

Missouri Legislature Passes Bill Making It More Difficult for Plaintiffs to Receive Punitive Damages

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Employment Litigation

The Missouri Legislature has passed a bill ([S.B. 591](#)) that raises the standards for punitive damages in civil actions.

S.B. 591 provides that punitive damages may be awarded only if the plaintiff 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.” The measure now heads to Governor Mike Parson, who is expected to sign the bill.

The measure was passed by the Missouri House on May 12, 2020. If signed by Governor Parson, the new law will apply to all cases filed on or after August 28, 2020.

State Representative Bruce DeGroot, R-Chesterfield, sponsored the legislation in the House because of a belief that courts have eroded the concept of punitive damages. DeGroot said, “Punitive damages should be awarded to punish wrongdoers, not to punish people who just make a mistake.”

Key Provisions

S.B. 591 provides:

- Punitive damages will be awarded only if the plaintiff 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,” and the plaintiff is awarded more than nominal damages.
- Punitive damages may be awarded against an employer or other principal due to an employee’s conduct only if,
 1. The principal or managerial agent of the principal authorized the doing and the manner of the act;
 2. The employee was unfit and the principal or a managerial agent of the principal was reckless in employing or retaining the employee;
 3. The employee 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.
- When an employer admits liability for the actions of an employee in a claim for compensatory damages, the court will grant limited discovery consisting only of employment records and documents or information related to the employee’s qualifications.
- A claim for punitive damages may no longer be made in the initial pleading and may be filed only as a written motion with permission of the court no later than 120 days before the final pretrial conference or trial date. The written motion for punitive damages must be supported by evidence. The amount of punitive damages will not be based on harm to nonparties. A pleading seeking a punitive damage award may be filed only after the

court determines the trier of fact could reasonably conclude the standards for a punitive damage award, as provided in , have been met. The responsive pleading must be limited to a response to the newly added punitive damages claim.

S.B. 591 also modifies provisions of the Missouri Merchandising Practices Act, which protects consumers from untruthful, misleading, and unfair business practices.

Implications for Employers

By tightening the punitive damages standard to only cases in which the defendant “intentionally harmed” the plaintiff “without just cause” or acted with a “deliberate and flagrant disregard for the safety of others,” S.B. 591 requires plaintiffs to first show a reasonable basis for a punitive damages claim.

S.B. 591 also intends to protect employers from punitive damages liability for acts by rogue employees. Punitive damages may be awarded only against an employer or other principal for an agent’s acts only if the managerial agent authorized, participated in, ratified the act, or the agent was “unfit” for the job, making it “reckless” for the principal to employ the individual.

Finally, by requiring the plaintiff to plead punitive damages only after adducing evidence of intentional wrongdoing, S.B. 591 will help weed out meritless claims and prevent unsupported or speculative claims that drive media attention and settlement negotiations. Before S.B. 591, Missouri required punitive damages claims to be included in the initial lawsuit, allowing plaintiffs to assert claims for punitive damages without any evidentiary support.

Please contact the Jackson Lewis attorney with whom you work to discuss these developments and what they may mean to your organization.

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