimination cases to the Massachusetts Commission Against Discrimination, they can transfer cases to a state court after 90 days. If the employee keeps the claim at the commission, losing employees now can no longer appeal to the courts.

A 1997 case, Lavelle vs. MCAD, which first gave employers the right to a jury trial and a decade-old decision in Dalis v. Buyer Advertising Inc. first gave the suing employee the right to seek a jury trial.

In a March Boston Business Journal story about the Supreme Judicial Court's consideration of the employment law cases, the anti-discrimination commission's general counsel Steven Locke said about 450 current and old cases were removed to court in 2003, while 3,272 were filed that year. In 2002, 4,150 cases were filed at the commission and about 600 taken to court that year.

Since many cases are dismissed or settled, the commission hearing officers have issued only 171 decisions during the past three years, Locke said.