



Missouri Levels The Playing Field For Defending Baseless Discrimination Lawsuits

Insights

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Good news for Missouri employers: the days of our state arguably being considered the most dangerous place in America for baseless discrimination lawsuits are about to end. Governor Eric Greitens late last week signed legislation that, effective August 28, 2017, amends the Missouri Human Rights Act (MHRA) and mostly aligns Missouri with federal antidiscrimination law and the laws of most other states. The result will be a level playing field for all parties to a discrimination claim. Employees still will be protected against employment discrimination, and employers will be better able to defend baseless lawsuits.

Summary Of New Law

The two most important provisions of the new law, signed into effect on June 30, make clear that employees accusing employers of intentional illegal discrimination or retaliation must prove that the alleged unlawful motivation was “the motivating factor” that had a “determinative influence” on the challenged employment decision, and will place a reasonable cap on compensatory and punitive damages that may be awarded against an employer. The cap ranges from \$50,000 for small employers (fewer than 100 employees) to \$500,000 for large employers (500 or more employees). Although the \$500,000 figure is somewhat greater than the \$300,000 cap under federal law, it will still put an end to totally unjustified seven figure punitive damage awards by juries in discrimination, harassment, and retaliation cases.

The new law also recognizes the right of employers to present a “business judgment” defense. This will make clear to jurors that their role is not to second guess the business judgment of the employer in terms of its challenged personnel action. The new law is designed to help juries focus on the legally determinative issues and determine the truth based on the evidence alone.

The other most important aspects of the new law include:

1. The following specific cap on compensatory and punitive damages, based on the size of the employer:
 - a. \$50,000 for employers with between 5 and 100 employees;
 - b. \$100,000 for employers with between 100 and 200 employees;
 - c. \$200,000 for employers with between 200 and 500 employees; and
 - d. \$500,000 for employers with more than 500 employees.

2. Recognition of the right to jury trial;
3. Managers, supervisors, and fellow employees can no longer be sued as individuals;
4. Employees must file a timely charge with the Missouri Commission on Human Rights within 180 days of the alleged unlawful treatment; and
5. A new “Whistleblower’s Protection Act” protecting employees against retaliation for reporting unlawful acts or violations of clear mandates of public policy, or refusing to carry out an employer directive that would require the employee to violate the law. The law recognizes the same “motivating factor” standard as in discrimination lawsuits. It provides for recovery of backpay and reimbursement of medical bills incurred in treatment of mental anguish, plus double those amounts as liquidated damages, and attorneys’ fees (but no punitive damages). Employers may also recover attorneys’ fees if the lawsuit is brought “without foundation.”

What This Means For Missouri Employers

These changes will make the litigation process in Missouri courts fair for both sides. An employee or applicant who was truly the victim of illegal discrimination or retaliation will still have the opportunity to prove his or her case and recover reasonable damages. An unjustly accused employer can fairly defend itself. Missouri law no longer places employers at a disadvantage in litigation and at a competitive disadvantage with employers located in other states.

The law makes no change to the absolute prohibition against unlawful discrimination and retaliation against employees and applicants. You should continue to provide equal employment opportunities to all employees and applicants, which includes providing a respectful and professional work environment for all employees.

You also should maintain and communicate a well-drafted anti-harassment and antidiscrimination policy. The policy should include a complaint procedure. You should take prompt action to investigate and, if warranted, address complaints by employees. You should also provide training as appropriate and otherwise make sure employees understand the expectation that they support equal employment opportunity in your organization.

For more information about how this new law could affect your workplace, contact any attorney in our [Kansas City](#) office at 816.842.8770, or your regular Fisher Phillips attorney.

This Legal Alert provides information about a specific new state law. It is not intended to be, and should not be construed as, legal advice for any particular fact situation.

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Brian J. Finucane

Senior Counsel

816.842.8770

Email

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