

MOTIVATED FOR CHANGE: MISSOURI'S EMPLOYMENT DISCRIMINATION LAW SET FOR TRANSFORMATION

Posted on February 8, 2017 by Andrew W. Blackwell



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In response to criticism that Missouri's employment discrimination law, the Missouri Human Rights Act ("MHRA"), has become too employee-friendly, the Missouri Legislature appears set to make sweeping changes to the law for the first time in close to twenty-five years. A look at the recent history of the MHRA is important to understand why some believe change is necessary.

Until 2007, Missouri courts applied the federal *McDonnell-Douglas* burden-shifting analysis in employment discrimination cases. This meant that if an employer could articulate a non-discriminatory reason for an employee's termination, demotion, etc., such as their poor performance, then the burden would shift back to the employee to produce evidence that the employer's decision was *motivated* by discrimination. If a plaintiff produced no evidence, then the Court would grant summary judgment in favor of the employer. This framework still exists on the federal level for Title VII of the Civil Rights Act of 1964, Age Discrimination in Employment Act, and Americans with Disabilities Act claims. However, *Daugherty v. the City of Maryland Heights* changed the standard for employment cases in Missouri.

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Daugherty v. the City of Maryland Heights

In *Daugherty*, the Missouri Supreme Court concluded that to survive a motion for summary judgment, an employee must show that the alleged discrimination was a *contributing factor* in the employer's decision. The court reasoned the contributing factor language contained within Missouri-Approved Instruction 31.24 and was consistent with the plain meaning of the MHRA and should apply to summary judgment motions. A contributing factor is a lower burden than a motivating factor.

The practical effect of this change has meant that the majority of employment discrimination claims are able to withstand motions for summary judgment and proceed to trial.

Another important development in the last decade was the MHRA's applicability to individuals. The MHRA's definition of an employer includes, "...any person directly acting in the interest of an employer. . . ." Since *Cooper v. Albacore Holdings, Inc.*, Missouri courts have held that the MHRA imposes individual liability for discriminatory conduct. Typically this means individuals in management positions can be found individually liable for employment discrimination.

For example, a small business owner who also manages his employees could be sued individually, in addition to his or her company, for employment discrimination under the MHRA. If the owner was found liable for employment discrimination, his or her personal assets could be attached to satisfy the judgment.

Senate Bill 43 and three companion House bills (H.B. 550, 552, and 676) would restore the motivating factor standard to employment discrimination cases and change the definition of employer to exclude individuals by adopting the definition of employer as used in Title VII. However, these bills also implement additional changes to the MHRA that have never existed under Missouri law.

As currently drafted, the proposed changes to the MHRA would include placing a cap on the amount of money a plaintiff can recover for discrimination. While there are caps to recovery under Title VII, those caps specifically exclude back pay, which can include lost wages, lost benefits, bonuses, and raises. The proposed caps to the MHRA do not explicitly exclude back pay from the cap. Thus, if passed into law, the cap on all damages an employee could recover against an employer under the MHRA would be:

- For employers with 6 to 100 employees, \$50,000;
- For employers with 101 to 200 employees, \$100,000;
- For employers with 201 to 500 employees, \$200,000;
- For employers with 501 or more employees, \$300,000.

The proposed changes would also require the use of a business judgment jury instruction at trial and eliminate the ability of state employees to recover punitive damages for MHRA violations.

Despite the numbers of changes in the proposed legislation, there are two areas where the

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proposed bills do not change the MHRA. First, Missouri courts can still award prevailing plaintiffs reasonable attorneys' fees. Second, the section of the MHRA related to retaliation, which varies from federal law, would be unchanged under the current proposals.

At present, Senate Bill 43 is set on the Senate Perfection Calendar. Before it can move to the House, the Senate must vote twice: once to perfect it and once to pass it after a third reading. There are currently no proposed amendments.

Missouri Human Rights Act, Mo. Rev. Stat. § 213.010, et seq.

See H.B. 1619 (1992).

231 S.W.3d 814 (Mo. 2007) (en banc).

204 S.W.3d 238 (Mo.App. 2006).

42 U.S. Code § 1981a (b)(2).

Walsh v. City of Kansas, 481 S.W.3d 97, 106 (Mo.App. 2016)

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