

Missouri Legislature Passes Sweeping Reforms to Employment Discrimination Law

By Brian J. Christensen

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The Missouri legislature has passed a bill that makes sweeping amendments to the Missouri Human Rights Act, including adopting the “motivating factor” standard for employment discrimination claims and excluding individuals from liability, among other things.

The measure, [Senate Bill 43](#), was passed in the House of Representatives on May 8, 2017. It had already passed in the Senate. If signed by Governor Eric Greitens, which is anticipated, SB 43 will become effective on August 28, 2017.

Key Provisions

The bill:

- Eliminates the “contributing factor” standard in favor of the “motivating factor” standard
 - To prove unlawful discrimination, the plaintiff must show the employee’s protected classification actually played a role in the adverse employment action or decision and was a determinative influence on the adverse decision or action (currently, the plaintiff must prove that discrimination merely contributed to the adverse employment action)
 - The plaintiff also must prove the adverse action was the direct proximate cause of the claimed damages
- Excludes individuals from liability under the Missouri Human Rights Act
- Requires the Missouri Human Rights Commission to make jurisdictional findings in all its decisions
- Permits employers to raise the defense of untimely filing of a charge at any time during the administrative phase or at an appropriate time in litigation
- Caps damages under the Missouri Human Rights Act to back pay, interest on back pay, and:
 - \$50,000 for employers with between 5 and 100 employees
 - \$100,000 for employers with between 100 and 200 employees
 - \$200,000 for employers with between 200 and 500 employees
 - \$500,000 for employers with more than 500 employees
- Leaves attorney’s fees available to prevailing plaintiffs
- Creates the “Whistleblower’s Protection Act” to provide a cause of action for employers who discharge employees who:
 - Report an unlawful act of the employer
 - Report an unlawful act to the employer
 - Refuse to carry out unlawful directives of the employer
 - Engage in conduct otherwise protected by statute or regulation where the statute or regulation does not provide for a private cause of action

Under the new Whistleblower Protection Act, an employee can recover actual, but not punitive, damages.

Implications

Once they go into effect, the amendments are expected to have a dramatic impact on the employment law landscape in Missouri, particularly in single-plaintiff employment cases. Because SB 43 eliminates the possibility of multi-million dollar verdicts, it likely will reduce the number of claims filed, as well as the settlement value of claims that are filed, and the cost of employer practices liability insurance should be

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reduced over time.

Further, more cases initially will be filed in or removed to federal court because of the elimination of individual liability. This likely will result in more cases being dismissed short of trial.

Finally, given the caps on damages, more cases may be tried given the significant reduction of risk in some jurisdictions.

Please contact your Jackson Lewis attorney to discuss these developments and what they may mean to your specific organization.

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