



# Sweeping Changes to the Missouri Human Rights Act – Back to the Mainstream

May 11, 2017

For more than a decade, employment discrimination plaintiffs in Missouri have benefited from a lower burden of proof than plaintiffs in federal court or other states. With no statutory cap on compensatory and punitive damages, a Missouri employer has faced the possibility of a multi-million dollar verdict on a case it takes to trial. Senate Bill 43, passed by the Missouri Legislature earlier this week, means the Missouri Human Rights Act (MHRA) will no longer be an outlier among discrimination statutes. The law, once signed, will go into effect August 28, 2017.

**Motivating Factor.** Prior to this week's amendment, an employee merely had to show that his or her protected status (race, age, disability, etc.) was a *contributing factor* in an employer's failure-to-hire, termination, demotion or other adverse employment action. Under the current (now "Old") MHRA, plaintiffs have taken the position that any circumstantial evidence of discriminatory intent outweighs the evidence of an employer's legitimate, non-discriminatory reasons for its action. In closing arguments at trial, plaintiffs' attorneys frequently tear off a tiny corner of a piece of paper to argue how low the "contributing factor" burden of proof is. On August 28, 2017, with the advent of the New MHRA, this and many other aspects of the MHRA will be brought in line with standards applicable in most other states.

**No Individual Liability.** Individual supervisors will no longer be liable for acts taken "in the interest of the employer." Only the entity is subject to liability for MHRA discrimination. By eliminating individual liability, the Missouri legislature lessened the chances that plaintiffs can avoid removal to federal court in state discrimination cases when the real parties-in-interest are from different states.

**Damage Caps.** Under the New MHRA, damages are capped on a sliding scale, depending on the number of employees. For employers of 500 or more employees, damages (other than back pay) are capped at \$500,000. For an employer with less than 50 employees, the cap is \$50,000. Employees who prevail are still entitled to their attorneys' fees apart from the cap, but under the New MHRA, those fees, often in the \$150,000 to \$250,000 range, are not factored into a punitive damages award.

**Other Changes.** The New MHRA also:



- Bars claims based on untimely Complaints to the Missouri Commission on Human Rights.
- Limits the Commission's issuance of Right to Sue to requests or expiration of 180 days.
- Allows for a jury instruction akin to the Business Judgment Rule.
- Calls for courts to use the federal summary judgment burden-shifting analysis.

**New Whistleblower Provisions.** Finally, the Missouri Legislature addressed the common-law wrongful discharge claims recognized by Missouri's courts. Under the common law, employees could sue for alleged retaliatory acts if a contributing factor was the employee's opposition or refusal to engage in conduct that violated a "clearly-mandated Missouri public policy." Under the new law, there are no punitive damages - just actual and liquidated (double) damages, and attorneys' fees, and the motivating factor standard now applies.

Of course, even with the passage of the New MHRA, employment discrimination remains illegal. Now, however, Missouri employers find themselves on a level playing field with competitors in other states with respect to the risks imposed by employment discrimination suits. We anticipate a rush to the courthouse to file discrimination claims before the August 28<sup>th</sup> effective date. It is important that Missouri employers maintain and disseminate up-to-date anti-harassment, anti-discrimination and anti-retaliation policies, and train their managers and workforces on those policies.

If you have questions regarding this alert, please contact your Lathrop Gage attorney or the attorneys listed above.

