

GOV. GREITENS SIGNS “EMPLOYER-FRIENDLY” AMENDMENTS TO ANTI- DISCRIMINATION LAW

At the end of last week, Gov. Eric Greitens signed legislation amending the Missouri Human Rights Act (MHRA) to make the statute more “employer-friendly.” The bill will take effect on Aug. 28, 2017. How will the legislation change the current Missouri law?

The new legislation eliminates individual liability for supervisors and specifies that only the employer may be held responsible for discrimination. Currently, an employee alleging discrimination can sue both the employer and any supervisory employee who is alleged to have discriminated. The elimination of individual liability is particularly significant for an employer that is not headquartered in Missouri and does not have its principal place of business here. Under the new law, these “nonresident” employers will be able to transfer an MHRA case from state to federal court. Federal courts tend to be more “friendly” to employers in such cases and will often dispose of weak cases without requiring an employer to defend at trial.

The new legislation also excludes from the definition of “employer” any entity that is owned or operated by a religious entity. This would presumably exclude from suit, for example, entities such as religious charities or hospitals operated by religious orders.

The new legislation also imposes limits on the amount an employee may recover as damages in an MHRA lawsuit. The new caps limit all damages other than actual back pay, interest on back pay, attorney fees and court costs to:

- \$50,000 for employers with fewer than 100 employees.
- \$100,000 for employers with more than 100 but fewer than 200 employees.
- \$200,000 for employers with more than 200 but fewer than 500 employees.
- \$500,000 for employers with more than 500 employees.

The damage cap under current law in an MHRA case places limits only on punitive damages to \$500,000 or five times the “net amount of judgment.” The Missouri courts have construed the term “net amount of judgment” to include

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a variety of damages including mental distress damages and attorney fees. Under current law, if an employee received \$50,000 for mental distress and \$150,000 for attorney fees, punitive damages would be capped at \$1,000,000 ($\$50,000 + 150,000 = \$200,000 \times 5 = \$1,000,000$).

The new law adopts a “motivating factor” standard rather than the less stringent “contributing factor” standard for liability. “Motivating factor” means that the employee’s protected characteristic (race, sex, age, etc.) had “a determinative influence” on the employer’s decision. The law also instructs courts to apply a more stringent test in considering whether a case merits a trial or can be thrown out before trial.

The new legislation also specifically permits an employer to challenge, at any time, the timeliness of a charge of discrimination or the authority of the Missouri Commission on Human Rights (MCHR) to issue a right to sue letter. This portion of the legislation is intended to reverse prior case law that required an employer to sue the MCHR in order to challenge timeliness or jurisdiction.

The new legislation also creates a “Whistleblower Protection Act” that codifies some of the case law on public policy wrongful discharge. For example, the legislation requires an employee to complain to outside authorities in certain circumstances rather than complaining to management. In addition, the new law adopts the “motivating factor” standard of liability in place of the “contributing factor” for whistleblower cases. The new law also defines the damages available. Specifically, an employee may recover (1) back pay, (2) reimbursement of medical bills, (3) attorney fees, (4) court costs and, in limited circumstances, (5) liquidated damages in an amount equal to double that of back pay and medical bills.

The final major change is a provision in the new law stating that the remedies under the Workers’ Compensation Act, the Human Rights Act and the Whistleblower Protection Act are the exclusive remedy “for injury or damages arising out of an employment relationship.” This change is designed to shield employers and supervisors from tort claims that were often used to circumvent the employment at will doctrine that had long been the law in Missouri.