



Missouri Raises Bar For Pleading And Proving Punitive Damages, Including In Employment Claims

Insights

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Just as the 2020 legislative session wrapped up, the Missouri legislature passed a bill increasing the standards for pleading and making it harder to prove claims for punitive damages – especially in employment cases. S.B. 591 is expected to be signed by Governor Parsons, and, if so, will apply to causes of action filed after August 28, 2020. This new law will be welcome news for employers. What do you need to know about the impending changes?

Pleading Punitive Damages Will Be Harder

Under the bill, a party will no longer be able to assert a claim for punitive damages in its initial pleading. To assert a claim for punitive damages, a party must first seek leave of court. The bill provides that the court shall grant such leave of court only if it concludes that, based on the evidence to be admitted at trial, a trier of fact could reasonably conclude that the standards for awarding punitive damages have been met.

Punitive Damage Standards Raised

The bill also alters the standards for awarding punitive damages, making it harder for plaintiffs to advance claims and recover such damages. The bill provides that “punitive damages shall not be awarded unless the claimant proves by clear and convincing evidence that the defendant intentionally harmed the plaintiff without just cause or acted with a deliberate and flagrant disregard for the safety of others.”

While the clear and convincing burden of proof is not new, but the evidentiary basis required to support a punitive damages claim is more onerous. The current standard requires only that plaintiff prove that the alleged conduct showed a “complete indifference to or conscious disregard for the safety of others.”

Punitive Damages In Employment Cases

In addition, the bill sets a different standard where a plaintiff seeks punitive damages against an employer or other principal because of an act by an employee/agent. Under these circumstances, punitive damages are only appropriate if:

1. The principal or a managerial agent of the principal authorized the doing and the manner of the act;

2. The agent was unfit and the principal or a managerial agent of the principal was reckless in employing or retaining him or her;
3. The agent was employed in a managerial capacity and was acting in the scope of employment; or
4. The principal or a managerial agent of the principal ratified or approved the act.

What Do These Changes Mean?

The changes will meaningfully impact how punitive damage claims are pursued, evaluated, and tried in Missouri. From a procedural aspect, it could be months after the initial petition is filed or even longer before a plaintiff is permitted to assert a claim for punitive damages. And, before a punitive damages claim can be asserted, a plaintiff must come forward with real, admissible evidence by motion to support adding the claim.

If a punitive damage claim makes it to trial, gone will be the days where a plaintiff could argue the vague, ambiguous standard that the alleged conduct showed “complete indifference to or conscious disregard” to the rights of others. Rather, a plaintiff will be required to prove, by clear and convincing evidence, that the defendant “*intentionally harmed* the plaintiff without just cause or acted with a *deliberate and flagrant* disregard ...”

Notably, these changes come three years after Missouri established caps on certain damages for claims under the Missouri Human Rights Act. R.S.Mo. 213.111 limits emotional distress and punitive damages to \$50,000 for employers with more than five employees and fewer than 100 employees, \$100,000 for employers with more than 100 employees and fewer than 200 employees, \$200,000 for employers with more than 200 employees and fewer than 500 employees, and \$500,000 for employers with more than 500 employees.

What Should You Do?

Once signed into effect, the pleading requirements will only apply to cases filed in Missouri state court after August 28, 2020. For cases filed in federal court, the federal pleading requirements remain unchanged.

The substantive changes discussed above will apply to all claims governed by Missouri law filed after August 28, 2020. For existing cases or those filed before this date, the current standards and procedural rules remain in effect.

When it comes to lawsuits filed after August 28, 2020, plaintiffs will be prohibited from including a claim for punitive damages in Missouri state courts without leave of court. If a petition includes a claim for punitive damages without first obtaining leave of court to do so, you should work with your employment counsel and develop a plan to strike the pleading. Moreover, for claims governed by Missouri law, you and your counsel should evaluate any claims for punitive damages under the new standards discussed above. For some cases, it will be less likely that a claim for punitive damages will be submitted to a jury. And, even for those cases where punitive damages are submitted to the jury, it will be less likely that a jury will award them.

We will continue to monitor developments related to this new law and its impact on Missouri employers. Make sure you are subscribed to [Fisher Phillips' Alert System](#) to get the most up-to-date information. For further information, contact your Fisher Phillips attorney or any attorney in [our Kansas City office](#).

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