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Major Changes to the Missouri Human Rights Act

By Lauren Herbig*

Effective as of August twenty-eighth of this year, the newly amended Missouri Human Rights Act (MHRA), which prohibits discrimination in employment, housing, and places of public accommodations based on religion, race, color, national origin, ancestry, sex, age, disability, and familial status, went into effect. Governor Greitens signed Senate Bill 43, the amended MHRA, into law on June 30, 2017. The major changes from the previous law to the one currently in place are as follows:

First, the current standard of “contributing factor” has been changed to a stricter “motivating factor” standard. Prior to the amendment, all an employee had to show was that “his or her protected status (race, age, disability, etc.) was a contributing factor”¹ to the adverse action taken by the employer. The new “motivating factor” standard is defined as “the employee’s protected classification actually played a role in the adverse action or decision and had a determinative influence on the adverse decision or action.”² This is likely to make it more challenging for plaintiffs to prove their discrimination claims. However, some feel that it is also likely to help prevent frivolous claims against employers.

Second, individual supervisors or managers are no longer liable in their personal capacity for acts done “in the interest of the employer.”³ Now, only the entity as a whole is liable for discrimination under MHRA. This change may increase the chance of removal to federal court in state discrimination cases. The inclusion of a supervisor in a suit helped plaintiffs to keep a case in state court by eliminating the potential for diversity jurisdiction.

Third, damages are now capped on a sliding scale. The damages depend on the number of employees a business employs. For employers with between 5 and 100 employees, the damage cap is \$50,000. For an employer with

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¹ Mo. Rev. Stat. § 213 (amended 2017).

² *Id.*

³ *Id.*

between 100 and 200 employees, damages are capped at \$100,000. Damages are capped at \$200,000 for employers with 200 to 500 employees. Lastly, if an employer has more than 500 employees, damages are capped at \$500,000. Attorney's fees are not included in the capped amounts, and plaintiffs who prevail on their MHRA claims are still entitled to their attorney's fees. However, attorney's fees are no longer accounted for in an award for punitive damages.

Fourth, the newly amended MHRA creates the Missouri Whistleblower Protection Act. Traditionally, whistleblowers protection have been protected under the common law, but now there is a statutory basis for the claim as well. Under the Missouri Whistleblower Protection Act, "it is an unlawful employment practice for an employer to discharge an individual who is a 'protected person' because that person engaged in any of the protected activities referenced in the definition of 'protected person.'"⁴ Additionally, the new law puts significant restraints on the remedies that are accessible to whistleblowers. The only remedies available for whistleblowers are back pay, reimbursement for medical bills upon a showing of direct relation to the MHRA claim, and liquidated damages only if the outrageous conduct of the employer is shown by clear and convincing evidence.⁵ The court may still award the prevailing party court costs and attorney's fees if it so chooses.⁶

There is much speculation on whether the amended MHRA will apply to suits filed after August 28 or whether the old MHRA will apply if the facts that gave rise to the claim took place before August 28. The question currently remains unanswered. Many feel that the amended MHRA helps put Missouri and its employers on a more level playing field with the federal government and other states. However, some feel that these changes make it much more difficult on the employee to hold an employer liable for misconduct. Regardless of which side one falls on, only time will tell how these changes affect employer discrimination suits in Missouri.

Edited by Luke Jackson

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

